

**LEGAL OFFICERS (ANNUAL FEES) ORDER 2011
ECCLESIASTICAL JUDGES, LEGAL OFFICERS AND OTHERS (FEES) ORDER 2011**

Explanatory Memorandum

1. The membership of the Fees Advisory Commission (“the Commission”)¹ is:

Appointed by

His Honour Judge Andrew Rutherford (Chair)	Lord Chancellor
Mr Geoffrey Tattersall QC	Chairman of the Bar Council
Mr Aiden Hargreaves-Smith	President of the Law Society
Mr Andrew Britton	Archbishops’ Council
Mr Timothy Walker (Third Church Estates Commissioner)	Church Commissioners
Mr Timothy Allen	Appointments Committee

All members are members of Synod, except the Chair.

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.
3. Members of Synod will be aware that the Ecclesiastical Fees (Amendment) Measure, which contains provisions which will establish a differently constituted Commission, was committed to the Ecclesiastical Committee of Parliament in November 2010. The Measure was approved by both Houses of Parliament in April and May 2011 and received the Royal Assent at the end of May. Once the relevant provisions of that Measure have been brought into force, a new Fees Advisory Commission will be constituted.

(a) **Legal Officers (Annual Fees) Order 2011**

4. The Legal Officers (Annual Fees) Orders made under section 5 of the Ecclesiastical Fees Measure 1986 as amended prescribes the annual fee payable to each diocesan registrar for the professional services specified in Schedule 2 to the Order.

Background to the 2011 Order

5. As members of the Synod will be aware, the evidence supplied to the Commission over a substantial period has consistently demonstrated that the amount paid to the registrars by way of annual fees falls 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 term ‘usual inflationary formula’ was used at that time, and is still used, to refer to a combination of the

¹ The constitution of 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.

increases in the Retail Price Index ('RPI') (25% weighting) and the Average Earnings Index ('AEI') (75% weighting) for the previous year (both published by the Government).

6. Each year between 1997 and 2002 the Synod approved draft Orders that increased the total amount paid to all diocesan registrars by the 'usual inflationary formula' plus a further additional increase. In each year between 1997 and 2000 this additional increase was 2%, while in both of the years 2001 and 2002 this additional increase was 1%². In 2003 the Synod approved a draft Order that provided for an increase by inflation, as measured by the RPI alone, with no additional upgrade.
7. In May 2004 the Commission agreed, by a majority of those present, to recommend to the Synod a draft Order that was again calculated using RPI alone, with no additional upgrade (GS 1537X). The motion for the approval of this draft Order was defeated at the July 2004 group of sessions. In October 2004 the Commission agreed (with one member absent) to recommend a revised draft Order calculated using the 'usual inflationary formula' (GS 1562X). The motion for the approval of this Order (to come into force with effect from 1st January 2005) was carried at the February 2005 group of sessions. At each July group of sessions in the years 2005 – 2010, draft Orders were again approved providing for an increase by the usual inflationary formula alone, with no additional upgrade.
8. In the course of 2010, AEI was discontinued and was replaced by the Average Weekly Earnings statistic ('AWE') as the lead measure of short term changes in average earnings in Great Britain. The Commission was advised that the new statistic was directly comparable to AEI and accordingly agreed to use AWE in its calculations in place of AEI.
9. In May 2011 the Commission agreed unanimously that the figure to be used to calculate the level of fees contained in the Legal Officers (Annual Fees) Order 2011 (to come into force on 1st January 2012) should be an inflationary formula based on 25% RPI and 75% AWE³ with no additional upgrade – a formula directly comparable to the 'usual inflationary formula' used in previous years. The level of increase that has been applied is therefore 2.55%. As in previous years, 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).
10. Each year, in support of its proposals, the Commission sets out a sequence of supporting statistics that have been gathered and analysed by the Research and Statistics Department of the Archbishops' Council, the latest of which (for 2010) is annexed to this explanatory memorandum. The Commission considered that it would again be helpful for Synod members to have additional information which, without breaching confidentiality, would demonstrate the apparent unfairness as between registrars produced by the current means of apportioning the retainer. 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.
11. The figures given in the statistical analysis are based on the figures provided by the registrars themselves. These figures show significant variations between the time spent and the hourly rates charged by registrars and their staff, albeit in dioceses of similar size. These variations

² This lower figure was agreed by the Commission in response to the financial constraints facing the Church (and with the support of the registrars' consultants).

³ RPI for 2010 was 4.8% and AWE 1.8%, giving a figure of 2.55%.

may be attributable to a number of factors, including regional charge-out rates and varying levels of demand from the diocesan bishop and diocesan officers. The Commission recognises that those whose retainer represents a relatively small percentage of value are not necessarily working inefficiently. In particular, the additional resources required to deliver the work in larger dioceses are not always adequately accounted for in the apportionment formula.

12. For all these reasons, the present Commission repeats the hope expressed last year that its successor body will undertake an early review of the means of calculating and apportioning the annual retainer, with a view to securing a more equitable formula.

(b) Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2011

13. 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.
14. 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, but always without an additional upgrade. In the period 1997–2002 this resulted in an annual upgrade calculated on the basis of the ‘usual inflationary formula’ (as defined in paragraph 5 above) whilst the inflation figure used in 2003 and 2004 was based on RPI alone⁴. The 2005 – 2010 Orders were based on the usual inflationary formula.
15. In 2010, the Commission considered a proposal from its consultants representing the chancellors and provincial registrars that certain of the fees in Tables I, III and IV should be increased to match the fees for equivalent work paid by the Ministry of Justice to Recorders sitting in the Crown or County Courts. The Commission took the view that it did not yet have sufficient information as to the likely overall cost to the Church to make a decision on the proposal, but recommended that its successor body should look at this issue as a matter of priority. The Commission makes a similar recommendation this year.
16. In May 2011 the Commission agreed unanimously that the policy outlined above should again be applied in calculating the fees payable under the 2011 Order, which have therefore been increased by 2.55%, (the figure calculated using the ‘usual inflationary formula’ using the AWE index in place of AEI (as explained in paragraph 8 above) with no additional upgrade).

On behalf of the Commission
HHJ Andrew Rutherford
June 2011

⁴ It should be noted that the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2004 (based on RPI alone) was approved by the Synod in July 2004.

Annex – 2010 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. Note that if middle figures remain static over two years then median values can be the same, as is the case for 2009 and 2010.

The table below show diocesan median values for the hours worked, the monetary value of work done and the retainer from 2001 to 2010.

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	68%	32%
2004	473	£57,200	£36,900	64%	36%
2005	547	£65,800	£37,800	59%	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	£84,100	£43,900	59%	41%
2010	501	£81,345	£43,931	59%	41%

The table shows the median value for hours worked fluctuated over the period but has grown year on year 2004 to 2008, but seen a decline in recent years.

The Median Retainer as a percentage of median value of work done was 71% in 2001 and in 2010 was 59%, this represents a net drop of 12% 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 has increased progressively from 2001 to 2007, falling from a high of 48% (2007) to 41% (2010).

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 2010 the total retainer paid across the forty two dioceses receiving it was 47% of the value of the work undertaken. This is almost exactly the same as in 2009. The table below indicates the significant spread in this proportion across the dioceses in 2010. Whilst the retainer varied for different dioceses between £34,892 and £67,398, 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%	3
30% - 39%	5
40% - 49%	5
50% - 59%	7
60% - 69%	7
70% - 79%	6
80% - 89%	5
90% - 99%	1
100% & over	1

Dioceses may be divided into three groups. For fifteen dioceses the retainer in 2010 was equal to two thirds or more of the value of the work undertaken. For twelve it was between two thirds and half while for fifteen it was equal to less than half the value. At the opposite end of the spectrum, the retainer more than covered the work in only one diocese.

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Archbishops' Council*

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