

**LEGAL OFFICERS (ANNUAL FEES) ORDER 2002
ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS
(FEES) ORDER 2002**

Explanatory Memorandum

1. The constitution of the Fees Advisory Commission (“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. The membership of the Commission for the current quinquennium is:

Appointed by:

The Rt Hon Lord Justice Laws (Chairman) Geoffrey Tattersall QC*	The Lord Chancellor The Chairman of the Bar Council
Mrs Heather Morgan*	The President of the Law Society
Shaun Farrell (Financial Secretary)	The Archbishops’ Council
Carol Pym (Finance Manager, Bishoprics and Cathedrals Department)	The Church Commissioners
Timothy Allen*	The Appointments Committee

* Members of Synod

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.

(a) *Legal Officers (Annual Fees) Order 2002*

3. The Legal Officers (Annual Fees) Orders made under section 5 of the 1986 Measure fix the annual fee payable to each diocesan registrar for the work specified in Appendix to the Order (much of

which they are required by law to carry out). As members of the previous Synod will be aware, the evidence supplied to Commission over a substantial period consistently demonstrated that the amount paid to the registrars by way of annual fees fell 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).

4. The "usual inflationary formula" referred to, which had been used since 1990, is calculated as a combination of the increases in RPI (25% weighting) and AEI (75% weighting) for the previous year (both published by the Government).
5. Each year between 1997 and 2000 when the Commission presented the Annual Fees Order to the Synod at the respective July Groups of Sessions, the increase to be applied was proposed on that basis and accepted by the Synod. However in 2001 because of the financial constraints facing the Church, and with the support of the Registrars' consultants, the increase on top of inflation applied was 1%. Each year, in support of these proposals, the Commission has set out a sequence of supporting statistics that have been gathered and analysed by the Statistical Unit of the Central Board of Finance (now a Department of the Archbishops' Council).
6. Annexed to this memorandum is a summary of the statistical analysis of the information supplied by registrars, relating to the value of the work done by them in 2001 and the amount actually paid by way of retainer. This again demonstrates that there is still a significant discrepancy between the amount paid and the value of the work done and that the above-inflation increases in recent years have only slightly improved the situation in real terms. This report includes median values so that the results are not distorted by possible anomalous returns. Of course, it will not be until next year's statistical analysis takes place that the effect of the payment agreed in 2001 will be seen.
7. In the light of this information, the Commission recognised that a deficit still remains to be addressed and that there was therefore an argument to reintroduce the formula of inflation plus 2% as

recommended in 1996. However, the Commission and the Registrars' consultants to the Commission remained conscious of the need to balance this consideration against the wider financial constraints still facing the Church.

8. In all the circumstances, the Commission agreed, with the support of the Registrars' consultants, to recommend that the fees in the Legal Officers (Annual Fees) Order 2002 should be increased from those in the 2001 Order by inflation (calculated as set out below) plus 1%. The level of increase that would ordinarily be paid in respect of inflation based on 2001 figures for the Average Earnings Index and the Retail Prices Index is as follows:

AEI	4.5% (three quarters weighting)
RPI	1.8% (one quarter weighting)

The weighted sum therefore is **3.825%**. An additional 1% will bring the total to **4.825%** and this is the level of increase used by the Commission in the Order. Once again, this increase is applied to the *total* sum payable 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 2002*

9. The Ecclesiastical Judges, Legal Officers and Others (Fees) Order fixes fees for faculty proceedings and some other proceedings in ecclesiastical courts, and also provide for the fees of the Provincial Registrars and the Vicars-General and certain fees for Synod elections.
10. The investigation which the Commission for the previous quinquennium undertook into the adequacy of diocesan registrars' remuneration extended only to the fees specified in the Legal Officers (Annual Fees) Order. As in past years, the new Commission has restricted the increase in the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2002 to one calculated on the basis of the usual formula for inflation, that is **3.825%**.

(c) *Review of Commission's work*

11. Members will recall that when presenting last year's Fees Orders to the Synod the Commission reported that it would be undertaking a review into "the procedure for fixing registrars' fees and other fees under the provisions of the 1986 Measure that relate to the work of the Commission, the terms of the Fees Orders and the way in which the figures they contain are calculated".
12. The Commission can report that this review has taken place. The Commission decided on this occasion not to undertake a full-scale consultation of registrars and dioceses, bearing in mind that such a consultation had been carried out relatively recently and recognising that registrars and dioceses were under increasing pressure in terms of time and resources.
13. The review focused on two main areas: the utility of a nationally set retainer and the basis for its calculation. In both areas the Commission agreed to maintain the existing arrangements.

The nationally fixed retainer

14. The argument put forward in favour of diocese by diocese negotiation was that it could lessen the disparity existing under the current arrangements between the value of work done and the retainer paid (as existed in the majority of dioceses) and therefore go some way to alleviate the difficulties experienced by some registrars as a consequence of many years of underpayment. However the Commission was more persuaded by points made in favour of maintaining a nationally calculated retainer. These included the argument that, since the pool of lawyers with experience in ecclesiastical law is very small, negotiation would be something of an artificial exercise since most dioceses do not have the option of sending the work elsewhere. There would, of necessity, be two separate negotiations – one with the DBF for the registrar's portion of the retainer and the other with the Commissioners for the portion relating to work undertaken in the capacity of bishop's legal secretary. Furthermore, with the Commissioners having a finite amount to allocate to these fees, it was inevitable that any extra money negotiated on a diocese by diocese basis would have to come from the dioceses themselves. The Commission also noted the strong preference of the registrars themselves (as recipients of the retainer) for the current system.

Calculation of nationally fixed retainer

15. Discussion on this point centred on whether the formula for allocating the total retainer between dioceses should in future be based on the number of benefices in a diocese or remain based on a weighted formula of parishes and stipendiary clergy of incumbent status and above as at present. The Commission concluded that it should continue to use the existing formula. There was some evidence before the Commission from recent statistical analysis that a formula based on benefice numbers might provide a better correlation between the retainer and the actual value of work done. However, the Commission considers that this correlation is unlikely to be sustained in the longer term, in particular given the prospect of further pastoral reorganisation. In the Commission's view the parish will remain the main unit to generate work for the registrar, and thus should continue to be a major factor in calculating the retainer.

Church Commissioners' review

16. Members of Synod may also be aware that the Church Commissioners recently independently announced that they would be undertaking a pilot exercise to examine the work being carried out by diocesan registrars and bishops' legal secretaries. The Commissioners will be consulting the Commission on the dioceses to be chosen for this exercise and will keep the Commission informed of the progress of this review.

22 May 2002

Annex: Statistical Analysis

Introduction

Since 1994 the Archbishops' Council's Research and Statistics Department (initially as the CBF Statistics Unit) presented a report to the Fees Advisory Commission each year based on figures supplied by registrars for the work they carried out in the previous year.

Each year the data showed a wide gap between the size of the overall retainer and the value of the work covered by the retainer. This report summarises the 2001 figures and compares them with those for previous years.

Summary for all 42 dioceses for 2001 and 2000

Year	Total Legal Secretary Hours	Total Registrar Hours	Total Hours	Total Value	Total Retainer	Total Shortfall	Retainer as percentage of Total Value
2000	9,975	13,778	23,753	£2,132,701	£1,365,714	£766,987	64%
2001	10,930	14,479	25,409	£2,319,399	£1,448,220	£871,179	62%
<i>Change from 2000 to 2001</i>	10%	5%	7%	9%	6%	14%	

Comparisons with previous years

In previous years not all dioceses supplied data each year making overall comparisons difficult. To compare the information that was provided in different years the concept of a 'median diocese' was introduced. The table below shows the hours worked and value of work done in a 'median diocese' and the median retainer since 1993. [Notes: The median is defined as the middle point when a set of values are arranged in order of size. The median is used as a measure of the "average" that is not unduly effected by extremes. For this analysis the 'work done in a median diocese' is defined as the sum of: a) the median hourly rate for clerks multiplied by median hours worked by clerks; and b) the median hourly rate for registrars and solicitors multiplied by the median hours worked by registrars and solicitors.]

Year	Median hours worked	Value of work done in median diocese	Median Retainer	Median Retainer as percentage of value of work done in a median diocese.
1993	587	£39,800	£23,000	58%
1994	572	£41,200	£24,100	58%
1995	549	£39,400	£24,700	63%
1996	532	£40,200	£25,400	63%
1997	582	£42,400	£26,600	63%
1998	633	£49,200	£28,000	57%
1999	540	£45,700	£29,700	65%
2000	498	£47,800	£31,000	65%
2001	532	£48,500	£32,800	68%

Conclusions

The return of completed forms by all 42 dioceses for both 2000 and 2001 allowed a much better comparison of two years' data than has previously been possible. Between 2000 and 2001 the total hours worked increased by 7% and the value of the work undertaken increased by 9%. Both of these increases are greater than the increase in the overall retainer (which was increased by approximately 6%).

The 2001 statistics show there continues to be a wide gap between the overall retainer and the total value of work done.

Research and Statistics Department
April 2002

Published by the General Synod of the Church of England and on sale at the Church House Bookshop, 31 Great Smith Street, London SW1P 3BN

£1.00