

**LEGAL OFFICERS (ANNUAL FEES) ORDER 2013
ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2013**

Explanatory Memorandum

1. The Fees Advisory Commission ('the Commission') is a statutory body, constituted under the Ecclesiastical Fees Measure 1986 as amended ('the 1986 Measure'). The Commission recommends to the Synod the level of fees to be paid to diocesan registrars and ecclesiastical judges for performing certain of their duties and functions.
2. As reported to the Synod in July 2012 (GS 1868X and 1869X) the Commission, following its reconstitution in 2011, agreed to take a fresh look at the method by which diocesan registrars are remunerated under the 1986 Measure, paying particular attention to the annual retainer system for specified duties. At the Commission's request an independent review team has gathered evidence about the way in which the retainer and other fee systems currently operate; looked more widely at issues related to the health and viability of the ecclesiastical law specialism; and made recommendations for reform.
3. The Commission appointed as reviewers Mr John Farr, a solicitor and former partner (now consultant) with Herbert Smith, and Mr Keith Malcouronne, a chartered accountant, corporate financier, business consultant and member of the General Synod. The terms of reference, and the programme of work undertaken, are set out in the reviewers' report presented to the Commission in March 2013. This report (with the exception of some supporting detail and material which must necessarily remain confidential because it identifies particular dioceses and individuals) may be found at <http://www.churchofengland.org/about-us/structure/churchlawlegis/consultations.aspx>. The Commission is grateful to the reviewers for their assistance, and the energy and commitment they brought to their task.
4. The Commission has accepted the majority of the reviewers' recommendations. It accordingly proposes a number of changes to the present arrangements for the remuneration of diocesan registrars, which it considers to be in the interests of both the providers and the users and funders of legal services. In summary, these proposals are as follows:
 - (a) the system of remunerating registrars for specified duties by means of an annual retainer should be maintained, alongside the payment of set fees for the performance of certain other tasks;
 - (b) the amount of each diocesan retainer, and the levels of set fees for other tasks, should continue to be determined at national level;
 - (c) the scope of the work covered by retainer should be slightly reduced;
 - (d) the approach used in setting the amount of the retainer should be broadened in two key ways:
 - (i) it should take into account the actual cost of providing legal services as well as the size of each diocese; and
 - (ii) it should require the diocese, as user, to satisfy itself that the volume of work undertaken by its registrar remains appropriate in relation to its scope, quality and cost;
 - (e) the diocese should conduct an in-depth review of the service being offered by the registrar at least every five years;

- (f) the Ecclesiastical Law Association and the Archbishops' Council should be invited to consider the scope for further provision of basic legal advice online, co-ordinated nationally if possible; and
 - (g) the Commission should seek to explore with the Ministry Division of the Archbishops' Council and other relevant bodies (including the Ecclesiastical Law Association) how training for clergy in the legal aspects of parochial ministry might be facilitated and improved, both in IME 4-7 and in Continuing Ministerial Development.
5. The Commission considers it likely that implementation of these proposals would result in an increase in the sums payable under the retainer to diocesan registrars, at least initially. However, the Commission would envisage any such increase being phased in over a period of, say, five years. In the longer term, the new system should give dioceses a more accountable and responsive Service, with greater scope to bear down on costs.
 6. Primary legislation would not be needed to give effect to the proposals: that could be achieved by making adjustments to the terms of the orders made under the 1986 Measure (principally the Legal Officers (Annual Fees) Order) and changes in practice. The Commission would envisage changes of the former kind being taken forward in the fees orders for 2015 (which the Commission would lay before Synod for approval at its February 2014 group of sessions). Recommendations relating to best practice would be embodied in advice issued by the Commission.
 7. Before taking these proposals forward, the Commission is seeking feedback on them. To that end it will be consulting:
 - the Ecclesiastical Law Association and diocesan registrars individually;
 - the Ecclesiastical Judges Association and diocesan chancellors individually;
 - diocesan bishops;
 - diocesan secretaries;
 - DBF chairs;
 - the Inter-diocesan Finance Forum;
 - archdeacons; and
 - the Church Commissioners.
 8. However, members of Synod are also strongly encouraged to take part in this consultation exercise. The consultation may be found at <http://www.churchofengland.org/about-us/structure/churchlawlegis/consultations.aspx>. Responses should be sent to **fees.consultation@churchofengland.org** by **1st September 2013**.
 9. Meanwhile, the Commission has agreed that both Orders laid before the Synod for approval this year should once again be calculated in accordance with the practice that has become established over a number of years.

LEGAL OFFICERS (ANNUAL FEES) ORDER 2013

10. The Legal Officers (Annual Fees) Order, 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.
11. Reflecting the fact that both Orders laid before the Synod should be calculated in accordance with previous practice (the proposed changes to the calculation of the retainer being intended to be reflected in the orders laid before the Synod next year, so as to take effect from 2015), the

Commission has agreed that the same formula should be applied in relation to the Legal Officers (Annual Fees) Order for this year that it applied in relation to last year's Order.

12. Thus the fees detailed in last year's Order have been increased using an inflationary formula based on a combination of the increases in the previous year in the Retail Prices Index (25% weighting - 3.1% for 2012) and the Average Weekly Earnings Index (75% weighting - 1.3% for 2012). The level of increase that has been applied is therefore 1.75%. 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).
13. Each year, in support of its proposals, the Commission sets out a sequence of supporting statistics that have been gathered from the registrars and analysed by the Research and Statistics Department of the Archbishops' Council, the latest of which (for 2012) is annexed. The Commission considered that it would again be helpful for Synod members to have additional information which, without breaching confidentiality, would demonstrate both the generally low level of the registrars' retainers in relation to hours worked and the apparent unfairness as between registrars produced by the current means of determining their amounts. The statistical report therefore 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.

ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2013

14. 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.
15. 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.
16. In May 2013 the Commission agreed that the policy outlined above should again be applied in calculating the fees payable under the Order laid before the Synod this year, which have therefore been increased by 1.75%.

On behalf of the Commission

J Alpass

June 2013

Annex – 2012 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 2012.

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	69%	32%
2004	473	£57,200	£36,900	64%	36%
2005	547	£65,800	£37,800	60%	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	£84,098	£43,931	59%	41%
2010	501	£81,345	£45,310	61%	39%
2011	525	£80,353	£46,088	56%	44%
2012	587	£90,125	£47,350	57%	43%

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 and 2012.

The Median Retainer as percentage of value of work done was 71% in 2001 and in 2012 was 57%, this represents a net drop of 14% 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) and 43% (2012).

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 2012 the total retainer paid across the forty two dioceses receiving it was 45% of the value of the work undertaken. This is 3% lower than in 2011. The table below indicates the significant spread in this proportion across the dioceses in 2012. Whilst the retainer varied for different dioceses between £38,008 and £73,206, 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%	2
20 – 29%	6
30% - 39%	4
40% - 49%	6
50% - 59%	4
60% - 69%	7
70% - 79%	6
80% - 89%	2
90%-99%	1
100% & over	4

Dioceses may be divided into three groups. For seventeen dioceses the retainer in 2012 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 eighteen it was equal to less than half the value. At the opposite ends of the spectrum, the retainer more than covered the work in four dioceses.

*Research and Statistics Department
Archbishops' Council*

May 2013