

GENERAL SYNOD

LEGAL OFFICERS (ANNUAL FEES) ORDER 2009
ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2009

Explanatory Memorandum

1. The membership of the Fees Advisory Commission ('the Commission')¹ for the current quinquennium is:

Appointed by

His Honour Judge Andrew Rutherford (Chair)	Lord Chancellor
Mr Geoffrey Tattersall QC	Chairman of the Bar Council
Mr Aiden Hargreaves-Smith	President of the Law Society
Mr Andrew Britton	Archbishops' Council
Mr Timothy Walker (Third Church Estates Commissioner)	Church Commissioners
Mr Timothy Allen	Appointments Committee

All members are members of Synod, except the Chair.

2. The Commission is assisted by four consultants: one from the Ecclesiastical Judges Association (representing diocesan chancellors and other ecclesiastical judges), one from the Ecclesiastical Law Association (representing the diocesan registrars), one of the provincial registrars, and a member of the Research and Statistics Department of the Archbishops' Council.
3. Members of Synod will be aware that the draft Ecclesiastical Fees (Amendment) Measure currently before Synod contains provisions which would establish a differently constituted Commission.
- (a) **Legal Officers (Annual Fees) Order 2009**
4. The Legal Officers (Annual Fees) Orders made under section 5 of the Ecclesiastical Fees Measure 1986 as amended fix the annual fee payable to each diocesan registrar for the work specified in Schedule 1 to the Order (much of which they are required by law to carry out).

Background to the 2009 Order

5. As members of the Synod will be aware, the evidence supplied to the Commission over a substantial period has consistently demonstrated 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." (GS 1225X). The term "usual inflationary formula" was used at that time, and is still used, to refer to a combination of the

¹ The constitution of the Commission is laid down by section 4 of the Ecclesiastical Fees Measure 1986, as amended by section 16 of the Church of England (Miscellaneous Provisions) Measure 2000.

increases in RPI (25% weighting) and AEI (75% weighting) for the previous year (both published by the Government).

6. Each year between 1997 and 2002² 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 this additional increase was 2%, while in both of the years 2001 and 2002 this additional increase was 1%³. In 2003 the Synod approved a draft Order that provided for an increase by inflation, as measured by the RPI alone, with no additional upgrade.
 7. In May 2004 the Commission agreed, by a majority of those present, to recommend to Synod a draft Order that was again calculated using RPI alone, with no additional upgrade (GS 1537X). The motion for the approval of this draft Order was defeated at the July 2004 group of sessions. In October 2004 the Commission agreed (with one member absent) to recommend a revised draft Order calculated using the ‘usual inflationary formula’ (GS 1562X). 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 the July Synods in each of 2005, 2006, 2007 and 2008, draft Orders were again approved providing for an increase by the usual inflationary formula alone, with no additional upgrade.
 8. In May 2009 the Commission agreed unanimously, with one member absent, that the figure to be used to calculate the level of fees contained in the Legal Officers (Annual Fees) Order 2009 (to come into force on 1st January 2010) should be the usual inflationary formula⁴ with no additional upgrade. The level of increase that has been applied is therefore 3.325%. 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).
- (b) **Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2009**
9. The Ecclesiastical Judges, Legal Officers and Others (Fees) Order fixes 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.
 10. 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

² Each year, in support of these 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 2008) is annexed to this explanatory memorandum. The median retainer figures given in the statistical analysis are based on the figures provided by the registrars. 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 down to many factors, including regional charge-out rates and varying levels of demand from the diocesan bishop and other officials for the diocese.

³ 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).

⁴ The RPI for 2008 was 4.0% and the AEI 3.1%, giving a figure of 3.325%.

inflation figure used in 2003 and 2004 was based on RPI alone⁵. The 2005, 2006, 2007 and 2008 Orders were based on the usual inflationary formula.

11. In May 2009 the Commission agreed unanimously, with one member absent, that the policy outlined above should again be applied in calculating the fees payable under the 2009 Order, which have therefore been increased by 3.325%, that is the figure calculated using the ‘usual inflationary formula’ with no additional upgrade.

27th May 2009

Annex – 2008 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 shows diocesan median values for the hours worked, the monetary value of work done and the retainer from 2001 to 2008.

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%

Conclusion

The table shows the median value for hours worked fluctuated over the period but has grown year on year since 2004.

The Median Retainer as percentage of median value of work done was 71% in 2001 and in 2008 was 55%: this represents a net drop of 16% 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, but fell from 48% (2007) to 45% (2008), a 3% drop over the year.

⁵ 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.

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.

*Research and Statistics Department
Archbishops' Council April 2009*