

GENERAL SYNOD**LEGAL OFFICERS (ANNUAL FEES) ORDER 2015****Explanatory Memorandum****INTRODUCTION**

1. The Fees Advisory Commission is a statutory body constituted under the Ecclesiastical Fees Measure 1986 as amended (“the 1986 Measure”). The Commission recommends to the General Synod the level of fees to be paid to diocesan and provincial registrars and ecclesiastical judges for performing certain of their duties and functions.

LEGAL OFFICERS (ANNUAL FEES) ORDER 2015 (GS 1997)

2. In furtherance of that function the Commission now lays before the Synod for approval the Legal Officers Annual Fees Order 2015.
3. 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.

The rationale for the calculation of the retainer

4. At the February 2014 group of sessions, the Synod approved the Legal Officers (Annual Fees) Order 2014, which introduced changes to the method of calculating the annual retainer payable to diocesan registrars. These reforms were recommended by the Commission following an independent review and consultation with users and providers of legal services. The new approach is intended to provide a fairer return to diocesan registrars for the work they do whilst also promoting a more effective dialogue between registrars and their dioceses about the work they do and a sharper focus on value for money, with the potential to deliver over the long term both cost savings and improvements in service delivery.
5. The Explanatory Memorandum for the 2014 Order, GS 1938-9X, explained the principles on which the annual retainer would be calculated in future. The detailed methodology was set out in the Annex to GS 1938-9X. This involves:
 - arriving at a figure for the national cost of the work done by registrars under the retainer by aggregating the average number of hours recorded by them as having been spent on such work over the previous five years, divided as between solicitors and clerks, and then multiplying that process by average agreed rates;
 - dividing that cost between the dioceses to arrive at a figure for the retainer, by:
 - allocating 30% of the national figure between the dioceses equally (to reflect the fact that every registrar’s practice attracts certain unavoidable overheads of running a practice; and
 - dividing the balance between the dioceses by reference to the ‘size of the diocese’ (assessed by reference to the number of open churches and clergy of incumbent status and above), subject to:
 - capping the resulting figure so that the ‘largest’ diocese pays no more than three times what the ‘smallest’ pays; and

- increasing the amounts payable by London and Southwark by an additional 10% to reflect the additional demands made on their registrars.
6. The retainers proposed for 2016 on the basis of this calculation are set out in Table 1 in Schedule 1 of the Order.
 7. In the case of the Diocese of Leeds, the calculation has been undertaken on the basis of the aggregate of the hours previously recorded by the registrars of the predecessor dioceses of Bradford, Ripon and Leeds and Wakefield. This is in accordance with the transitional arrangement reported in GS 1938-9X, under which, following the coming into force of the Dioceses of Bradford, Ripon and Leeds and Wakefield Reorganisation Scheme, the Commission decided in the short term to set the retainer for the new diocese by reference to the sum that would otherwise have been payable in respect of all three former dioceses: whilst the creation of the single new diocese is expected to result in savings in the cost of legal services, they were not expected to be realised before 2016. However, the Commission will review the situation in the course of the coming year, in consultation with the diocese, and form a view on how to proceed from 2017 onwards.
 8. The Commission notes that the overall annual increase in the total amount payable to registrars under the retainer in 2016 will amount to an additional £117,982 over and above the total of £ 2,440, 504 payable in the current year – an increase of 5.08%. That is broadly consistent with the Commission’s objective, described in GS 1938-9X, of achieving an increase in registrars’ remuneration under the retainer of some 30% over a five year period.

Discussions between the diocese and the registrar

9. As explained in paragraph 5 above, the national cost of the work done by registrars under the retainer is calculated by aggregating the average number of hours recorded by them as having been spent on such work over the previous five years. The figures for 2010 to 2013 have been taken from figures previously submitted to the Commission on their own account. But the figures for 2014 have in each case been agreed by the diocese concerned, in accordance with the new arrangements described in GS 1938-9X.
10. As part of those arrangements the Commission asks dioceses annually to indicate that they are content that the annual data on hours worked and indicative fee levels provided by their registrars to the Commission provide an acceptable basis on which to calculate the value of the retainer. That confirmation should follow an annual review discussion between the registrar, the diocesan bishop (or his or her representative) and other diocesan users. The Commission encourages dioceses and their registrars to use that review as an opportunity to take a wide-ranging look at the size and shape of the legal workload, with a view to improving mutual understanding and support and identifying ways of achieving greater efficiency and effectiveness. Feedback reaching the Commission on the first round of reviews has indicated that the new process is resulting in productive discussions.

NATIONAL INSURANCE AND VAT

11. The Commission has given some consideration to the issues of the payment of National Insurance contributions for registrars and the payment of VAT on fees prescribed by the Orders made by the Commission – matters which had been raised in the course of the independent review of registrars’ remuneration conducted on the Commission’s behalf in 2012-13.

12. The Commission understands that, whilst the majority of dioceses pay their registrars' NI contributions as though registrars are employees or 'office holders' (which is to the advantage of registrars as it has the effect of boosting their State Pension) there is no universal practice across the dioceses in that respect. Nor is there a consistent approach to the payment of VAT on registrars' retainers or fees payable under the Orders made by the Commission. The Commission understands that both matters have previously been the subject of careful consideration by others directly involved in them.

13. The Commission has considered whether there would be advantages in its attempting to promote a more consistent approach on these matters but decided that it should not seek to do so: both matters raise difficult and complex issues, requiring careful discussion with HMRC and the interested parties, which the Commission does not consider itself to have the mandate or the resources to undertake. In any event, it is unclear that there is a case for its disturbing the *status quo* at the present time. But if others wish to reopen the issues in the light of developments in the basis on which registrars and other legal officers are remunerated for their services, the Commission stands ready to play whatever part it can.

On behalf of the Commission

J Alpass

June 2015