

Crematorium funerals and parochial fees

1. The Legal Office has been asked to clarify the legal position in relation to crematorium funerals and the payment to, and receipt of fees by, the clergy. In particular we have been asked to advise on the position of clergy who do not hold office (whether because they are retired or otherwise) and who purport to conduct funerals on a freelance basis.
2. The legislation relating to parochial fees was recently revised and updated by the Ecclesiastical Fees (Amendment) Measure 2011 which made extensive amendments to the Ecclesiastical Fees Measure 1986. Incumbents fees have been abolished with effect from 1st January 2013¹ and the legal basis on which fees become payable, and to whom, has been put beyond doubt.
3. Parochial fees automatically arise and are payable when any of the duties listed in Schedule A1 to the 1986 Measure are carried out by a clerk in holy orders.² Those duties include officiating at a funeral at a crematorium.
4. The parochial fees are payable to the diocesan board of finance and to the parochial church council.³ The amount of the fees payable to each of these two bodies is prescribed in the current Parochial Fees Order.⁴
5. The effect of the legislation is that the fees prescribed in the current Parochial Fees Order are payable to the diocesan board of finance and the relevant parochial church council whenever a clerk in holy orders of the Church of England officiates at a funeral service at a crematorium. That is so irrespective of whether the clerk in holy orders is beneficed, licensed or holds permission to officiate. The statutory provisions apply simply by virtue of the service in question being performed by a person who is a clerk in holy orders.
6. Unless the diocesan board of finance has expressly agreed that retired or other clergy who undertake occasional duties may keep the fee that is payable to the board (or part of the fee), it is not lawful for a member of the clergy to retain any fee which is payable to the diocesan board of finance under the 1986 Measure. To do so in the absence of an agreement with the board would amount to the appropriation of property belonging to another for the purposes of the Theft Act 1968.
7. It is not legally open to the clergy of the Church of England to operate on what amounts to a 'freelance' basis. The 1986 Measure - like all Measures - is not merely an internal church rule; it has the same force and effect as an Act of Parliament⁵ Its provisions are part of the law of the land and compliance with them is not optional or voluntary.
8. Moreover, all clerks in holy orders are, by virtue of that legal status, bound by the Canons of the Church of England (which also form part of the law of the land). Canon B 1.2 limits the forms of service that may be used by the clergy to those which are authorised or allowed by Canon. Canon C 8 provides that clergy may officiate in any place only if they have the authority of the bishop of the diocese to do so.⁶ Additionally, it is unlawful for a member of the clergy to officiate in any parish without the permission of the incumbent⁷ except where authorised to do so under specific statutory provisions.⁸
9. There is therefore no legal scope for the exercise of an independent or freelance ministry by any clergy of the Church of England. An Anglican clergyman/woman cannot lawfully claim to be taking a funeral in a private, unofficial capacity, and accept payment for his or her services on that basis, rather than as a clerk in holy orders.
10. The only way in which a clerk in holy orders can render him- or herself free from the provisions of the 1986 Measure, and of the obligations imposed by the Canons, is by executing and enrolling a deed of relinquishment in accordance with the provisions of the Clerical Disabilities Act 1870. Only where a deed is executed and enrolled under that Act and subsequently recorded by the bishop is the person concerned freed from the legal constraints and obligations that apply to clerks in holy orders.

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¹ This is subject to transitional provisions under which an incumbent who was in office on 1st July 2011 and who had not assigned his or her fees to the diocesan board of finance could give notice to the Bishop by 31st December 2011 stating that he or she wished to preserve his or her entitlement to parochial fees. An incumbent who gave such notice is entitled to retain his or her entitlement to parochial fees for so long as he or she remains in office. Or by a licensed deaconess, reader or lay worker.

³ See section 1 of the 1986 Measure.

⁴ Currently, the Parochial Fees and Scheduled Matters Amending Order 2014 (S.1.2014/813). ⁵ By virtue of section 4 of the Church of England Assembly (Powers) Act 1919.

⁶ This is subject to an exception (not material here) which permits an incumbent to invite another member of the clergy to officiate in his or her church on a limited occasional basis.

⁷ *Nesbitt v Wallace* [1901] P 354.

⁸ See the Extra-Parochial Ministry Measure 1967 (which is concerned with chaplains licensed to institutions) and section 2 of the Church of England (Miscellaneous Provisions) Measure 1992 (which permits an incumbent to officiate at the funeral of his or her parishioner at a cemetery or crematorium situated in another parish without the consent of the incumbent of the other parish).