

**LEGAL OFFICERS (ANNUAL FEES) ORDER 2004  
ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS  
(FEES) ORDER 2004**

**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
Andreas Whittam Smith (First Church Estates Commissioner)*	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 2004*

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).

## **Background 1990 - 2002**

4. As members of the 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). The “usual inflationary formula” referred to 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 the basis of paragraph 4 above and was accepted each year by the Synod. However in 2001 and 2002, because of the financial constraints facing the Church, and with the support of the Registrars’ consultants, the increase on top of inflation applied each of those years was 1%. Each year, in support of these proposals, the Commission 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), the latest of which are annexed to this explanatory memorandum.

## **Background to the 2003 Order**

6. The Commissioners completed a pilot exercise to examine the work being carried out by diocesan registrars and bishops’ legal secretaries early in 2002 and shared the results with the Commission. In response to that review, the Commission set up its own Working Party to make recommendations to the Commission on a response to the Commissioners’ review. The report of this Working Party and the Commission’s initial views on it were reported to the Synod in last year’s explanatory memorandum (GS 1506X). As promised last July, later in 2003 the Commission undertook a consultation with stakeholders – i.e. registrars, chancellors, chairmen of diocesan boards of finance, bishops and

the Commissioners on the recommendations of its Working Party. In summary, the main recommendations of the Working Party were:

1. *The nationally set retainer for registrars should be abolished as soon as practicable to be replaced by local negotiation in each diocese.*
  2. *In the interim, the national retainer should remain, to be upgraded annually by reference to RPI alone, while the dioceses start the process of local negotiation.*
  3. *The duties of the registrar and bishop's legal secretary should be merged into a combined post of registrar.*
  4. *The Church Commissioners should be asked to continue to pay the same proportion as now of the upgraded national retainer until it is abolished and thereafter the Commissioners should be encouraged to continue to contribute on the same basis.*
  5. *With assistance from the Fees Advisory Commission in identifying the core statutory duties of the registrar, each diocese should individually identify the scope of the duties that they require their registrar to undertake.*
  6. *A group to be established under the auspices of the Archbishops' Council to work on and disseminate best practice and other guidance material.*
  7. *The statutory duty on the Fees Advisory Commission to prepare the Ecclesiastical Judges, Legal Officers and Others (Fees) Order to be transferred to the Archbishops' Council.*
  8. *The Fees Advisory Commission to be abolished.*
7. Whilst the consultation referred to above was taking place, in 2003 the Commission agreed, to recommend that the fees in the Legal Officers (Annual Fees) Order 2003 should be increased from those in the 2002 Order by inflation with **no** additional upgrade. The Commission also agreed that inflation as measured by the Retail Prices Index **alone** would be applied. The Synod approved the fees order produced on that basis.

### **Background to the current 2004 Order as now before the Synod**

8. The results of the Commission's consultation with stakeholders and the Commission's decision on the recommendations of its Working Party in light of that consultation were reported to Synod

in January 2004 (GS Misc. 737). In summary, responses were received from thirty-three dioceses (either collective responses or from individual diocesan secretaries or registrars), the Commissioners, the Ecclesiastical Law Association, the Ecclesiastical Judges Association and the Dean of the Arches and Auditor. An analysis of the responses to the main recommendation of the Working Party (recommendation 1 - the abolition of the national retainer to be replaced by local negotiation in each diocese) revealed that a large majority of the responses from the dioceses were opposed to this recommendation (twenty three against, six in favour, two neutral and two 'split'). The responses from the Ecclesiastical Law Association, the Ecclesiastical Judges Association and the Dean of the Arches and Auditor were also opposed to recommendation 1, with a response in favour being received from the Church Commissioners. All twelve of the registrars who responded individually were opposed to recommendation 1.

9. The Commission took note of the strongly argued points made by the majority of responses against the main recommendation of the Working Party to abolish the nationally set retainer. The Commission therefore agreed unanimously that it should not proceed with this recommendation.
10. As to the future, the Commission agreed that (a) (as of course it must) it would continue to fulfil those statutory functions laid down for it in the 1986 Measure and any other activities which are properly ancillary to those functions; and (b) it would not itself pursue any of the recommendations of the Working Party, but would report to the Archbishops' Council (which it has done) so that the Council may, if it thinks fit, consider whether those recommendations which are not dependent on a move to local negotiation should be taken forward in due course.
11. It has been reported to the Commission that the Council, after careful consideration of the matters referred to it, has decided that it does not wish to pursue any of these matters. However, the Council has committed itself to explore further the possibility of bringing forward proposals to amend the Commission's constitution (dealing with its membership and functions), something that had been touched on previously by both the Church Commissioners and the Commission's own Working Party. The

Council will report to the Synod when it has given further consideration to this matter.

12. In the meantime, in May 2004, the Commission met (with one member absent) to consider the level of fees to be payable from 1<sup>st</sup> January 2005 (as contained in the Legal Officer (Annual Fees) Order 2004 now before the Synod).
13. A majority of the members of the Commission present at the meeting felt that, as in 2003, the RPI index of inflation alone should be used in upgrading the retainer and that once more there should be no 'above inflation' top-up. It was argued that retail price inflation should be used because it was lower than average earnings<sup>1</sup> and that increased productivity by the registrars could assist in making up the deficit. Also, the continued financial pressures being placed on the dioceses were cited as strong reasons for the using the lower inflation figure (namely RPI). It was also noted that DBFs already had the power to approve a 'supplementary annual fee' to be paid in addition to the retainer, if the diocese felt this was required to address any shortfall in the remuneration of its registrar.
14. A minority of the members of the Commission present supported a return to the use of the 'mixed inflation' formula (as outlined in paragraph 4 above) and one member also suggested that there should be an above inflation 'top up' of perhaps as much as 2% to address the continued shortfall in the retainer. Despite the relative closeness in 2003 of RPI and the mixed formula<sup>2</sup>, it was argued that the decision on which inflation figure to use needed to be made on principle. The Commission was reminded of the views expressed in the consultation on this point, which were overwhelmingly in favour of a return to a mixed formula - largely reflecting a concern that average earnings should be included in upgrading the retainer to help offset the staff costs incurred by most registrars. It was felt that the use of the 'supplementary annual fee' was, in effect, introducing local negotiation, something that the Commission had clearly rejected. It was also proposed (and this proposition was supported by the registrars' consultants) that the scope for economies and greater efficiency in most registrars' offices and operations was extremely limited.

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<sup>1</sup> RPI for 2003: 2.9%; AEI for 2003: 3.3%

<sup>2</sup> Mixed formula of 25% RPI and 75% AEI on 2003 inflation figures: 3.2%

15. In conclusion, the Commission agreed by three votes to two (with one member absent), that the inflation figure to be used to calculate the level of fees contained in the Legal Officers (Annual Fees) Order 2004 should be **RPI alone** with no above inflation top up. The level of increase which has been applied is therefore **2.9%**. As in previous years, 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 2004*

16. 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.

17. In past years, the Commission has restricted the increase in the Ecclesiastical Judges, Legal Officers and Others (Fees) Order to one calculated on the basis of the mixed formula for inflation (as outlined in paragraph 4 above), but without the additional upgrade. Following the Commission's decision to increase the Legal Officers (Annual Fees) Order in 2003 by RPI alone, the inflation figure used in calculating the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2003 was also RPI alone, with no additional upgrade. The Commission agreed unanimously (with one member abstaining having declared an interest) that this pattern should be repeated in calculating the fees in the 2004 Order, which have therefore been increased by **2.9%**, that is the RPI inflation figure alone, with no additional upgrade.

**24 May 2004**

## Annex - 2003 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. Each 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. For this analysis a median diocese is defined as one where the registrar and his/her staff worked the median number of hours for the median rate of pay.

The table below shows the median hours worked, the value of work done in a 'median diocese' and the median retainer since 1993.

Year	Median hours worked	Monetary 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%
2002	491	£54,800	£34,500	63%
2003	531	£56,900	£36,300	64%

Note: The 'monetary value of 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.

## **Conclusion**

The above analysis shows there continues to be a wide gap between diocesan registrars' retainers and the monetary value of work carried out by diocesan registrars. Although the median hours worked has decreased over the last ten years, it must be noted that this does not take into account the nature of the work or the level of personnel performing it. The gap between the monetary value of the work and the median retainer has closed since 1993 but in recent years has remained as a proportion at approximately two-thirds.

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