

REPORT ON SIMPLIFICATION OF THE FACULTY PROCESS

1. INTRODUCTION

We were invited by the Simplification Task Group set up by the Archbishops' Council and the House of Bishops' Standing Committee, to make recommendations for modernising and streamlining the Faculty System. The Group consists of people with first hand experience at every level of the process. It comprised:

- Mrs Anne Sloman, OBE, Chair of the Church Buildings Council (Chair)
- Rt Worshipful Timothy Briden, Chair of the Ecclesiastical Judges Association and Vicar General of the Province of Canterbury
- Revd Canon John Rees, Provincial Registrar of the Southern Province and Registrar of Oxford Diocese
- The Ven Paul Ferguson, Archdeacon of Cleveland in the Diocese of York
- Mr Henry Russell, OBE, Chair of Gloucester DAC and member of the Church Buildings Council
- Mr James Halsall, Secretary of St Edmundsbury and Ipswich DAC
- Ms Janet Gough, Director of the Cathedral and Church Buildings Division (Secretary)

Our brief was to consider the Faculty System from the point of view of the parishes, and at every stage we were aware that the church does not consist of the buildings but of the people who worship in them, raise the money for them, and sustained by their faith, care for them with love and passion. The statement in the opening words of the *Care of Churches and Ecclesiastical Jurisdiction Measure 1991 (CCEJM)*, “Any person or body carrying out functions of care and conservation under this Measure or under any other enactment or rule of law relating to churches shall have due regard to the role of the church as a local centre of worship and mission”, came back to us time and again as our work took shape.

We were determined to keep the mission priority in view, recognising at the same time the importance of our responsibility for the built heritage that comes with the stewardship of parish churches and the ecclesiastical exemption. Creativity and delight, worship and mission are undergirded by practical work. That work should be supported by the availability of advice, and a system of permissions that ideally ensures high standards, is easy to use, and avoids unnecessarily burdensome administration. The thread linking mission and the Faculty jurisdiction has always been in the Group's mind, mirroring, we hope, the dedication of churchwardens, clergy and PCC members who care for church buildings and resolutely know them to be a wonderful asset in making Christ visible.

We hope our recommendations will enable the present generation to do so with greater facility without losing any of the desirable safeguards which have preserved these buildings as living witness to the glory of God that has been inherited from previous generations.

It was not part of our brief to question the overall value of the Faculty Jurisdiction. Indeed we were pleased to discover from all our research how valued it is and that it was considered to be more fit for purpose than the secular system. A history and evaluation of the exemption by the Deputy Legal Adviser, Revd Alexander McGregor, is attached in **Appendix 1**.

Each proposal we have made is flagged as falling into one of three categories for action: **BEST PRACTICE**, **RULES REVISION**, or **AMENDING MEASURE**.

2. CONSULTATION

The Group's conclusions have been informed by extensive consultation with a wide range of interested bodies.

1. Parishes. A parish survey using Survey Monkey was sent to 515 contacts under the supervision of Dr Bev Botting, Head of Research and Statistics for the Church of England. The response rate was 49% which Dr Botting reports was excellent for this type of web based survey with at least one response from all but two dioceses. Dr Botting's full report is in **Appendix 2**.
2. Diocesan Advisory Committees (DAC). The DAC Survey also using Survey Monkey was sent to all DAC Secretaries and there was an 83% response rate. They represented dioceses with between 170 and 812 churches in their diocese, and in the period September to November 2011 the DACs had considered between 20 and 233 Petitions. The full report in **Appendix 3**.
3. Full discussion at the Ecclesiastical Judges Association (EJA) conference with input from Chancellors. The Dean of the Arches, who chairs the Rules Committee has given written and oral evidence and generously made himself available for informal advice at every stage.
4. Two days of oral evidence. List of attendees attached as **Appendix 4**.
5. Discussion at the South West Regions annual DAC Conference, attended by 30% of all DACs nationwide.

Within the NCIs we have also benefitted from the input of Declan Kelly Director of Libraries, Archives & IT, Revd Alexander McGregor, Deputy Legal Advisor and Dr Bev Botting, Head of Research and Statistics for the Church of England.

A large number of useful detailed points emerged from these consultations, many of which have been incorporated in this Report, but overall five main messages emerged:

1. Disproportionate bureaucracy for minor works.

2. Length of time it can take to get a Faculty.
3. Importance of full information to be provided by the parishes to DACs in order to allow advice to be given. Importance of information from DACs and Registrars in order for parishes to know where their application is at any time in the process.
4. A simpler Petition form in plain English.
5. Improvements which can be made by a move to working online (with paper option still available for those who prefer).

3. LIGHTENING THE BURDEN OR PROPORTIONALITY BY ANOTHER NAME

The research showed that one of the causes of concern in the parishes was that the weight of the Faculty system bore down disproportionately on works of minor significance in churches. We therefore propose four different routes for works to churches, including a new category for routine works. DAC Secretaries, in consultation with the Archdeacons and/or Registrar, will be able to advise at a very early stage into which of the following four categories a parish's proposals should fall: Route A (Minor Items), Route B (Routine Works), Route C (full Faculty procedure simplified) and Route D (Emergencies).

ROUTE A: Minor Items (previously referred to as De Minimis lists)

The evidence taken shows that there is a groundswell of opinion in favour of a national list with standardised contents. Provision should be made for the addition or subtraction of certain items from the list by individual Diocesan Chancellors but only where good reasons to do so exist. It is further proposed that the list is reviewed by the Rules Committee on a biennial basis, so that new developments (particularly technological advances) can be taken into account.

A list of Minor Items proposed is attached as **Appendix 5**.

ROUTE B: Routine Works

There is a body of work in church buildings that should not proceed without the benefit of advice of the DAC but for which the full Faculty procedure is inappropriate. Works on this list should be subject to the approval of the relevant Archdeacon, by delegated authority from the Chancellor, who may in some circumstances require a Faculty application to be made. Proper details/quotation/specification/schedule of works must be submitted before approval can be given. Where appropriate these documents will be checked by the DAC before permission is granted by the Archdeacon, subject to the work being carried out by a suitably-qualified person(s) and the agreement should be recorded in writing.

AMENDING THE MEASURE to establish a National list, and the List of Works in categories A and B to be reviewed by the **RULES** committee on a biennial basis to take account of technological and other advances.

The list which covers the routine works is attached as **Appendix 6**.

ROUTE C: Simplified Faculty procedure

All other alterations, additions, removals or repairs to the fabric, ornaments or furniture of a church will need to be authorised by Faculty.

Set out in **Appendix 7** is the simplified process we are proposing with the time frame parishes can expect in normal circumstances. **RULES REVISION**

ROUTE D: Emergencies

The jurisdiction is already very flexible indeed in relation to urgent matters, and Chancellors can grant a Faculty over the telephone if time is of the essence e.g. stolen lead from a roof needing emergency protection, and nothing needs to be done legislatively. **No RULES or AMENDMENT TO MEASURE necessary.**

4. INFORMATION AND COMMUNICATION

Two way information is key to making the system clearer and simpler for parishes at every stage of the process. On the one hand the DAC research shows that many unnecessary delays leading to items being deferred from one meeting to another are because DACs have been given inadequate information on which to give considered advice. On the other hand parishes complain that they are often left in the dark about what is happening to the progress of the application, before and after the Petition stage. Systems are being introduced in some dioceses which will allow electronic tracking of the application, before and after the Petition stage, and this is a valuable way of enabling parishes to plan the time table of projected works. There is also a need for simple devices like checklists of necessary documents to be provided for parishes whether by the DAC or the Registry and the ChurchCare website can also play a useful role here. **BEST PRACTICE**

But over and above this, there are three key building blocks to a more efficient system:

1. The first is Statements of Significance. We are aware that they have a formal definition in the Faculty Jurisdiction Rules and that the rules only require a Statement of Significance where significant changes to a listed church are proposed. However, experience shows that a wider approach to Statements of Significance than that contained in the formal definition is both necessary and desirable. We consider for example that they should address the contents of churches and the churchyard. We also consider that Statements of Significance are of value in wider circumstances than those that are required by the rules. The task of the DAC in making recommendations on particular matters is fulfilled more effectively within the context of a holistic account of the church and its historic, architectural and missional significance. The time and thought that parishes invest in compiling a Statement will pay dividends in the longer term, not least in supporting applications for funding.

There is a clear need to encourage DACs to request parishes to use the Church Buildings Council (CBC) Guidelines to ensure greater uniformity of the information provided:

http://www.churchcare.co.uk/images/PDF/statements_of_significance.pdf

We have considered advocating amending the Rules to extend the formal obligation to provide Statements of Significance, but have concluded this is not a realistic way forward. But there is evidence that the practice is becoming more widespread and that parishes that are embarking on a project to their church appreciate the advantages of this one off investment in time and trouble. This is a trend the Church is leading in the heritage sector and one that Diocesan Advisory Committee, the Church Buildings Council, Amenity Societies, Heritage Lottery Fund and other funders will strongly encourage. **BEST PRACTICE**

Once completed the Statement of Significance will be prefaced by our new proposed Standard Information Form (see **Appendix 8**) and will not need to be submitted for subsequent applications (unless substantial change has taken place), avoiding the repetition that parishes find to be so burdensome.

They will be stored electronically by the Diocese, updated as necessary, with a copy sent to the Cathedrals and Church Buildings Division. This will have the added advantage of enabling the Church of England to build up a data base of our buildings over time.

2. The second building block is Statements of Need. These will change as the thinking of the parish develops but by the time they are attached to the Petition Form they should give a clear indication of why they want to do what they propose to do. Working through the Statement of Need will make the whole process more efficient by demonstrating that the parish has made a realistic assessment of their needs rather than just supplying a wish list. Guidance on Statements of Need are also available on the ChurchCare website:
http://www.churchcare.co.uk/images/PDF/statements_of_need.pdf

The value of the system of Statements of Significance and Need was endorsed by all our witnesses. **BEST PRACTICE**

3. The third building block where significant works to a church are under consideration is an early site visit by all the interested parties. This point was underlined by all our witnesses. The tone of such meetings has to be enabling, rather than judgmental, and open minded if it is to achieve the desired result of helping the parish in a constructive way. Parties (e.g. English Heritage and the Amenity Societies) who are unable to attend a Group meeting should attempt either to visit or to indicate that they do not wish to do so within a fortnight of the meeting taking place so that PCC members can assimilate all the advice at the same time. Contradictory advice spread out over a long period is a cause of understandable frustration to parishes. PCC members on their part should consider questions raised in the visit when they next meet and inform the DAC accordingly. **BEST PRACTICE**

5. THE PETITION FORM

The form is undoubtedly a sticking point in the parishes. We even heard from one Chancellor, who was himself a churchwarden, who had found it difficult and time consuming to complete. In particular there is understandable irritation in the parishes about the burden of having a lengthy form to fill in. Whilst we accept that there is an important conceptual difference between the early stages of an application, where input from the DAC is advisory, and the legal process that begins with the Petition Form, from the parishes' perspective these are aspects of one process and without cutting corners the less unnecessary bureaucracy it involves the better.

The present mandatory form of Faculty Petition was designed as a comprehensive document with questions to cover almost all types of application. Evidence given to us has shown that the merits of this approach are outweighed by difficulties in gathering all the required information and in navigating through the various parts of the form itself.

We suggest that all the standard information about a church is included as a standard information form prefixed to the Statement of Significance, and attached to the Petition Form. **See Appendix 8.**

The second page of the current Petition Form is blank and requests an outline of the works proposed. We suggest this is given to parishes at the very beginning of the process and becomes an iterative document which is altered and refined as their plans develop. In its final stage when the parishes are ready to petition for a Faculty, it becomes page 2 of the form.

Extra information, which has been gathered in the process including plans, drawings, photographs and most importantly the standard information form with Statements of Significance and Need should be attached to it.

Some sections of the form that are rarely used should be eliminated from the Petition Form altogether because they are rarely used and when occasional cases occur the information could be included in the accompanying documentation, for example, in the Statement of Need.

All the standard information about a church contained in the Standard Information Form and the Statement of Significance together with the Statement of Need will be used to establish a diocesan data base and will be available for multiple purposes, including fund raising applications, in the future. They will not need to be submitted by the parish every time they apply for a Faculty. **RULES REVISION**

6. ELECTRONIC WORKING

We received considerable evidence from parishes, DACs and other bodies such as the Amenity Societies that the time had come to move to electronic working. We considered the advantages of a national system of electronic tracking but were more impressed by the advantages of a diocese by diocese system. One company we took evidence from are already in negotiation with a number of dioceses. We have noted the advances made by government in recent years in, for example, online tax returns,

driving licences and passport applications and can see no reason in principle why these cannot be applied to Faculty Petitions.

The Archbishops' Council edition of the Petition Form provides a modest but dependable source of revenue for Church House Publishing (CHP). However, the Council's Publishing Manager suggests that Hymns Ancient and Modern can be persuaded to consent to this extension of free access to CHP copyright material provided that a corresponding financial and/or marketing benefit to CHP can be achieved, e.g. CHP might be permitted to sell banner advertising on the site hosting the online form.

Whilst the layout and content of the Petition Form are within the remit of the Rules Committee, it may be helpful for its members to take as a starting point the sort of streamlined form that we have in mind, which reduced the current 14 pages to 8. It is attached as **Appendix 9**.

Having sought the advice of the Head of Libraries, Archives and IT, we have established that a professional designer known to Church House Publishing would deliver an on line version of the simplified Petition Form for under two thousand pounds, which would include the necessary licence for church wide use. PCCs would apply to their DAC for the form, which could be completed and submitted online instead of filled in on paper. If a parish chooses the paper form, we suggest that the DAC simply prints the form and sends it to them. The data can be input by the DAC at a later stage. Templates will also be available as illustration, complete with Guidance Notes on the ChurchCare website and available in hard copy form on application.

Amendment of the Faculty Jurisdiction Rules 2000 will be needed to permit the electronic submission of documents as was done in the Clergy Discipline Rules 2005. In the absence of a signature on electronic submissions the RULES Committee may wish to make appropriate provision for authentication by the Registrar in certain circumstances. **RULES REVISION**

7. TIME LIMITS

It would be a mistake to assume that all delays are unnecessary. There are numerous cases where the amount of thought and revision that has gone into, for instance, a re-ordering scheme has made a huge difference to the quality and effectiveness of the end product. Our concern has been to eliminate unnecessary delays which prove so frustrating to parishes. The practice of DACs, Registrars and Chancellors varies hugely and it would not be reasonable or practical to impose a uniform process on them. Nevertheless we think it would be helpful for them to consider adopting the discipline of an ideal timeline which should prove useful to everyone concerned, particularly when used in conjunction with the automated tracking described above. This has been incorporated into the process for Route C set out in **Appendix 7**. **RULES REVISION / BEST PRACTICE**

We have considered whether sanctions for non compliance with the deadlines would be appropriate. Such sanctions could take the form of automatic grant of the Faculty or an immediate right of appeal to the Court of Arches/Chancery Court of York, both of

which have parallels in the secular planning system. However, this could lead to unfortunate consequences where a Faculty was deemed granted in circumstances where it should have been refused and few petitioners would welcome the expense and further delay of an appeal to a higher court. It would however be possible to devise provisions whereby after a set period (e.g. 12 weeks) from submission, if certain steps had not been taken, there was a right for petitioners to request the appeal court to take over the handling of the Petition and determine it. Such a procedure would probably act as a trigger to any dilatory Chancellor to expedite consideration of the Petition. The appeal court could of course decline to assume jurisdiction if good reason was established for the delay. **AMENDING MEASURE / RULES REVISION**

8. OTHER SIMPLIFICATION MEASURES THAT WE ARE RECOMMENDING

- **Public notices.** We propose that the outdated, cumbersome and expensive requirement in Rule 13(4) of the Faculty Jurisdiction Rules 2000, to publicise petitions in certain circumstances in the local newspapers be abolished. Although this persists in the secular system we believe that, given the decline of local newspapers, we can successfully argue this point with the DCMS should it object. A requirement to put the notice on the Diocesan website could be imposed instead. **RULES REVISION**
- **Demolition.** The Dean of the Arches has expressed the view on many occasions that there is a strong case of radical amendment of Section 17 of the CCEJM 1991, particularly as it fits untidily with the modern interpretation of secular law relating to partial demolition. This should be the subject of a separate discussion which does not fall within the scope of this paper. **AMENDING MEASURE**
- **Sequence of Decisions.** Several parishes expressed concern about the ‘chicken and egg’ situation where the Chancellor requires evidence of adequate funding for a project, while funders require assurance that a Faculty is forthcoming before making a commitment. We believe that it makes for good governance that Chancellors take financial viability into consideration, and we disagree with a suggestion that it should have no place in the Faculty procedure. But the main point here - supporting the overall aim of simplification - is that the decision-making process must not become locked or unduly delayed. We advocate further use of procedures already available: the Chancellor may agree to grant a Faculty for a project in outline, either on the basis that the subsequent approval of final details will be delegated to the DAC, or on the condition that funding should be guaranteed before work actually commences. There are three steps which are already available and could be more widely used to meet the concerns expressed:
 - A direction can be made for works to be carried out in phases as funding becomes available.
 - Faculties can be granted subject to DACs satisfying themselves with the detail, which could provide funders with the assurance they need implied in the Faculty.

- Where large sums of money are at stake with a deadline attached, Registrars and Chancellors make every effort to fast track applications.

BEST PRACTICE

- **Shrinking the Footprint.** The Group received a number of representations concerning the need for the Faculty process to take account of the Church's commitment to Shrinking the Footprint. However, while accepting the desirability of using every opportunity to make parishes aware of their responsibilities in this area, we felt that adding a burden of requiring even more information on the Petition Form would complicate rather than simplify the process.

We propose instead that parishes should be required to include information about the environmental cost/benefits of their proposal, as appropriate in their Statement of Need. Most DACs nowadays are well briefed with issues of sustainability and can be expected to explore these issues thoroughly when formulating their advice. **BEST PRACTICE**

- **Trees.** We also propose that Chancellors' Guidance notes about trees, required by Section 6(3) of the CC and EJM 1991, should like the contents of Routes A and B meet a national standard. We hope that this will reduce the need for works to trees to be dealt with under Route C. **RULES REVISION / AMENDING MEASURE** See **Appendix 10** for the current example of a Guidance note from the Diocese of York.

9. PROPOSALS WE HAVE CONSIDERED AND HAVE DECIDED NOT TO PURSUE

- **Extending Archdeacons' Licences for Temporary Re-ordering.** A report was prepared in December 2011 by the Vicar General of the Northern Province on the use of Archdeacon's Licences for temporary reordering. We thought there was nothing to add to his recommendations, many of which should be subsumed in our proposed package of reforms.
- **Unlisted Churches.** There has been some suggestion that unlisted churches should operate under a different procedure, or even be excluded from the Faculty system altogether. Interestingly this suggestion did not surface at all from our parish research or expert witness sessions. After careful consideration the Group did not think this was a helpful way forward.

The fact that a church is unlisted does not mean that it has no architectural or spiritual value. As paragraphs 26 and 27 of **Appendix 1** makes clear, the Church of England does not have the Faculty Jurisdiction in order to qualify for the ecclesiastical exemption. It has it because the Ordinary has a proper interest in what happens to churches in the diocese and in ensuring that the proposals are consistent with the doctrine of the Church. It is not only the current worshipping community who have to be considered, it is the parish as a whole, and the worshippers and parishioners of the future.

Repairs and improvements can involve spending large amounts of money. There is no logic in depriving the PCCs caring for unlisted churches of the advice of the DAC, particularly where large scale re-ordering is involved. Indeed, some unlisted churches are likely to be listed in the future. The system should help people in parishes make good decisions and to get the best long term value for money, not least to avoid wasting money on cheap but ineffective repairs. There is every reason why these church buildings should be beacons for quality and good practice in the local community.

Our evidence suggests, not least from those who have advocated a different procedure for unlisted churches in the past, that the way forward is to leave it to the experience and discretion of both the DAC and the Chancellor to simply operate less strict criteria within the system when recommending/granting a Faculty for unlisted churches.

- **Integrating Registry and DAC services.** The Group heard with interest of the experience of two dioceses where DAC administration was undertaken by Registry staff. While there would appear to be advantages for tracking Petitions from the first request for advice through to the granting of a Faculty, the Group felt unable to recommend this approach more widely. The process we are recommending provides all the advantages of streamlining without losing the value added by the contribution of a well run DAC. The increasing professionalism of DAC Secretaries and Support Officers, where appointed in dioceses, provides tremendous value and support for the volunteers who so freely give of their expertise and advice to parishes on a diverse range of initiatives that keep church buildings open and sustainable into the future. We think there could also be issues raised concerning conflicts of interest and the administration of justice. Although special circumstances in these two dioceses have meant that this system has not given rise to problems there, the Group as a whole did not feel able to recommend this practice more widely.
- **Completion Certificates.** We have considered the role of completion certificates in the Faculty process and whether they impose an unnecessary bureaucratic burden on parishes. They do not exist in the secular planning system. However the form is relatively simple and does provide an important check that the conditions attached to the Faculty have been complied with and that the work has been carried out in accordance with the terms of the Faculty.

Completion Certificates should not be confused with Architects' Certificates which are required when they sign off work by contractors and which are necessary to satisfy funders that work has been completed to specification.

The Rules Committee might however want to consider whether the completion certificates are necessary in all cases.

10. CONCLUSION

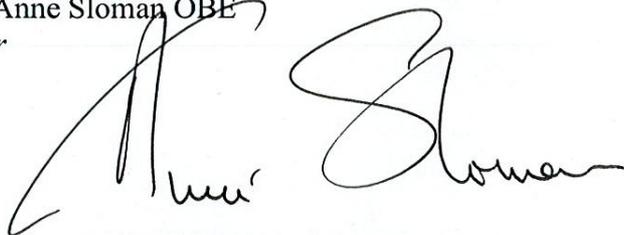
It will come as no surprise to anyone in the Church of England that, whatever the current Rules state, practice varies considerably from diocese to diocese. Many of our

recommendations are about establishing best practice and this will take negotiation over time to persuade dioceses that greater national consistency is to everyone's advantage. The Group has been pleasantly surprised that our research has revealed widespread support for the Faculty system accompanied by a widespread desire to improve and simplify it. Our main recommendations reflect the feedback we have received from parishes with direct recent experience of the system. They are simple, practical and we believe will make a real difference on the ground. We hope they will be welcomed by most of those involved at different stages of the process. These are:

- Establishment of a national agreed list of minor works (Route A)
- Establishment of a national agreed list of routine works which will require advice from the DAC and the approval of the Archdeacon, but do not need to go through the full Faculty procedure (Route B).
- A more streamlined application process from early advice stage through to the formal Petition with a more disciplined time frame for routine applications (Route C).
- A move to an online form with a printed out paper version available for those who are unable to access a computer.
- Expanding the use of Statements of Significance accompanied by a Basic Information Form which will be stored electronically to build up a data base in each diocese thus eliminating the need for repetition in future applications and making it possible to achieve.
- A much shorter and more streamlined Petition Form.

As we have indicated throughout the text of this report most of our recommendations can be achieved either by **BEST PRACTICE** or by **RULES REVISION**. Two of our Group, the Rt Worshipful Timothy Briden and the Revd Canon John Rees are on the Rules Committee. The Chair of the Rules Committee, the Rt Worshipful Charles George has been involved at various stages of our deliberations. We are therefore confident that if the Archbishops' Council approves the Report, the Rules Committee can proceed with its deliberations without delay. We accept that an Amending Measure will be necessary for some of our proposals. But as we understand it the spirit of the Simplification Process is that parishes need help now, not several years down the line, and it is our hope and expectation that many of our recommendations that require legislative change can be brought before Synod in July 2013 by way of Amendment of the Rules without the need for primary legislation, thereby reducing the amount of Synodical time required, and bringing simplification in to effect more rapidly.

Mrs Anne Sloman OBE
Chair



Rt Worshipful Timothy Briden



Revd Canon John Rees



The Ven Paul Ferguson



Mr Henry Russell OBE



Mr James Halsall



Ms Janet Gough
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3 September 2012