

GENERAL SYNOD

LEGAL OFFICERS (ANNUAL FEES) ORDER 2018

**THE ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES)
ORDER 2018**

Explanatory Memorandum

INTRODUCTION

1. The Fees Advisory Commission is a statutory body constituted under the Ecclesiastical Fees Measure 1986 ('the 1986 Measure'). Of its nine members, three represent the providers of legal services within the Church, three represent the users and funders of such services and three (from whom the Commission's Chair must be drawn) are independent.
2. In accordance with the terms of the 1986 Measure as amended, the Commission's membership is as follows:

Mr John Alpass (Chair) (nominated by the Appointments Committee);
Mr Niall Blackie (nominated by the Ecclesiastical Law Society);
The Rt Revd Richard Blackburn, Bishop of Warrington (until May 2018) (nominated by the House of Bishops);
The Revd Canon Joyce Jones (nominated by the Appointments Committee);
Ms Josile Munro (nominated by the Appointments Committee);
The Revd Canon John Rees (nominated with the agreement of the Provincial Registrar for York);
Mr Bill Hüsselby (nominated by the Inter-Diocesan Finance Forum);
Mr Geoffrey Tattersall QC (nominated by the Ecclesiastical Judges Association); and
The Revd Stephen Trott (nominated by the Church Commissioners).
3. The rôle of the Commission is to recommend to the General Synod the level of fees to be paid to ecclesiastical judges, legal officers and others for performing certain duties and functions, and to prepare annual Orders in the form of Statutory Instruments to give effect to those recommendations (which require the approval of the Synod, prior to being laid before Parliament under the negative resolution procedure). The practice is for both Orders to be laid before the Synod for approval at its July group of sessions each year, with a view to their coming into force at the beginning of the following year.
4. The Commission accordingly now lays the two Orders for 2018 before the Synod for its approval. This Explanatory Memorandum explains the approach taken by the Commission to the drafting of the Orders this year.

THE LEGAL OFFICERS (ANNUAL FEES) ORDER 2018

5. Legal Officers (Annual Fees) Orders, made under section 5 of the 1986 Measure, prescribe 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

6. Since 2014, the Commission has calculated the annual retainer according to certain principles, and following the formula agreed by Synod.¹ 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 for a diocese, by:
 - allocating 30% of the national figure between the dioceses equally (to reflect the fact that every registrar’s practice attracts certain unavoidable overheads);
 - applying a 30% charitable discount to this national figure; 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), but subject to:
 - capping the resulting figure so that the ‘largest’ diocese pays no more than three times what the ‘smallest’ pays; and
 - applying an additional 10% weighting in the case of London and Southwark to reflect their higher costs.
7. Owing to an historic record of underpayment, retainer levels in previous years fell substantially short of the new national cost. As a result, exceptional phased uplifts over the transitional five-year period 2015-19 were agreed to reach the new target levels. Thus for the period 2015-19 annual movements in the national cost of the retainer have been affected both by changes in reported hours worked and average charge-out rates, and by the application of the phased uplifts. The proposed 2019 retainer will be the last affected by a phased uplift, after which any movements in levels will be determined solely by changes in reported hours worked or average charge-out rates, and are therefore likely to be significantly smaller.

The Commission’s proposals for the 2019 retainers

8. For the calculation of the 2019 retainers, the Commission has again used the most recent data available, including updated figures for the average total hours worked for the period 2012-17 and charge-out rates for 2017; and has applied the last of the phased exceptional uplifts. The effect is that the total amount payable by way of retainer will increase from £2.94 million in 2018 to **£3.33 million** in 2019 (an increase of **13%** nationally), with percentage increases in individual retainers ranging from 10% to 17%.
9. The Commission recognises that, in percentage terms, this level of increase is somewhat higher than the 10% nationally estimated last year. It is attributable to an increase in average charge-out rates: mean rates for registry clerks outside London increased from £112 in 2016 to £116 in 2017, and rates for solicitors outside London from £205 to £216. This comes after a period when rates had been fairly static. The number of hours worked

¹ For a fuller description, see the Explanatory Memorandum to the 2014 Order (GS 1938-9X)

by registrars has remained broadly steady for several years, with slight declines reported for 2016 and 2017.

10. The Commission maintains that the approach it adopted in 2014, and which the Synod confirmed, remains the right one. In any event, as in previous years the burden of the increase will not fall entirely on the diocesan board of finance of the diocese concerned: only an average of 58% nationally will do so, since that part of the retainer that is expressed by the Order to represent a liability of the diocesan bishop remains payable² by the Church Commissioners.
11. The Commission therefore considers the proposed level of increase in the retainers to be one that it can properly commend to the Synod.
12. The Commission has this year made a small amendment to the customary form of the Order so as to add a further class of work to those excluded from the scope of the retainer. (The relevant provision is the new paragraph (18) of Schedule 2.)
13. Accepting that registrars are, rightly, increasingly being drawn into providing advice in relation to safeguarding matters and that the time they spend on such work can be significant (especially if it involves giving advice to ‘core groups’ or on the conduct of risk assessments) the Commission agreed that such work should be remunerated otherwise than by the retainer. (In that respect, it will therefore be treated in the same way as work in connection with clergy discipline, which is already excluded from the scope of the retainer.) The cost of such work will accordingly have to be funded by other means, whether by the bishop or by the diocesan board of finance.

THE ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2018

14. Ecclesiastical Judges, Legal Officers and Others (Fees) Orders, made under s.6 of the 1986 Measure, prescribe fees for faculty proceedings and certain other proceedings in ecclesiastical courts, as well as the fees of the Provincial Registrars, the Vicars-General and other holders of legal offices. In practice the great bulk of the work remunerated under the terms of such Orders relates to faculty proceedings, for which provision is made in Table 1 of the 2018 Order (though the holding of a hearing, which is likely to attract the highest fees, is an infrequent occurrence).
15. As previously, the Commission has set the fees, wherever possible, so as to be broadly equivalent to those determined by the Ministry of Justice to be payable to secular judges when exercising similar functions, rather than being simply increased by reference to inflation. The Ministry of Justice had not at the time the Commission made the 2018 Order published details of increases in the year 2018/19 in the rate of remuneration payable to secular judges but the pattern in recent years has been for annual 1% increases and it is unlikely that this year’s figures will depart from that trend. The 2018 Order has, therefore, been prepared on that assumption.

² Under section 8 of the Ecclesiastical Fees Measure 1986.

16. The Commission explained in the Explanatory Memorandum which accompanied the two Orders for 2016³ that a particular issue arose as to the implications, from the fees point of view, of the changes to the operation of the faculty jurisdiction which culminated in the changes made by the Faculty Jurisdiction Rules 2015⁴ and the introduction of the online system for processing faculty applications. As the Commission suggested at that time, it would take some time for all the consequences of these changes to become apparent. The Commission considers that it is not yet possible to reach a concluded view on the consequences of those changes and, as a result, the Commission does not at this time propose any significant adjustment to the approach followed in the 2017 Order in relation to fees in the faculty jurisdiction.
17. The Commission will continue to keep the operation of the Order under active review, and reassess the case for any change when formulating proposals for the 2019 Order.

CHANCELLORS' INFORMAL RETAINERS

18. Finally, in its Explanatory Memorandum for the Orders laid before the Synod for approval in July 2016⁵ the Commission set out the approach which it proposed to take on the question of the informal retainers it recommends annually to dioceses for the remuneration of chancellors. This involved setting the rate of chancellors' informal retainers at a level equivalent to 14% of the relevant registrar's retainer to be payable for that year, but with the increase being phased in where necessary over the course of four years so that the increase in any chancellor's retainer in any one year did not exceed 15%, delivering an eventual average increase in chancellors' retainers of 27%.
19. Whilst recognising that this was significant in percentage terms, the Commission considered the cost increase in each year to be relatively modest and is in any event justified in the Commission's view by the need to address a history of underpayment. The Commission agreed to review the position further in 2018 in the light of any feedback from dioceses and chancellors on its approach. No such feedback has been received, and so the Commission considers it appropriate to continue with the phased increases to 2020.
20. Due to the increase in the hourly rates charged by diocesan registrars and clerks during 2017, and the consequent rise in the rate of the registrars' retainers for 2018, there are some slight increases in the rates for chancellors' informal retainers as well, ranging from 3% for most dioceses through to 15% for those who had most ground to make up.

On behalf of the Commission
John Alpass

May 2018

³ GS 2037-7X.

⁴ The Rules came into force on 1st January 2016.

⁵ GS 2036-7X.