

GENERAL SYNOD

DRAFT ECCLESIASTICAL FEES (AMENDMENT) MEASURE

REVISION COMMITTEE REPORT

- Chair:** Mr Tim Allen (St Edmundsbury & Ipswich)
- Ex-officio members
(Steering Committee):** The Rt Reverend John Packer, Bishop of Ripon & Leeds (Chair)
The Reverend Moira Astin (Oxford)
Mr Justin Brett (Oxford)
The Venerable Adrian Harbidge (Winchester)
Mr Robert Hammond (Chelmsford)
- Appointed members:** The Rt Worshipful Timothy Briden (Vicar-General of
Canterbury) (*ex officio*)
The Reverend Canon David Felix (Chester)
Mr Brian Newey (Oxford)
The Reverend Caroline Ralph (Exeter)
The Reverend Stephen Trott (Peterborough)

Consultants

- Diocesan Registrars: Mr Chris Hodson (Southwell & Nottingham)
Diocesan Secretaries: Mr Jim Drennan (Birmingham)

Staff

- Legal Adviser: The Reverend Alexander McGregor
Standing Counsel: Sir Anthony Hammond KCB QC
Policy Advisers: Mrs Sarah Smith
Mr Jim Smith

1. The draft Ecclesiastical Fees (Amendment) Measure received First Consideration at the February 2009 group of sessions of the General Synod. The period for submission of proposals for amendment under Standing Order 53(a) expired on 16th March 2009.
2. Prior to the closing date mentioned in paragraph 1, proposals for amendment of the draft Measure were received from 16 members of the Synod, 5 individuals who are not members, 10 cathedrals and the Ecclesiastical Law Association (which represents diocesan registrars). A number of the proposals and other submissions made the same or similar points. The Committee therefore agreed to deal with them in groups (identified by the letters A - L) when the clause to which they related was reached. The Committee itself also identified an issue which led it to make amendments to the draft Measure.
3. The Committee met on one occasion and the proposals which it accepted form the basis of the draft of the Measure (GS 1715A) now before the Synod (in which amendments made by the Committee are shown in bold). Four members of the Synod – Mr Barry Barnes, the Reverend Paul Benfield, the Reverend Dr John Hartley and Mr Jonathan Redden – exercised their right under Standing Order 53(b) to attend the meeting and to speak to their proposals.

4. Set out in Appendix I to this report, the Synod will find a summary of the amendments considered by the Committee as well as the Committee's decision on each. Appendix II contains a destination table showing where new provisions have been inserted and how the provisions in the draft Measure at First Consideration (GS 1715) relate to those in the draft Measure now before the Synod.

CLAUSE 1

NEW SECTION 1(1)

Group A: Proposals not to replace incumbent's fee with a fee payable to the DBF

5. Proposals to the effect that the incumbent's fee should not be replaced with a fee payable to the diocesan board of finance were received from the following:

The Reverend Stephen Trott;
The Venerable Alistair Magowan;
The Reverend Rod Thomas; and
The Reverend Paul Benfield.

Mr Trott's proposal

6. Mr Trott proposed that Part 1 of the Measure (Parochial Fees) should simply be left out. He spoke to his submission as a member of the Committee and raised a number of points which, in his view, meant that it would be wrong to provide for fees to be payable to the diocesan board of finance. In particular he considered the arrangements made between those to whom the ministrations of the Church are provided and the minister in question to be contractual in nature and the fee to be a payment for professional services rendered.
7. Mr Trott's submission made a number of points about the nature of parochial fees which staff advised did not accurately reflect the current legal position in this regard.
8. Under the current law, the only clergy to whom a parochial fee is legally due are the incumbents of benefices. Unbeneficed clergy (including priests-in-charge, assistant curates and retired clergy with permission to officiate) have no legal right to parochial fees at all and if any fee (or part of a fee) is currently remitted to them, that is lawful only where it takes place with the agreement of the relevant incumbent or, where the incumbent has assigned his fees (as will usually be the case), of the relevant diocesan board of finance. (Where a benefice has a priest-in-charge rather than an incumbent the parochial fees are already payable to the diocesan board of finance, save where the board directs otherwise: section 3(1) of the Ecclesiastical Fees Measure 1986 ("the 1986 Measure").)
9. The Committee was provided with advice as to the legal history of parochial fees. It was advised that contrary to Mr Trott's view of the matter, parochial fees have never arisen on a contractual basis, having only ever been payable either on the basis of a legally enforceable custom or, more recently, on the authority of statute. Parochial fees are therefore not (and never have been) in the same legal category as, for example, doctors' or lawyers' fees (which do arise by virtue of a contractual agreement).
10. Mr Trott suggested that making the diocesan board of finance the legal recipient of parochial fees would be a breach of the "right in general law of any person to enter into a contract to carry out services and to receive payment" and of "human rights law".

11. The Committee was advised that it has never been lawful for the clergy to make the celebration of the sacraments or the performance of other ministrations of the Church (such as the solemnizing of matrimony or the burial of the dead) conditional upon the payment of money. Doing so is prima facie simony and amounts to the commission of an ecclesiastical offence. Incumbents were in the past entitled to receive parochial fees only because Canon law gave recognition to local customs regarding such fees where such customs existed. Incumbents are now entitled to receive fees on the authority of statute. But it remains the case that there is no general legal right on the part of the clergy to enter into contracts with the laity for payment in return for the ministrations of the Church.
12. The Committee was further advised that it was not legally open to the clergy of the Church of England to operate on what amounts to a 'freelance' basis. All clerks in holy orders are bound by the Canons of the Church of England (which form part of the general law). Canon C 8 provides that clergy may officiate in any place only if they have the authority of the bishop of the diocese to do so. This leaves no scope for independent ministry by the clergy of the Church of England. An Anglican clergyman/woman could not, therefore, lawfully claim to be taking a funeral in a private, unofficial capacity, and accept payment for their services on that basis, rather than as a member of the clergy of the Church of England.
13. Mr Trott referred to a possible breach of "human rights law" if the clergy were not free to contract for the provision of their ministry. When speaking to his proposals he referred to Article 1 of the First Protocol to the Human Rights Convention which provides a right not to be deprived of one's property without compensation. The Committee received legal advice that making fees payable to diocesan boards of finance rather than to incumbents, in accordance with the Measure, would not amount to a breach of any article of the Human Rights Convention. It was doubtful whether Article 1 of the First Protocol was engaged: it was far from clear that an incumbent's right to statutory fees amounted to "property" and in any event the receipt of a stipend would almost certainly meet the requirement for compensation (assuming it to be applicable). But the matter was put beyond doubt by the transitional provisions in clause 5(2) which would allow any existing incumbent who had not already assigned his fees to the DBF to opt to retain them.
14. Mr Trott also mentioned what he saw as deficiencies with Part 1 of the Measure. He suggested that the Measure would make it more difficult for retired clergy to receive remuneration for undertaking occasional duties; that it would make it more difficult to waive fees; that the Measure seemed to cover all funerals in crematoria irrespective of whether they were Church of England funerals; and that it was questionable whether funeral directors would be willing to co-operate with the new arrangements in which case the collection of fees would become more difficult. It was explained to the Committee that the Measure should not make it any more difficult for retired clergy to be remunerated: as the law already stood, retired clergy could only lawfully receive fees with the agreement of the DBF (save in the small minority of cases where fees had not been assigned). It was explained that the Measure, for the first time, provided an express power to waive fees (which incumbents almost certainly do not have at present where they have assigned their right to fees to the DBF). It was explained that the provision in the new section 1(1) which referred to fees being payable in respect of matters that "relate to duties carried out by a clerk in holy orders or by a duly licensed deaconess, reader or lay worker" meant that it was only Church of England funerals that were caught by the Measure. The Committee was also informed that the policy behind the Measure had been formulated in the light of consultation with the National Association of Funeral Directors who were in favour of what the Measure would achieve.
15. Mr Trott pointed out that the Measure would not deal with the problem of incumbents who refuse to conduct the funerals of their parishioners. The Committee was advised that the

Measure was not intended to address this issue which was covered by the Clergy Discipline Measure in so far as it amounted to neglect of duty.

Archdeacon Magowan's proposal

16. Archdeacon Magowan did not propose a specific amendment to the Measure, but his proposals essentially amount to leaving out Part 1 of the Measure, maintaining the status quo in terms of the legal framework for parochial fees, and discouraging the assignment of fees by incumbents.
17. Archdeacon Magowan submitted that the current law should not be amended and that incumbents should simply keep, and not assign, the fees to which they were currently entitled. He put forward a number of reasons for this suggestion. First that fee income is now a much smaller proportion of the income that goes towards paying clergy stipends than used to be the case; secondly that there would be a saving in respect of National Insurance contributions if individual incumbents simply retained their fees; thirdly that their doing so would save administration time and costs for dioceses; fourthly, that this would remove the need for the draft Measure, thereby saving resources; and finally that incumbents retaining their fees would be consistent with the position of the clergy as office holders.

Mr Thomas's proposal

18. Mr Thomas did not formally propose an amendment to the provision whereby fees are payable to the diocesan board of finance under the new section 1(1). However, his submission said that he was "far from convinced of the need to change those to whom parochial fees are payable". He made alternative suggestions as to how any under-recovery of fees might be addressed (on the assumption that that is the mischief with which this aspect of the Measure is concerned).

Mr Benfield's proposal

19. Mr Benfield's proposal (to which he spoke) was somewhat different from the previous three proposals. He proposed that the reference in the new section 1(1) to 'a diocesan board of finance' should be replaced with a reference to 'the officiating minister' and that the new section 1(7) should be amended to provide a definition of 'officiating minister' in place of the definition of 'diocesan board of finance'. The effect of that would be that a fee would be payable to (and belong to) the person who conducted the service to which that fee related.

The Committee's consideration of the proposals

20. The Steering Committee did not support any of the proposals in Group A. Making what were currently incumbents' fees payable to the DBF was a central plank of the policy behind the Measure and had recently been approved by the General Synod.
21. **The Committee rejected Mr Trott's proposal with 1 in favour and 9 against.**
22. **It rejected Archdeacon Magowan's proposal with 1 in favour and 8 against.**
23. **It rejected Mr Thomas's proposal with none in favour and 10 against.**
24. **It rejected Mr Benfield's proposal with none in favour and 9 against.**

NEW SECTION 1(2)

25. No proposals for amendment had been received in respect of the new section 1(2) and no amendments were made by the Committee.

NEW SECTION 1(3)

Group B: Proposals that the statutory fees should not cover (certain) costs and expenses

26. A number of submissions suggest either that the power to make a Parochial Fees Order should not (as provided for in the draft Measure) contain a power to specify that certain costs and expenses are included in the prescribed fee; or, alternatively, that if any such costs or expenses are capable of being included in a fee, they should not cover certain, particular matters. This Group of proposals includes submissions from the following:

The Reverend Paul Benfield;
Dr Graham Campbell;
The Reverend Christopher Strain;
The Reverend Andrew France (who is not a member of the Synod);
Mr Clive Scowen; and
The Reverend Dr John Hartley.

27. The Committee was advised that a parochial church council has never had a power to set ‘fees’ of its own in relation to the occasional offices, over and above the statutory fees contained in a Parochial Fees Order. All parishioners (irrespective of whether they attend the church or not) have certain common law rights. These include a right to be married in the parish church and to be buried in the churchyard. It was not legally open to a PCC or an incumbent to fetter the exercise of those rights by making them conditional upon the payment of money.

28. Statutory fees, by contrast, were payable in relation to marriages and burials precisely because those fees are authorised by statute; if they were not paid it was open to the person to whom they were payable to recover them in court (see section 7 of the 1986 Measure which makes any fee payable under the Measure recoverable as a debt). But ‘fees’ that a PCC sought to impose over and above the statutory fee for a particular service (for example, for ‘use of the church building’) would be unlawful and would not be recoverable.

29. The position in relation to sums payable to organists, choirs, bellringers, flower-arrangers etc. was different. If such sums were charged in respect of genuinely optional items which the parties to a marriage, or the family of the deceased in relation to a funeral, have specifically requested and agreed to pay for then there was nothing to prevent that.

30. What it was not open to an incumbent or the PCC to do was to purport to make charges over and above the statutory fee for items that are simply essential to the exercise of the common law right in question. It would not therefore be lawful for a PCC to impose a charge, for example, for opening the church for a wedding or for ‘use’ of the church building or in respect of wear and tear to its fabric.

31. As to the cost of heating and lighting a church for a wedding, this was not an entirely straightforward issue. In theory it might be possible for a wedding to take place without any heating or lighting of the church – particularly in the summer. It might therefore be arguable that heating and lighting a church are not essential to the exercise of a parishioner’s legal right to marry there and that heat and electric light would be provided only if specifically requested by a couple who had agreed to cover the costs of such provision.

Mr Benfield’s, Dr Campbell’s, Mr Strain’s and Mr France’s proposals

32. Both Mr Benfield (who spoke to his proposal) and Dr Campbell propose leaving out of the new section 1(3) the words “*which may include provision specifying costs and expenses which are*

to be included in the prescribed fee in respect of any specified matter". Their intention was that the Archbishops' Council and the General Synod should not, when making a Parochial Fees Order, have power to specify that any costs or expenses are included in any statutory fee. While Mr Strain and Mr France did not propose a specific amendment, they appeared to intend the same result as Mr Benfield and Dr Campbell.

33. In his submission Dr Campbell argued that the statutory fee should not be capable of covering costs "such as heating and lighting, maintenance, verger's services etc". He also mentioned the cost of the services of "organists, choir-members, bell ringers, flower arrangers etc". Mr France raised similar points.

Mr Scowen's proposal

34. Mr Scowen submitted that it was "desirable that a fees order should clearly specify what the prescribed fee does and does not cover" but considered that "it ought not to be possible for it to specify a national fee in respect of heating and lighting". He proposed instead that PCCs be given an express power to make charges in respect of heating and lighting to cover the actual cost incurred by them in this regard.

Dr Hartley's proposal

35. Dr Hartley's proposal (to which he spoke) took a different approach from those described above. He submitted that the Synod should establish a 'scale of fees' in relation to 'local costs' (within which category he included musicians etc. as well as maintaining the building and heating and lighting it). PCCs would be encouraged to opt in to a particular 'band' within the scale based on advice given centrally on how to determine the band for a particular church.

The Committee's consideration of the proposals

36. The Steering Committee opposed the proposals in Group B on the basis that to accept them would introduce confusion. At present parishes near each other appeared to charge different amounts for apparently the same thing, and this Group of proposals would continue that situation. The view of the fees review group was that heating and lighting were as much part of the provision of building cost as having the roof on the church building. It was better to have one fee and to know what it covers.
37. The Committee was advised that the new section 1(3) only conferred a power on the Archbishops' Council: it did not require the Council to include heating and lighting expenditure, or any other expenditure, in the fee. Moreover, it would be open to the General Synod to amend a draft Parochial Fees Order to remove any cost specified as being included in a prescribed fee if it saw fit.
38. In discussion the view was expressed that church buildings varied widely and that it was unwise for the Archbishops' Council to attempt to "micromanage" parishes. Archdeacons had a role in dealing with problems caused by the excessive charging of fees. So long as it was clear what was being charged for, then clergy could be accountable to parishioners and the bishop.
39. A contrary view was that the subsection gave the Archbishops' Council the necessary powers so that it could make such provision as was required. It would be open to the Council to take into account the various points raised in these proposals when it came to consider the subordinate legislation (i.e. the Parochial Fees Orders made under the Measure). The Fees Policy Working Group that had been set up following the approval of GS1703 was considering these issues. The earlier Fees Review Group had recommended the provision of the power now contained in the

new subsection on the basis that it was clearly desirable for there to be clarity in relation to what was included in the statutory fee.

40. **The Committee rejected Mr Benfield’s proposal with 2 in favour and 8 against.**
41. **It rejected Dr Campbell’s proposal with 1 in favour and 9 against.**
42. **It rejected Mr Strain’s proposal with 1 in favour and 9 against.**
43. **It rejected Mr France’s proposal with 1 in favour and 9 against.**
44. **It rejected Mr Scowen’s proposal with none in favour and 10 against.**
45. **It rejected Dr Hartley’s proposal with none in favour and 10 against.**

NEW SECTION 1(4)

Group C: Proposals relating to the period for which fees may be prescribed under a Fees Order

46. Proposals relating to the period for which fees may be prescribed under the new section 1(4) were received from the following:

Dr Graham Campbell; and
Mr Jonathan Redden.

47. Under the new section 1(4) it would be possible for the Archbishops’ Council, with the approval of the Synod, to prescribe fees for a period or periods not exceeding 5 years in total, with such inbuilt increases in fees as were prescribed in the Order.
48. Dr Campbell proposed that the new section 1(4) should be left out altogether. He was opposed in principle to it being possible to prescribe fees for a period of up to five years. He submitted that this would “reduce the effectiveness of Synodical Government”.
49. Mr Redden (who spoke to his proposal) proposed an amendment to provide that a Parochial Fees Order made under the new section 1(4) “may be amended and scrutinized by the Synod on a yearly basis”. He compared the levying of fees with taxation and took the view that an annual decision was desirable.
50. The Reverend Christopher Strain, by contrast, had written to the Committee saying that he “fully support[ed] the proposal to fix fees for five years”. This was on the basis that “we spend too much time on this item as things are at present”.
51. The Committee was advised that the policy behind the current drafting was to move away from the current annual Fees Order on the basis that the time and cost involved in preparing and laying such an Order before the Synod and then before both Houses of Parliament was incommensurate with the benefit gained by Fees Orders being approved annually. The maximum period of five years was settled upon in order to ensure that the Synod should be involved in determining the content of a Fees Order at least once during each quinquennium.
52. Dr Campbell’s proposal would amount to departing from that policy and retaining the status quo. As to Mr Redden’s proposal, it was not entirely clear how in practice it would be any different from the status quo. The Committee was advised that it would always remain open to a member (or members) of the General Synod, or to a diocesan synod, to put down a motion

calling for the Archbishops' Council to introduce a further Fees Order during the lifetime of an existing Order. The Committee was advised that under the 1986 Measure as it currently stood there was no requirement for Fees Orders to be made annually and that the Archbishops' Council only needed to prepare a fresh Order if it proposed to make increases in the prescribed fees.

53. The Reverend Stephen Trott, during the Committee's discussion, proposed an amendment to the effect that fees should be approved annually by the General Synod.
54. The Steering Committee did not support any of the proposals in Group C. It was useful to have a power to provide for inbuilt increases in fees. It would be helpful if the Synod could avoid the need for an annual debate about the level of fees; but it would remain open to revisit a current order should the need arise.
55. **The Committee rejected Mr Trott's proposal with 1 in favour and 9 against.**
56. **It rejected Dr Campbell's proposal with none in favour and 9 against.**
57. **It rejected Mr Redden's proposal with 1 in favour and 9 against.**

Group D: Proposals relating to the making of further Fees Orders during the lifetime of an existing Fees Order

58. Proposals relating to the ability to make a new Fees Order during the lifetime of an existing Fees Order were received from the following:

Mr Clive Scowen; and
The Reverend Paul Benfield.

59. Mr Scowen and Mr Benfield (who spoke to his proposal) both proposed that it should be possible for a further Fees Order (which either amends or replaces an existing Order) to be made during the lifetime of an existing Order. This might be necessary because circumstances, or the policy underlying an existing Order, have changed during its lifetime.
60. The Committee was advised that what Mr Scowen and Mr Benfield propose was already possible under the Measure as drafted. This was because section 14 of the Interpretation Act 1978 provides that where an Act confers power to make orders or other subordinate legislation by statutory instrument, it implies (unless the contrary intention appears) a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under that power.
61. The Interpretation Act 1978 applies to Measures of the General Synod in the same way as it applies to Acts of Parliament. The position is, therefore, that the power contained in the new section 1(4) already includes a power to revoke or amend any Fees Order during its lifetime.
62. The Committee was accordingly advised that no amendment of the Measure was necessary to cover the situation referred to by Mr Scowen and Mr Benfield.
63. **In the light of the advice given to the Committee, Mr Benfield withdrew his proposal.**
64. **The Committee rejected the proposal from Mr Scowen (who was unable to be present) with none in favour and 9 against.**

NEW SECTION 1(5)

65. No proposals for amendment were received in respect of the new section 1(5) and no amendments were made by the Committee.

NEW SECTION 1(6)

Group E: Proposal relating to the power to make a “Scheduled Matters Amending Order”

66. A proposal relating to the power contained in the new section 1(6) has been received from Dr John Hartley (to which he spoke). The new section 1(6) confers power on the Archbishops’ Council to make an order called a “Scheduled Matters Amending Order” that amends the new Schedule A1 – i.e. the list of services and other matters in respect of which fees may be prescribed by a Parochial Fees Order. Dr Hartley referred to the power conferred upon the Archbishops’ Council by the new section 1(6) as a “blank cheque” and submitted that the exercise of that power should be limited. He therefore proposed an amendment which would require any exercise of the power to have previously been debated and approved by the General Synod in principle.
67. The Committee was advised that the power contained in the new section 1(6) was not a “blank cheque”. Under the Measure as drafted, a Scheduled Matters Amending Order would have to go through the same procedure as a Parochial Fees Order. That was achieved by clause 2 of the draft Measure which inserts the words “or a Scheduled Matters Amending Order” in various places in section 2 of the 1986 Measure. The effect of those insertions was to apply the same procedural provisions as apply to the making of a Parochial Fees Order to the making of a Scheduled Matters Amending Order. Those procedural provisions include a requirement that a draft of any order is to be laid before the General Synod for approval and that prior to approval it may be amended by the Synod. If the Synod were to amend the draft prior to approving it, then the Archbishops’ Council had the choice of making the Order as amended or of withdrawing the draft. (See section 2 of the 1986 Measure.)
68. The Steering Committee did not support Dr Hartley’s proposal. The effect of accepting the proposal would be to lengthen the Synodical process. It was possible that a very minor change would be subject to a lengthy process.
- 69. The Committee rejected Dr Hartley’s proposal with none in favour and 9 against.**

NEW SECTION 1(7)

Group F: Proposals relating to the definition of “parochial church council”

70. Proposals relating to the definition of “parochial church council” in the new section 1(7) were received from the following:

The Reverend Paul Benfield;
The Reverend Dr John Hartley;
The Reverend Andrew France (who is not a member of the Synod); and
The Association of English Cathedrals.

Mr Benfield’s proposal

71. Mr Benfield proposal (to which he spoke) involved leaving out paragraphs (b) and (c) of the definition of “parochial church council”. This was on the basis that these provisions were “unnecessarily complicated and bureaucratic” and that there was no reason why a PCC should

get a fee at all where a funeral takes place at a crematorium (rather than in a church or churchyard which a PCC is responsible for maintaining).

Dr Hartley's proposal

72. Dr Hartley made a slightly different point in his proposal (to which he spoke). He doubted that a PCC should receive a fee for a funeral service conducted other than in a church or churchyard "where there [was] no link between the church and the deceased". He also questioned the appropriateness of using electoral roll membership for the purpose of determining the "allegiance" of a deceased person to a particular parish. Dr Hartley also raised the question of how any services that might in the future be added to Schedule A1 by a Scheduled Matters Amending Order would fit into the scheme that relies on this definition of "parochial church council".
73. Whereas Mr Benfield proposed that no fee be payable at all to a PCC where a service takes place other than in a church or churchyard, Dr Hartley proposed that the PCC in such a case "should be that of the church with whom the individual or couple is linked and on behalf of which the service is being held" but that "where there [was] no such PCC then the Measure should not specify one".

Mr France's proposal

74. Mr France submitted that it was wrong for a fee to go by default (i.e. under paragraph (c) of the definition of "parochial church council" in a case where the deceased was not entered on any electoral roll) to the PCC where the deceased resided as the funeral service might be taken by the minister of another parish.

The Committee's consideration of the proposals

75. The Committee was advised that paragraphs (b) and (c) of the definition of "parochial church council" were included in the Measure in order to make it possible to prescribe a fee payable to a parochial church council for a burial or funeral where the service in question does not take place in a church or churchyard. This represented a departure from the current practice in fees orders made under the 1986 Measure where no fee is prescribed as payable to a PCC in such a case.
76. This change was recommended by the Fees Review Group in GS Misc 877 ('Four Funerals and a Wedding') on the basis that "[t]he growth in lay participation in ministry means that in many parishes lay people (some remunerated) are involved in ministry around pastoral services in administrative and pastoral roles". The Group suggested that in the cases of funerals at cemeteries and crematoria there were "often associated costs for PCCs and this should be recognised in the fees payable to them." In that light they further suggested that "there should be ... a fee for the parish when the minister officiates at a crematorium funeral ...".
77. The Steering Committee did not support the proposals from Mr Benfield, Dr Hartley and Mr France. It considered that there should be a fee for the PCC in relation to crematorium funerals on the basis that the ministry provided at crematoria was, in one sense, the ministry of the whole parish and not just of the person who officiated at the service. The Steering Committee also took the view that it would be very difficult to give legislative effect to Dr Hartley's proposal.
- 78. The Committee rejected Mr Benfield's proposal with 1 in favour and 9 against.**
- 79. It rejected Dr Hartley's proposal with 2 in favour and 7 against.**

80. It rejected Mr France’s proposal with none in favour and 9 against.

The proposal from the Association of English Cathedrals

81. The Association of English Cathedrals (“AEC”) had pointed out that cathedrals do not have parochial church councils. That being so, and given that parochial fees are applicable in the case of cathedrals that are parish churches, some alternative provision would need to be made in such cases.

82. They suggested that in the case of a parish where a cathedral is the parish church, the body corporate of the cathedral should be the recipient of the fees that would otherwise be payable to a parochial church council.

83. The Steering Committee supported the proposal from the AEC.

84. The Committee accepted the proposal from the AEC with 9 in favour and none against and agreed to amend the Measure accordingly.

Group G: Proposals relating to the definition of “diocesan board of finance”

85. Proposals relating to the definition of “diocesan board of finance” in the new section 1(7) were received from the following:

The Reverend Paul Benfield;
The Reverend Dr John Hartley;
The Reverend Rod Thomas;
Mr Clive Scowen; and
The Association of English Cathedrals.

Mr Benfield’s proposal

86. Mr Benfield had proposed that for the definition of “diocesan board of finance” there should be substituted a definition of “officiating minister”. This was consequential upon his submission in relation to the new section 1(1) above and which the Committee rejected. **He accordingly withdrew his proposal in relation to the definition of “diocesan board of finance”.**

Dr Hartley’s proposal

87. Dr Hartley had proposed that “diocesan board of finance” should be defined as “the DBF responsible for the stipend of the minister or the incumbent on whose behalf s/he acts”. **In the light of the Committee’s decision in relation to his proposal with regard to the definition of “parochial church council”, Dr Hartley withdrew his submission in relation to the definition of “diocesan board of finance”.**

Mr Thomas’s proposal

88. Mr Thomas questioned the policy behind paragraph (b) of the definition of “diocesan board of finance”. He pointed out that “there [were] many cases where the deceased comes from a nursing or residential home located in a diocese other than the one where he or she has lived or where their relations live.” He submitted that “it seem[ed] both inequitable and highly bureaucratic to arrange for part-payments to be made to the DBFs of the dioceses in which such homes are situated”.

89. The Committee was advised that for the purposes of the definition of “diocesan board of finance”, part-payments would arise only where a deceased person was a parishioner in more than one diocese and – because the definition of “diocesan board of finance” depends upon the definition of “parochial church council” for the purpose of determining where a person was a parishioner – that would mean only in a case where a person had his or her name on the electoral roll of more than one parish. It would not arise simply because a person died in a care home in a different diocese from where he or she normally lived or where he or she went to church.

Mr Scowen’s proposal

90. Mr Scowen asked “why a different approach was taken in the definitions of “parochial church council” and “diocesan board of finance” respectively with regard to membership/residence of the deceased where the funeral was not conducted in a church or churchyard”.

91. The Committee was advised that that was not the position. In the case of a burial or funeral service which took place otherwise than in a church or churchyard the “diocesan board of finance” would be the DBF of the diocese in which the deceased was a parishioner and for that purpose the parish of which the deceased was a parishioner was the same parish as under the definition of “parochial church council”. That is the effect of the words “*and, for this purpose, the parish in question shall be construed in accordance with paragraphs (b) and (c) of the definition of “parochial church council”*” at the end of paragraph (b) of the definition of “diocesan board of finance”. However Standing Counsel advised the Committee that the position could be made clearer in this regard and suggested an amendment.

The Committee’s consideration of the proposals

92. The Committee rejected the submission from Mr Thomas with none in favour and 9 against.

93. The Committee unanimously accepted an amendment suggested by Standing Counsel to deal with the point made by Mr Scowen.

The proposal from the Association of English Cathedrals

94. The Association of English Cathedrals pointed out that cathedrals were “financially independent from their dioceses” and that the existing practice was not for cathedral clergy to assign fees to the DBF, but for parochial fees to be assigned to the cathedral. It accordingly proposed that fees that would generally be paid to DBFs should, in the case of cathedral parishes, be payable to the cathedral.

95. The Committee was advised that the Measure could be amended to provide that where a service took place in a parish of which a cathedral was the parish church, and in the case of a burial or funeral which took place other than in a church or churchyard and the deceased was a parishioner of a cathedral parish, the body corporate of the cathedral should be the recipient of the fees that would otherwise be payable to a diocesan board of finance.

96. The Steering Committee supported the proposal from the AEC.

97. The Committee accepted the proposal from the AEC with 9 in favour and none against and agreed to amend the Measure accordingly.

NEW SECTION 1(8) AND (9)

Group H: Proposals relating to the requirement to consult before waiving fees

98. Proposals relating to the requirement of consultation before waiving fees were received from the following:

Mr Barry Barnes;
The Reverend Rod Thomas;
The Reverend Andrew France (who is not a member of the Synod); and
The Reverend Paul Benfield.

Mr Barnes's, Mr Thomas's and Mr France's proposals

99. Mr Barnes, Mr Thomas and Mr France each proposed that the requirement to consult the person nominated by the bishop before waiving a fee payable to the DBF should be removed from the new section 1(8). Mr Benfield proposed the same but with an alternative proposal that the DBF itself, rather than the incumbent etc., should have the power to waive such a fee.
100. The reasons given for the above proposal were that the requirement of consultation was impractical and that it failed to have regard to the fact that it was the parochial clergy who were best placed to determine whether a fee should be waived in a particular case.
101. The Committee was advised that the requirement was included in the draft Measure to reflect the policy of the Fees Review Group that where fees were to be waived there should be a requirement at least to consult a person nominated by the bishop so that a reasonable degree of consistency could be maintained within a diocese with regard to the waiver of fees.
102. Mr Benfield additionally made the proposal that the requirement as to consultation in the new section 1(9) should be removed or, alternatively, that the power to waive a fee payable to a PCC should be given to the PCC itself rather than to the incumbent etc.
103. In speaking to his proposal, Mr Barnes expressed the view that the incumbent was the appropriate person to decide to waive a fee and that the draft subsections imposed an unnecessary level of bureaucracy. Mr Benfield agreed with Mr Barnes. In these cases it was necessary to act quickly, and he felt it should be left to the incumbent to act professionally. Mr Barnes also asked whether an incumbent who did not follow the guidance of the person appointed by the bishop would be guilty of misconduct. The Committee was advised that the duty contained in the new subsection (8) was only to *consult* the person appointed by the bishop and the decision whether to waive a fee remained with the incumbent. An incumbent who waived a fee notwithstanding advice that he should not do so would not thereby be guilty of misconduct. However the power was to waive a fee "in a particular case": it was not a general power to waive all fees.

The Committee's consideration of the proposals

104. The Steering Committee did not support the proposals in Group H. The new subsections (8) and (9) conferred a right on incumbents which they did not have before if they assigned their fees. There were a wide variety of circumstances which arose when the incumbent would want to waive fees. There needed to be a consultation requirement, but the incumbent did not have to accept the advice of the bishop's officer. At the moment some incumbents waived all their fees and some none.

105. In discussion it was suggested that there were occasions when the clergy had pressure put on them to waive fees and a requirement to consult would give them a means of avoiding such a situation. A contrary argument was that the requirement to consult might involve the clergy in divulging confidential information.
106. **The Committee rejected the proposal from Mr Barnes with 1 in favour and 9 against.**
107. **It rejected the proposal from Mr Thomas with none in favour and 9 against.**
108. **It rejected the proposal from Mr France with none in favour and 9 against.**
109. **It rejected both of Mr Benfield's proposals with, in each case, 1 in favour and 9 against.**
110. Dr Hartley additionally proposed that the Measure should be amended so as to require the incumbent (etc.), in deciding whether to waive a fee, to have regard to any policy laid down by the body to whom the fee would otherwise be payable.
111. The Steering Committee did not support this proposal on the basis that the Measure already made adequate provision in this regard with the requirement for consultation before a fee was waived.
112. **The Committee rejected Dr Hartley's proposal with none in favour and 9 against.**

Group I: Proposals relating to the extent of the power to waive fees

113. Proposals relating to the extent of the power to waive fees were received from the following:

The Reverend Canon Tony Walker;
Dr Graham Campbell; and
The Reverend Dr John Hartley (**B9**).

Canon Walker's, Dr Campbell's and Dr Hartley's proposals

114. Canon Walker, Dr Campbell and Dr Hartley (who spoke to his proposal) each proposed that the power to waive fees in the new section 1(8) and (9) should also extend to the reduction of fees.
115. The Steering Committee did not support these proposals. If there were a power to reduce fees this might lead to the statutory fee being undermined if, in some places, the level of fee set in a Fees Order were to be reduced on a regular basis.
116. **The Committee rejected each of the proposals in Group I with none in favour and 9 against.**
117. Following a suggestion from Mr Drennan, the Chairman put a further proposal to the Committee, namely that either both the DBF and the PCC fee should be waived, or neither.
118. **The Committee rejected this proposal with none in favour and 8 against.**

NEW SECTIONS 1(10) AND (11)

119. No proposals for amendment have been received in respect of the new sections 1(10) and (11).

CLAUSE 2

120. No proposals for amendment have been received in respect of clause 2.

CLAUSE 3

Paragraph (a) – Membership of the Fees Advisory Commission

Mr Scowen’s proposal

121. Mr Scowen questioned the necessity of the proposed reconstituted Commission. He suggested that a simpler and less resource-intensive method of dealing with legal officers’ fees should be adopted, although he did not make any specific proposal as to the form that this might take.
122. The Committee was advised that having considered a number of possibilities (including a body that consisted entirely of representatives of those with an interest in the Commission’s work; and, alternatively, a body that was entirely independent), the Archbishops’ Council concluded that the functions of the FAC could most effectively be discharged by a composite body which combined both elements – that is, one which included within its membership equal representation for both the users and providers of legal services alongside an independent element. The provision in clause 3(a) gave effect to that conclusion.
123. It was considered important that the FAC should command respect from both those whose professional duties meant that they would be remunerated under the Orders made by it and from those who would have to pay the fees contained in such Orders. The provisions in clause 3(a), by providing for a composite body that included legal practitioners and ecclesiastical judges as well as independent members would assist in achieving that objective and it is not readily apparent how that could be achieved with a substantially smaller Commission.
124. The Steering Committee did not support Mr Scowen’s proposal.
125. The Committee considered that an independent body was required to make recommendations and orders in relation to legal officers’ and ecclesiastical judges’ fees. Otherwise fees might fall into disrepute. The Committee considered that the proposed arrangements had been carefully thought out and it supported them.
126. **The Committee rejected Mr Scowen’s proposal with none in favour and 9 against.**
127. Mr Scowen had also made a number of proposals with respect to the drafting of paragraph 3(a). Following advice from Standing Counsel, **the Committee rejected Mr Scowen’s proposals in this regard with none in favour and 9 against.**

The proposal from the Ecclesiastical Law Association (“ELA”)

128. The ELA proposed that the draft legislation should be amended to provide that the Chair of the Commission should not be (a) a person who was a member of the General Synod, the Church Commissioners or a Diocesan Board of Finance and should be (b) a judge.
129. The Committee was advised that the ELA’s submission on this point seemed to contain two misconceptions. Firstly, paragraph 3 implied that the 1986 Measure, as it currently stands, requires that the judge appointed by the Lord Chancellor must be the Chair of the Commission. This was not so: the Measure is silent as to the Chairmanship, although the judge has traditionally had this role. Paragraph 5 of the submission was predicated on the

misunderstanding that all three of the members appointed under the new section 4(1)(g) must be members of General Synod, whereas in fact only one of the three is required to be a Synod member

130. As the draft Measure stood, a member or officer of the Church Commissioners would already be precluded from being Chair of the Commission, since the category of membership from which the Chair must, under section 4(7), be drawn excludes those eligible for nomination under section 4(1)(b). The same would apply to a chair of a DBF.
131. The Steering Committee was opposed to this proposal. As matters stood there was no requirement for the chair to be a judge, and to impose such a requirement could give the impression that the interests of legal professionals and the judiciary were paramount. Under the Measure as drafted the interests of those to whom fees were payable and of those who were required to pay them were evenly balanced.

Chancellor Briden's proposal

132. Chancellor Briden proposed that the category of members provided for by paragraph (g) of the new section 4(1) should – in addition to requiring one member who was a member of the House of Clergy or House of Laity – also require that at least one member of the Commission in this category must not be a member of the General Synod.
133. **The Committee rejected the proposal from the ELA with 1 in favour and 8 against.**
134. **The Committee accepted the proposal from Chancellor Briden with 8 in favour and none against.**

Paragraph (b) – Amendment of functions of Fees Advisory Commission

135. The ELA proposed that the new obligation imposed on the FAC in clause 3(b) of the draft Measure - to keep under review the duties of ecclesiastical judges and legal officers - should be qualified by the insertion of a requirement to consult the Archbishops' Council before any order was made.
136. The Committee was advised that any order made by the FAC was subject to the prior approval of the General Synod under section 5(3) of the 1986 Measure and that it was, therefore, difficult to see any argument for introducing an additional level of consultation.
137. The Steering Committee did not support this proposal.
138. A number of members of the Committee suggested that in the new section 5(1) the words “keep under review” were unhelpful and might suggest to some that the FAC was being given the power to determine the duties of ecclesiastical judges and legal officers. It was proposed by Chancellor Briden that the requirement should be for the FAC to keep itself informed of those duties. In the past the FAC had been criticised for not having regard to the duties that legal officers were required to carry out.
139. **The Committee rejected the proposal from the ELA with none in favour and 8 against.**
140. **It accepted the proposal from Chancellor Briden with 9 in favour and none against.**

CLAUSE 4

141. A small number of proposals have been received that relate to clause 4 (from Dr Hartley and Mr Scowen). These are dealt with in Group L, below.

CLAUSE 5(1)

142. No proposals were received in relation to clause 5(1) and the committee made no amendments.

CLAUSE 5(2)

Group J: proposals relating to the transitional provisions for incumbents in office at commencement of Part 1 of the Measure

143. Proposals relating to clause 5(2) were received from the following:

The Reverend Paul Benfield; and
The Reverend Dr John Hartley.

144. Clause 5(2) provides that an incumbent holding office when Part 1 of the Measure comes into force may retain his or her entitlement to receive parochial fees if he or she (a) has not already assigned his or her fees to the diocesan board of finance and (b) gives notice within 2 months of the coming into force of Part 1 that he or she wishes to preserve his or entitlement.

145. Both Mr Benfield and Dr Hartley proposed that incumbents should be able to retain their fees even if they had already assigned them to the diocesan board of finance. Dr Hartley explained his proposal on the basis that “a deed of assignment isn’t irrevocable”.

146. The Committee was advised that that was not the case: a deed is, by its nature, irrevocable. If an incumbent who had executed a deed of assignment wanted to reverse what he or she had done in that regard, that could only be achieved with the agreement of the diocesan board of finance and would need to be achieved by the DBF re-assigning the fees to the incumbent in question. Once fees have been assigned by deed to a DBF those fees legally belong to that DBF.

147. The legal position was, therefore, that an incumbent who has executed a deed assigning his fees to a diocesan board of finance has given up the right to those fees and no longer has any entitlement to them. That being so, it would not be logical to permit an incumbent who had already assigned his or her fees to preserve an entitlement to such fees under the Measure.

148. Mr Benfield further proposed that the default position should not be as in the Measure as drafted (i.e. that existing incumbents do not retain their entitlement to fees unless they give notice that they wish to retain it) but rather that they should retain their entitlement unless they give notice that they do not wish to retain it.

149. The Steering Committee did not support the proposal that an incumbent who had already assigned his fees should be able to benefit from the transitional provisions. Owing to the lack of time it had not come to a clear view on his further proposal with regard to reversing the default position.

150. **The Committee rejected the proposals from Mr Benfield and Dr Hartley in respect of incumbents who had already assigned their fees with none in favour and 8 against.**

151. **The Committee accepted Mr Benfield’s proposal that the default position should be reversed so that existing incumbents who had not assigned their fees should retain their entitlement to fees unless they gave notice that they did not wish to do so with 8 votes in favour and 1 against and agreed to amend the Measure accordingly.**

CLAUSE 5(3)

152. No proposals for amendment were received in respect of clause 5(3) and the Committee made no amendments.

CLAUSE 6

153. No proposals for amendment were received in respect of clause 6 and the Committee made no amendments.

SCHEDULE 1

NEW SCHEDULE A1

Group K: proposals relating to the inclusion of “Memorial service in church” under “FUNERALS AND BURIALS”

154. Proposals relating to the inclusion of “Memorial service in church” were received from:

The Reverend Canon Andrew Nunn;
10 Cathedrals; and

The Reverend Nicholas Holtam (who is not a member of the Synod).

155. Canon Nunn pointed out that memorial services often take place in cathedrals that are parish churches and that these cathedrals are covered by the legal framework for parochial fees. In cathedrals, memorial services can be on a large scale, often being organised in association with a charity or other organisation with which the deceased person was associated. Some memorial services are of regional or national significance and require even greater organisation and expenditure. Canon Nunn therefore proposed the omission of “Memorial service in church” from the list of services that give rise to a statutory Parochial Fee. He was supported in this proposal by 10 other cathedrals.

156. Mr Holtam (Vicar of St Martin-in-the-Fields) proposed, more widely, that statutory fees should not be capable of being prescribed other than in relation to baptisms, marriages, funerals and burials. This was on the basis that there are legal rights associated with these services but not in the case of other pastoral services. He therefore proposed that statutory fees should not be prescribed in the case of memorial services or services of Prayer and Dedication after a Civil Marriage or services of Thanksgiving for marriage.

157. The Committee was advised that it was the policy of the Fees Review Group that pastoral services for which the Church of England provides authorised or commended forms of service should, generally, be covered by parochial fees.

158. The Steering Committee did not have a collective view with regard to this group of proposals. Views were expressed on both sides of the argument.

159. **The Committee rejected the proposal to omit “Memorial service in church” from Schedule A1 with 1 in favour and 7 against.**

160. **It also rejected an alternative proposal to disapply the statutory fee for “Memorial service in church” in the case of parish church cathedrals with 2 in favour and 8 against.**
161. **It rejected the proposal from Mr Holtam with 2 in favour and 7 against.**

Group L: Miscellaneous Proposals

The Reverend Dr John Hartley

Clause 1

162. In his submission Dr Hartley raised a number of questions arising from GS 1703. There was legal doubt as to whether certain fees (in particular crematorium fees) are in fact payable under the 1986 Measure given the way in which “parochial fees” was defined in that Measure. Dr Hartley sought assurance that such doubt is removed by the draft Measure.
163. The Committee was advised that there could be no doubt that fees would be lawfully due in respect of any of the matters set out in Schedule 1 to the draft Measure if a Parochial Fees Order prescribed a fee for any of those matters and the relevant duty was carried out by a clerk in holy orders or by a deaconess, reader or licensed lay worker. The form of words used in the new section 1(1) is quite adequate to make the fees in question legally payable and needs to be read with section 7 of the 1986 Measure which provides that any fee payable by virtue of an order made under the Measure is recoverable as a debt. The new definition of “parochial fees” (inserted by clause 4(1)(b)(ii)) contains none of the material that is contained in the definition in the 1986 Measure that had the potential to give rise to doubt as to what “parochial fees” might encompass (such as references to “duties in connection with a parish” or “such other services or matters as may by law or custom be included in a Parochial Fees Order”, which were uncertain in their meaning).
164. As to the question of the clergy having “no general right to take fees”, it is not the intention of this Measure to confer such a right on the clergy and it therefore does not do so. The intention of the Measure is only to make the fees to which it relates legally payable and it already achieves that as currently drafted.
165. **In the light of the advice it received the Committee agreed (by 8 votes to 1) not to amend the Measure in response to the questions raised by Dr Hartley.**

Mr Clive Scowen

Clause 1(1), new section 1(1)

166. Mr Scowen proposed that clause 1 “should make it clear that, although the DBF fee is legally due to it, a DBF may (or even shall) make arrangements for incumbents [etc.] to act as collecting agents for all such fees”.
167. The Committee was advised that a DBF did not require any express power in the Measure to allow it to do that; and that it would seem undesirable to require a DBF to adopt a particular method of collecting fees. Under the 1986 Measure it is already the case that where a benefice is vacant the fees are payable to the DBF (section 3(1)). That covers both the situation where a benefice is temporarily vacant during an interregnum and where the right of presentation has been suspended and a priest-in-charge has been appointed for the benefice. DBFs did not seem to have had any difficulty in practice operating under that provision and there did not therefore seem to be any reason to suppose that they would experience any particular difficulty if an equivalent provision were extended to benefices generally.

168. **The Committee rejected Mr Scowen’s proposal with none in favour and 9 against.**

Clause 1(1), new section 1(7)

169. Mr Scowen proposed (at para. 6 of his submission) that “church”, “churchyard” and “parishioner” should be defined in the body of the Measure. He also proposed a re-numbering of the paragraphs within the definitions of “parochial church council” and “diocesan board of finance”.

170. The issue Mr Scowen raised with regard to “parishioner” has already been addressed above. Standing Counsel advised the Committee that it would be desirable – as suggested by Mr Scowen – to include definitions of church and churchyard within the body of the Measure. He advised that the lettering and numbering of the paragraphs within the definitions of “parochial church council” and “diocesan board of finance” were satisfactory as they stood.

171. **The Committee unanimously accepted Mr Scowen’s proposal that definitions of “church” and “churchyard” be included within the body of the Measure.**

172. **It unanimously rejected his proposals as to the renumbering of the paragraphs within the definitions of “parochial church council” and “diocesan board of finance”.**

Clause 4(3)

173. Mr Scowen proposed that the amendment to the Marriage Act 1949 effected by this subsection should instead be contained in the consequential amendments in Schedule 2. Standing Counsel advised the Committee that Schedule 2 was a Schedule containing consequential amendments whereas clause 4(3) was a repeal and therefore did not belong in Schedule 2.

174. **The Committee unanimously rejected Mr Scowen’s proposal that the provisions contained in clause 4(3) be removed to Schedule 2.**

Schedule 1, new Schedule A1

175. Mr Scowen raised a number of drafting points (one of which is also mentioned by the Reverend Christopher Strain) in relation to the new Schedule A1. Standing Counsel advised the Committee that some of these were printing errors which could simply be corrected.

176. **The Committee unanimously rejected Mr Scowen’s proposal that the indefinite article be used in the list in Part 1 of Schedule A1 but unanimously agreed that the words “on a separate occasion” in paragraph 1 of Part 2 should be amended to “on separate occasion”.**

177. **The Committee did not agree that the definition of “church” and “churchyard” were not compatible and unanimously agreed not to amend those definitions in paragraph 8 of Part 2 of Schedule A1.**

178. **The Committee unanimously agreed to amend the heading “FUNERALS AND BURIALS” in Part 1 of Schedule A1 to read “FUNERALS AND BURIALS OF PERSONS AGED 16 YEARS OR MORE”.**

179. **Following a proposal from Mr Justin Brett the Committee unanimously agreed to amend paragraph 2 of Part 2 to read, “No fee is payable in respect of the funeral or**

burial of a still-born infant, or for the funeral or burial of a child dying before attaining the age of 16 years”.

180. Mr Scowen raised a point with regard to the words “Burial in churchyard following on from service in church”. He pointed out that the service in church might take place *after* the burial in the churchyard (which might not immediately adjoin the church).
181. The Committee agreed that it was conceivable that a corpse might be buried in the burial ground of a church (which might not immediately adjoin the church) “immediately preceding” a funeral service in the church. **The Committee unanimously agreed to amend the entry in Schedule A1 accordingly.**

Dr Graham Campbell

182. Dr Campbell (under the heading “Clause 1 sub-clause (1)” of his submission) sought to be reassured that fees could not be introduced for services listed in the new Schedule A1 which do not currently attract a fee without the Synod having had the opportunity to debate the new fees.
183. The Committee was advised that the provisions governing the making of Parochial Fees Orders were not changed by the Draft Measure. A Parochial Fees Order would still have to be laid in draft before the General Synod (as would a Scheduled Matters Amending Order) and could not be made unless approved by the Synod. Even if such a draft Order were to be designated by the Business Committee as business for deemed approval it would remain open to any member to require the draft Order to be debated.
184. **The Committee noted the above advice.**

The Reverend Rod Thomas

185. Mr Thomas raised concerns about the position of retired clergy and asked how their remuneration for taking services to which fees relate was to be treated. He said that under the draft Measure it was entirely in the hands of the DBF whether such clergy were paid. He suggested that this would increase administration costs for dioceses and might also result in reduced co-operation from retired clergy.
186. The Committee was advised that Mr Thomas’s submission needed to be seen in the context of the current legal position. As matters currently stand, parochial fees are not payable to retired clergy at all. Legally, they are payable only to incumbents or – where an incumbent has assigned his fees (which is the position in over 90% of cases) – to the DBF. So even as matters currently stand, the general position is that retired clergy are only legally entitled to receive fees (or any part of them) where the DBF agrees to their doing so. It is difficult to see why putting the current position (where nearly all fees in practice belong to a DBF) on a statutory footing should make the lawful remuneration of retired clergy more difficult than it is at present.
187. **The Committee noted the above advice.**

Mr Adrian Greenwood

188. Mr Greenwood asked about progress with developing policy with respect to the remuneration of retired and non-stipendiary clergy and readers. As he himself suggested might be the case, the questions he raised were not matters that related to the Measure and were not therefore

matters for the Revision Committee. The Committee was advised that they would be taken into account as part of the review of fees policy asked for by the General Synod in July 2008.

189. **The Committee noted the above advice.**

The Reverend Canon Simon Butler

190. Canon Butler drew attention to the cost of maintaining open churchyards. His submission contained a misapprehension. It is not the case that “any fee chargeable for a burial” is “potentially a breach of the common law”. If burial fees are prescribed pursuant to statutory powers then they are ipso facto lawful. What is, however, unlawful is (1) to refuse to bury a deceased parishioner unless the statutory fee is paid (in the case of non-payment the incumbent remains legally obliged to bury a deceased parishioner; but he or she may bring a claim for the fee against the deceased’s estate); and (2) to require payment over and above the statutory fee for the burial of a parishioner.

191. Canon Butler’s other concerns were essentially about the level of burial fees and that they did not bear any real relation to the cost of maintaining the churchyard in which such burials took place. The Committee was advised that that was a matter which could be addressed in due course when it came to setting the level of the fee. The other points that Canon Butler raised were not within the scope of the Measure.

192. **The Committee noted the above advice.**

The Bishop of Chester

193. The Bishop of Chester raised the question of the lawfulness of clergy entering into ‘private arrangements’ with funeral directors and others. That had already been addressed in relation to Mr Trott’s submission.

194. As to the Bishop’s question about travel expenses and whether they should be included in funeral fees: that was not a question for the Measure but rather for any subsequent fees order made under the Measure.

195. **The Committee noted the above advice.**

The Reverend Canon Timothy Barker and the Feoffees of Spalding Rectory

196. Canon Barker had pointed out that the stipend of the Vicar of Spalding was not paid by the DBF but rather by the Feoffees of Spalding Rectory (a charity that exists for that purpose). That being so, the incumbent’s fees were conventionally assigned to the Feoffees. He and the Feoffees were concerned that under the Measure the parochial fees would automatically go to the DBF with the possibility that the Feoffees would be placed in financial difficulty. He therefore proposed (supported by the Feoffees) that a DBF should have the power to authorise the payment of parochial fees that it would otherwise receive to a charitable body paying the stipend of a clerk in holy orders.

197. The Committee was advised that there was no difficulty with a DBF simply assigning (or simply paying) the fees that arose from a particular parish to such a charity and that they would not require any express power in the Measure to do so.

198. **The Committee noted the above advice.**

Chancellor Briden

199. Chancellor Briden suggested that paragraphs 5 and 6 of Part 2 of the Schedule A1 (“Monuments in churches” and “Reservation of grave space: vaults”) were unnecessary as they did not relate to any of the matters contained in Part 2 of the Schedule. It was agreed that legal staff would discuss the matter further with Chancellor Briden after the meeting as the issues raised were of a purely technical nature and that staff would report back to the Committee in writing with a view to its agreeing any necessary amendments by correspondence. Following discussion between the legal staff and Chancellor Briden the Committee was advised that paragraphs 5 and 6 of Part 2 of Schedule A1 were redundant for the reasons initially suggested by Chancellor Briden.
200. **The Committee agreed by correspondence to amend the Measure so as to leave out those two paragraphs. There were 10 in favour and none against the proposal.**

Drafting amendments

201. The Committee noted that in the list of definitions contained in paragraph 8 of Part 2 of Schedule A1 the definition of “cemetery” was out of alphabetical order. **The Committee agreed, by correspondence, to move the definition of “cemetery” so that it immediately preceded the definition of “Chancellor” with 10 in favour and none against.**
202. The Committee was advised that the reference in clause 5(1) to “the coming into force of this Measure” should be a reference to “the coming into force of Part 2”. **The Committee agreed, by correspondence, to amend the Measure accordingly with 10 in favour and none against.**

SCHEDULE 2

203. No proposals for amendment were received in respect of Schedule 2.

Timothy Allen
Chairman
on behalf of the Revision Committee

9 June 2009

Church House, Great Smith Street, Westminster, London SW1P 3AZ.

Appendix I**Summary of proposed amendments and the Committee's decisions**

Clause or schedule of original draft Measure (GS 1693)	Summary of submission	Committee's decision
Part 1	Leave out Part 1 (Mr Trott, Archdeacon Magowan, Mr Thomas)	Rejected
Clause 1 New section 1(1)	Replace reference to “diocesan board of finance” with reference to “officiating minister” (Mr Benfield)	Rejected
	Insert provision stating that the fees provided for in the Measure are lawfully due (Dr Hartley)	Rejected
	Insert provision stating that DBF may (or shall) make arrangements for incumbents to act as collecting agents for fees (Mr Scowen)	Rejected
New section 1(3)	Remove power for AC to specify costs and expenses included in prescribed fees (Mr Benfield, Dr Campbell, Mr Strain, Mr France)	Rejected
	Exclude heating and lighting from power to specify costs and expenses included in prescribed fees (Mr Scowen)	Rejected
	Establish scales of fees into which parishes would opt (Dr Hartley)	Rejected
New section 1(4)	Fees should be approved annually by GS (Dr Campbell, Mr Redden, Mr Trott)	Rejected
	Insert express power to make further Fees Orders during lifetime of existing Order (Mr Benfield, Mr Scowen)	Rejected
New section 1(6)	Insert requirement that making of Scheduled Matters Amending Order be approved in principle by GS before draft Order is laid (Dr Hartley)	Rejected
New section 1(7)	Leave out paragraphs (b) and (c) of the definition of “parochial church council” (Mr Benfield)	Rejected

New section 1(7) (cont.)	Do not provide for a fee to PCC for crematorium funeral where “no link between the church and the deceased” (Dr Hartley)	Rejected
	Remove default provision for fee to PCC of deceased’s residence (Mr France)	Rejected
	Where parish church is a cathedral make corporate body destination of “PCC fee” (Association of English Cathedrals)	Accepted
	Replace definition of “diocesan board of finance” with definition of “officiating minister” (Mr Benfield)	Withdrawn
	Redefine “diocesan board of finance” as DBF responsible for stipend of minister (Dr Hartley)	Withdrawn
	Remove provision for part-payments to different DBFs (Mr Thomas)	Rejected
	Insert definition of “parishioner” and move definitions of “church” and “churtyard” into body of Measure	Accepted
	Renumber definitions of “parochial church council” and “diocesan board of finance” (Mr Scowen)	Rejected
New sections 1(8) and (9)	Where parish church is a cathedral make corporate body destination for “DBF fee” (Association of English Cathedrals)	Accepted
	Remove requirement to consult before deciding whether to waive fee (Mr Barnes, Mr Thomas, Mr France, Mr Benfield)	Rejected
	Insert requirement to have regard to any guidance issued by body entitled to fee before deciding whether to waive (Dr Hartley)	Rejected
	Extend power of waiver to reduction of fees (Canon Walker, Dr Campbell, Dr Hartley)	Rejected
	Insert requirement that either both fees be waived or neither (Chairman)	Rejected

Clause 3 Paragraph (a)	Replace provisions for reconstituting FAC with “simpler and less resource-intensive” arrangements (Mr Scowen)	Rejected
	Redraft paragraph (a) (Mr Scowen)	Rejected
	Insert requirement that Chair of FAC (1) should not be member of GS, CCs or a DBF and (2) should be a judge (Ecclesiastical Law Association)	Rejected
	Insert requirement that at least one of the FAC members provided for in new section 4(1)(g) must not be a member of GS (Chancellor Briden)	Accepted
Paragraph (b)	Insert requirement for FAC to consult AC (Ecclesiastical Law Association)	Rejected
	In the new section 5(1), for “keep under review” substitute “inform itself of” (Chancellor Briden)	Accepted
Clause 4(3)	Remove repeal in relation to Marriage Act 1949 to Schedule 2	Rejected
Clause 5(1)	For “this Measure” substitute “Part 2”	Accepted
Clause 5(2)	Allow incumbents who have assigned fees to benefit from transitional provisions (Mr Benfield, Dr Hartley)	Rejected
	Reverse transitional provision for existing incumbents so that they may opt in to Part 1 rather than having the option of opting out (Mr Benfield)	Accepted
Schedule 1 New Schedule A1 Part 1	Remove “memorial service in church” (Canon Nunn, 10 Cathedrals, Mr Holtam)	Rejected
	Disapply “memorial service in church” in the case of cathedrals (Chairman)	Rejected
	Use indefinite article in list in Part 1 (Mr Scowen)	Rejected

<p>Schedule 1 New Schedule A1 Part 1 (cont.)</p>	<p>Add at the end of “FUNERALS AND BURIALS”, “OF PERSONS AGED 16 YEARS OR MORE” (Mr Scowen)</p>	<p>Accepted</p>
	<p>In “Burial in churchyard following on from service in church”, insert “immediately preceding or” after “churchyard” (Mr Scowen)</p>	<p>Accepted</p>
<p>Part 2</p>	<p>In paragraph 2 insert “funeral or” before “burial of a still-born infant” (Mr Brett)</p>	<p>Accepted</p>
	<p>Leave out paragraphs 5 and 6 (Chancellor Briden)</p>	<p>Accepted</p>
	<p>Amend definitions of “church” and “churchyard” in paragraph 8 (Mr Scowen)</p>	<p>Rejected</p>
	<p>In paragraph 8, move definition of “cemetery” so that it immediately precedes the definition of “Chancellor”</p>	<p>Accepted</p>

Appendix II**Destination table***Numbers refer to clauses unless otherwise stated*

GS 1715 (as at First Consideration)	GS 1715A (as amended by the Revision Committee)
1, new section 1(1)-(7)	1, new section 1(1)-(7)
-	1, new section 1(8)
1, new section 1(8)-(9)	1, new section 1(9)-(10)
-	1, new section 1(11)
1, new section 1(10)-(11)	1, new section 1(12)-(13)
2	2
3	3
4(1)(a)	4(1)(a)
-	4(1)(b)(i)
4(1)(b)(i)-(ii)	4(1)(b)(ii)-(iii)
4(2)-(3)	4(2)-(3)
5(1)	5(1)
5(2)	5(2) & (3)
5(3)	5(4)
6	6
Schedule 1, new Schedule A1, Part 1	Schedule 1, new Schedule A1, Part 1
Schedule 1, new Schedule A1, Part 2, paragraphs 1-4	Schedule 1, new Schedule A1, Part 2, paragraphs 1-4
Schedule 1, new Schedule A1, Part 2, paragraphs 5-6	-
Schedule 1, new Schedule A1, Part 2, paragraphs 7-8	Schedule 1, new Schedule A1, Part 2, paragraphs 5-6
Schedule 2	Schedule 2