

Appendix iii).

Treasury & Resources Department

Review of the Funding of
the Ecclesiastical Court

March 2016

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TREASURY AND RESOURCES DEPARTMENT **REVIEW OF THE FUNDING OF THE ECCLESIASTICAL COURT**

1. Introduction

In 2011, the previous Policy Council and Treasury and Resources Department were approached by the Chairman of the Parochial Ecclesiastical Rates Review Committee (PERRC) with a suggestion that the future funding arrangements of the Ecclesiastical Court ("the Court") was a subject that was worthy of review. Having considered the matter together, they agreed that it would be more appropriate for Treasury and Resources to undertake the review.

The current Treasury and Resources Board subsequently committed to undertake the review as part of its business plan for 2012-2016 and the Board agreed that the terms of reference for the review should encompass the following:

- Changes in the level of fees charged by the Court since the previous review was undertaken by the States in 1985 (and reasons therefor);
- Changes in the average number and value of the estates for which probate applications are being made;
- The income and costs of operating the Court, particularly in relation to determining the costs and income arising directly from the Court's probate activities, as opposed to its other activities;
- The extent to which income from the Court's probate activities is contributing to the Deanery Discretionary Fund, including whether it is appropriate that the Fund should be supported by this source of revenue;
- The cost of probate fees in other jurisdictions, and,
- The possibility of providing the States of Guernsey with authority to approve future increases in the fees charged by the Court.

These terms of reference reflected the fact that the Department had only been requested to undertake a review of the Court's funding and not the jurisdiction of the Court.

This report seeks to: provide the Board with an update on the work and research that has been undertaken to date; identify the key issues that have emerged; and, set out the recommended next steps in terms of the review.

2. Ecclesiastical Court - Background

The Ecclesiastical Court (Jurisdiction) (Bailiwick of Guernsey) Law, 1994 states that '*for the avoidance of doubt...the jurisdiction of the Ecclesiastical Court in respect of the inheritance of personal property is limited to (a) the grant of probate of the wills of the deceased persons; and (b) the grant of letters of administration of the estates of the deceased persons.*'

In addition to retaining probate jurisdiction in all estates of personalty (ie. not real estate), the Court also undertakes the following activities:

- It deals with faculty applications (an ecclesiastical licence that gives permission to make physical alterations to church buildings);
- It issues licences for Church of England marriages; and,
- Exhumation orders.

The majority of the Court's income is derived from the fees paid from probate, which are based on a percentage of the gross value of the estate of the deceased at the date of death¹.

The Court's revenue belongs to the Bishop of Winchester in his corporate capacity but, in practice, it is paid to the Deanery Fund LBG (previously the Deanery Discretionary Fund (DDF))² after the running costs of the Court are paid. The Court has advised that this arrangement is also subject to its retention of a sum equal to the running costs of the Court (incorporating salaries and running costs) for six months because of the unpredictability of fee income and the certainty of fixed and contractual costs. This is a policy that has been adopted since 2013.

The States of Guernsey last considered a review of the Court in 1985. The scope of that previous review, which had been undertaken over a period of several years between July 1978 and November 1984, was wider than just the funding of the Court and considered, in particular, whether there were merits in transferring probate jurisdiction to the Royal Court. The conclusion of the associated policy letter, which was accepted by the States, was that probate jurisdiction should remain with the Court. This policy letter is attached at Appendix 1.

It should be noted that, in terms of funding issues, the 1985 report recognised that the Guernsey Deanery had confirmed at that time that *"the Church did not seek to make any profit from the work, merely to cover the cost of providing the service"*. The report noted that the fees charged appeared to average at around £16,500 per annum and that *"...the level of fees was fixed solely to raise the amount necessary to cover costs and remuneration for services rendered."* The Deanery has advised that the fees charged at the time of this review were based on the tariff dated 1 January 1980, which was lower than the current tariff (established 1 January 1987) especially for high-value estates.

Since 1985, this position has evolved and the fee income generated by the Court is no longer used solely for the purpose of meeting its running expenses, but also makes a contribution to the DDF/Deanery Fund LBG. In comparison to the average annual fees of £16,500 received in 1985, the overall fee income for 2013 (the last full year for which data is available to the

¹ The deceased may have had the prospective benefit of an investment with a fixed date of maturity after the date of death. However, whatever value such an investment might have had, this would not count as part of the gross value at the date of death.

² The DDF was originally used to give the Winchester Diocesan Board of Finance a sum equivalent to the Dean of Guernsey's stipend and his expenses of office and for the internal care of the Deanery, the vicarages and those rectories occupied by the Rectors. In 2013 the DDF became an LBG which, in addition to the aforementioned commitments, is also a registered charity for the purpose of holding investments, including real property, for the benefit and advancement of the Church of England in the Bailiwick of Guernsey and generally for other charitable objects.

Department) was £546,484, of which £335,569 was transferred to the DDF/Deanery Fund LBG. It is clear from these figures that the average fee income has grown at a rate which far outstrips inflation. Had fee income grown in line with movements in the Guernsey Retail Price Index, it would currently stand at just over £52,000³. At the outset of this review, it was acknowledged that this disparity could be a result of three factors: increases in rates/scale of fees charged by the Court; increases in the values of the estates involved; and/or an increase in the number of probates being granted.

3. Review

The Department adopted the following approach to the review:-

- As a first step, the agreed Terms of Reference were shared with the Dean of Guernsey for comment;
- This was followed by a meeting on 6 March, 2014, which was attended by the then Dean, Canon Mellor, the Registrar to the Ecclesiastical Court, Mr Nick Ozanne, the Minister and officers of the Treasury and Resources Department;
- During this meeting and in subsequent correspondence, the Dean confirmed that he would be willing to support the review and that records would be made available to the Department as required.
- The following information was subsequently provided to the Department over the ensuing months:
 - a) Audited Accounts for the Ecclesiastical Court for 2009-2013 inclusive;
 - b) Tariff of Court Fees;
 - c) Information regarding the governance arrangements for the Deanery Fund LBG, including copies of the Memorandum and Articles of Association and details of the charitable projects which have been assisted by the Fund. Copies of the unaudited annual Accounts for the LBG since its inception in June 2013 were also provided;
 - d) Details of the staffing structure of the Court, including a copy of the current Registrar's Service Agreement.

The Department is grateful for the assistance and co-operation provided by Canon Mellor and Mr Ozanne and, following the retirement of Canon Mellor, the Vice-Deans, Reverend Northover and Reverend Keirle and, more recently, the new Dean, the Very Reverend Barker.

The main findings of the review against the Terms of Reference are set out below.

a) Changes in the level of fees charged by the Ecclesiastical Court since the previous review was undertaken by the States in 1985 (and reasons therefor)

The Registrar to the Ecclesiastical Court has provided the Department with details of the current levels of fees being charged by the Court in relation to probate, which were established on 1 January, 1987.

³ Based on movement in the RPI Index between 31/12/84 and 31/12/14.

A copy of the tariff is attached at Appendix 2 and is summarised in Table 1 below.

Table 1 – Probate Fee Levels

Gross value of relevant Estate (as at date of death) (£)	Fee (£)
500.00	6.00
1,000.00	7.50
1,500.00	13.00
2,000.00	15.50
3,000.00	19.50
5,000.00	25.00
10,000.00	31.00
12,500.00	37.50
15,000.00	43.00
20,000.00	59.00
25,000.00	70.00
30,000.00	82.50
40,000.00	95.00
50,000.00	107.50
60,000.00	120.00
70,000.00	132.00
80,000.00	155.00
80,000.00 +	Additional £35.00 per £10,000 or part thereof

It should be stressed that scale fees are charged by the Registrar for the work done based on the gross⁴ value of the estate. Fees are also charged for such items as copies of grants and for providing extracts from the Registrar.

Fees are fixed by the Registrar in consultation with the Dean. As such, the Court is currently responsible for setting and charging its own fees. The extent to whether or not this is appropriate is considered in further detail in section (f) below.

Notwithstanding this issue, it is apparent from the tariff information that there have not been any significant increases in fee rates since the previous review was undertaken and that fees have remained unchanged since 1987⁵. As such, it can be concluded that the reasons for the significant increase in income arising from the granting of probate must lie elsewhere.

⁴ The gross value in this instance is defined as the value of the estate as at the time of death before the deduction of liabilities. As previously stated, this will not include any investments with a post mortem maturity date.

⁵ Although the percentage fee scale has not changed since 1987, the Court has advised that there have been a few small changes to charges for such things as ancillary documents. Also, for original applications made from 1 February, 2013, administration bonds are no longer required, which has resulted in a reduction in the overall income. For example, the income from this source for the previous year before the requirement was removed was £1,170.

b) Changes in the average number and value of the estates for which probate applications are being made

The Court has advised the Department that there has been a downward trend in the number of probate grants applied for in recent years. The figures available at the time the 1985 review was undertaken are as follows: 1978 – 484 grants, 1979 – 370, 1980 – 457, 1981 – 372, 1982 – 459, and 1983 – 551. The Court has supplied the figures of the number of grants applied for from 1995 to date and these are summarised in Table 2 below.

Table 2 – Probate Grant Applications

Calendar Year	No of Grants Applications	Rolling Five Year Average
1995	683	
1996	623	
1997	629	
1998	692	
1999	658	657
2000	725	665
2001	692	679
2002	651	684
2003	716	688
2004	712	699
2005	724	699
2006	704	701
2007	621	695
2008	591	670
2009 ⁶	588	646
2010	560	613
2011	539	580
2012	540	564
2013	499	545
2014	491	523

The figures provided support the Court's assertion that there has been a downward trend in applications. Therefore, it must be concluded that the significant driver behind the increased revenue from the granting of probate rests with the value of the estates, as opposed to other factors. It should also be noted that, whilst the fee levels have remained unchanged (as outlined above), they have increased in real terms as a result of the increased value of the estates.

Table 3 below shows details of the Court's total income for the years 2001-2013. Although there have been some fluctuations, these figures do provide evidence that revenue has been

⁶ The Court advises that, from 2009 onwards for accounting reasons the figures are for the period 1 February to 31 January in each case, therefore the figures for these years are not strictly comparable with earlier figures, although the number of grants issued over the whole of each period is the same. Additionally, in providing these figures, the Court wishes to stress that the figures were recorded for internal purposes only and are not necessarily absolutely 100% accurate.

increasing, though it should be noted that there is no breakdown available in relation to the source of this income (ie. whether it came from probate or any of the other activities of the Court). The Accounts as provided by the Court present a gross figure for the granting of letters of administration, probate and marriage licences. However, following meetings with representatives of the Court, it is understood that the probate fees make up the majority of this income with other activities raising only *"a few thousand pounds per annum"*.

Table 3 – Ecclesiastical Court Income

Year	Total Income (£)		Year	Total Income (£)
2001	306,063		2008	397,854
2002	327,912		2009	441,117
2003	340,232		2010	855,206
2004	380,033		2011	457,098
2005	426,356		2012	833,297
2006	492,828		2013	546,484
2007	377,441			

It is perhaps worth highlighting the substantial fluctuations in income levels, notably since 2008, when income has varied from a low of £397,854 to a high of £855,206, with no discernible trend.

c) The income and costs of operating the Court, particularly in relation to determining the costs and income arising directly from the Court's probate activities, as opposed to its other activities

The Department has been provided with complete sets of Audited Accounts for the Court for the years 2009-2013 inclusive. These are attached as Appendix 3 to this Report and a summary of the Court's Income and Expenditure position over this period is set out in Table 4 below.

The Accounts for subsequent years are not currently available. The Court advises that the Accounts for 2014 have not yet been finalised due to the delay in the appointment of a new Dean following Canon Mellor's retirement. In this situation, the accountants were not able to finalise the Accounts as they require signature by the Dean. However, following the appointment of the new Dean in late 2015 these are expected to be available imminently, with the 2015 Accounts soon after (noting that, for the purposes of the Court Accounts, the financial year ends on 31st January and as such there may still be a degree of work required in relation to 2015 before they can be signed off by the Dean).

Also attached (Appendix 4) is a summary of the Court's income and outgoings for 2001-2008 as provided by the Policy Council.

In addition, the Court has also submitted details relating to its staffing structure, including a copy of the Registrar's Service Agreement, which is attached at Appendix 5. Staffing levels at the Court have recently been reduced by one following a decline in activity and now consist of the Registrar (an Advocate of the Royal Court) and two permanent assistants. A Deputy Registrar (also an Advocate) is available to cover in the absence of the Registrar on annual leave etc.

Aside from the transfers to the Deanery Fund LBG (formerly, the DDF), which are considered in more detail below, the largest area of expenditure is for the Registrar's service fee. It is understood that, until 2009, the Registrar was paid an amount representing 5/7ths of the Court's Annual Income (with the remaining 2/7ths being transferred to the DDF). This was then used to meet the running costs of the Court including the employment of staff and any remaining balance was then retained for the Registrar's fee for legal and management services. As such, the amount paid to the Registrar could fluctuate in line with the Court's revenues. However, as a result of a review of the Court undertaken by the Bishop of Winchester, an agreed annual sum has been paid to the Registrar since 2009 to cover running expenses and remuneration, any surplus revenues available to the Court after this payment has been made now accrue to the DDF and latterly the Deanery Fund LBG.

The Agreement currently in place with the Registrar was entered into with effect from 1 February, 2009. In addition to remuneration, the Agreement also sets out the main duties of the role, the terms of appointment, matters relating to time and attention to be committed by the Registrar to the operation of the Court, the provision of a Deputy Registrar and the associated remuneration, confidentiality arrangements, grievance and disciplinary procedures and transitional/termination provisions.

Given the annual fluctuations in the Court's income levels that are highlighted in Table 3 above, it is acknowledged that it is sensible for the Court to retain a level of reserve. This figure is represented in table 4 as the 'balance in hand carried forward'.

The Dean has advised that the current policy is that a sum equal to the running costs of the Court for six months (to include salaries and office costs) is retained to protect against likely variances in income in future years due to the unpredictability of fee income and the certainty of fixed and contractual costs. The remaining balance is transferred to the Deanery Fund LBG on a quarterly basis.

It is understood that this reserves policy was established following the founding of the Deanery Fund LBG in June 2013. In the absence of the 2014 and 2015 Accounts, it is not possible to document the application of this policy. However, the Dean and the Vice-Dean, Reverend Keirle, have advised that, following the establishment of the LBG and the new reserves policy, a transitional period followed whereby the existing reserves were transferred to the LBG over a period of time and the new policy was subsequently applied. The Dean and Vice-Dean have undertaken to provide copies of the 2014 and 2015 Accounts as soon as they become available so that this may be confirmed. However, in the absence of this information it is understood that, going forward, a clear reserve policy is in place which will prevent high levels of reserves such as those generated in the past being held by the Court in future. The contribution to the Deanery Fund LBG is explored in greater detail in section (d) below.

Table 4 – Ecclesiastical Court Income and Expenditure (£s)

	2009	2010	2011	2012	2013
Income					
Fees receivable	441,109	855,180	457,040	833,229	546,436
Bank Interest	8	26	58	68	48
Total Income	441,117	855,206	457,098	833,297	546,484
Expenditure					
Registrar's Service Fee	250,036	269,640	267,880	273,312	289,515
Office of Dean expenses	73,040	83,454	89,808	90,454	87,977
Deanery expenses	10,745	7,100	13,737	12,435	18,663
Administration expenses	594	1,775	-	2,504	3,898
Total Expenditure	334,415	361,969	371,425	378,705	400,053
Surplus	106,702	493,237	85,673	454,592	146,431
Expenditure as a % of Income	75.8%	42.3%	81.2%	45.4%	73.2%
Transfer to/from DDF	98,379	(18,011)	9,474	(304,424)	(32,898)
Transfer to Deanery Fund LBG	-	-	-	-	(302,671)
Returned Surplus	205,081	475,226	95,147	150,168	0
Income Over Expenditure	205,081	475,226	95,147	150,168	(189,138)
Balance in hand/brought fwd	-	205,081	680,307	775,454	925,622
Balance in hand/carried fwd	205,081	680,037	775,454	925,622	736,484

Notes:

- (i) The Office of the Dean's Expenses includes, inter alia: the Dean's stipend; the Secretary's salary; office equipment and costs; travel and subsistence; telephone and postage.
- (ii) Deanery Expenses includes, inter alia: appointments to the Deanery; courses and lectures; ordination and confirmation costs; Episcopal visits; chapter and robe expenses; library and subscription costs; and, locum and visiting preachers.
- (iii) Fee income is the gross figure including from the granting of letters of administration, probate and marriage licences.
- (iv) All the Court's receipts are paid into an account entitled *The Ecclesiastical Court Income Account* and the agreed annual sum is paid to the Registrar from this account in three-monthly instalments.

d) The extent to which income from the Court's probate activities is contributing to the Deanery Discretionary Fund, including whether it is appropriate that the Fund should be supported by this source of revenue

One of the most significant matters arising from the Audited Accounts is the transfer of funds to the DDF/Deanery Fund LBG. The Fund is used to give the Bishop of Winchester Diocesan

Board of Finance a sum equivalent to the Dean's stipend and his expenses of office and for the internal care of the Deanery, vicarages and those rectories occupied by the Rectors. The Fund is also a Guernsey Registered Charity. As a company established since 2013 under the Companies Law, 2008, the Fund has its own Memorandum and Articles of Incorporation, copies of which are attached at Appendix 6. Paragraph 6.1 of the Memorandum of Incorporation sets out the 'Objects' of the Fund, which are as follows:

"The Company's wide exclusively charitable objects are to advance the Church of England in the Bailiwick of Guernsey, to relieve poverty, promote social inclusion and relieve those in need by reason of youth, financial hardship or other disadvantage, to support the good works and administration of the said Church, to support the clergy and to pursue such other exclusively charitable objects as may be beneficial to the community".

The funds that have been transferred to the Deanery Fund LBG (and its predecessor) for the years 2001-2013 are set out in Table 5 below.

Table 5 – Transfers to the Deanery Fund LBG

Year	Total Income (£)	Outgoings to DDF/Deanery Fund LBG (£)
2001	306,063	74,115
2002	327,912	80,892
2003	340,232	85,645
2004	380,033	96,911
2005	426,356	114,562
2006	492,828	125,777
2007	377,441	86,185
2008	397,854	101,920
2009	441,117	0 (98,379 transferred from the DDF)
2010	855,206	18,011
2011	457,098	0 (9,474 transferred from the DDF)
2012	833,297	304,424
2013	546,484	335,569 (32,898 DDF, 302,671 Deanery Fund LBG)

The Company currently has four directors, including the Senior Vice Dean, who will now be joined by a fifth director following the appointment of a new Dean. Additionally, the Fund is supported administratively by a Company Secretary. There is an agreed schedule of delegations and authorisations in place. The Dean (or in his absence the Senior Vice Dean) is authorized to approve payments not exceeding £500 for the purposes of: clergy welfare (including but not limited to travel); retreats, courses etc. for the clergy, licenced lay ministers and other persons approved from time to time by the Board of Directors; Dean's expenses; Deanery expenses; and, hospitality. Proposed payments in these categories which exceed £500 but are less than £2,000 require the consent of one other director in addition to the Dean/Senior Vice Dean. Any other proposed payment would require approval at a quorate meeting of the Board of Directors.

Some of the charitable objects assisted by the Fund are set out in table 6 below.

The Court has noted in its submissions to the Department that grants that have been made are not simply within the realm of the Anglican Church in Guernsey and that the Fund has supported many community projects that would otherwise have not been funded. The Deanery has also confirmed that some of the grants made from the Fund are for projects outside of the Bailiwick, most recently to the Bishop of Dover's appeal for the support of refugees in Calais. The Dean has also noted that the Deanery Fund LBG was only established in 2013 and is in its early stages of development.

Copies of the complete Unaudited Accounts for the Fund for 2013 and 2014 are attached at Appendix 7.

Table 6 – Deanery Fund Grants

Project	Grant (£)
Purchase of 35 Mill Street, St Peter Port for use as a community café by Caritas	257,763
Grant to St Stephen's Church towards cost of rewiring etc.	50,000
Grant to St Matthew's Church towards construction of a new community centre	50,000
Grant to St Martin's Church towards cost of employing a Lay Youth Worker	2,000 single payment plus 12,000 p/a for 5 years
Grant to Holy Trinity Church to convert church gallery principally to accommodate food bank	10,000
Approval in principle of a grant to the Sark Sanctuary project	10,000
Grant to Vale Church towards cost of providing Sunday School and coffee area in church	6,000
Grant to Vale Church towards youth work	2,500
Grant towards cost of erecting Occupation Registers' memorial	2,000
Grant to Friends of the PEH for purchase of new trolley	2,000
Grant to fund work of hospital chaplaincy	2,000
Grant to fund work of prison chaplaincy	2,000

e) Comparisons - The cost of probate fees in other jurisdictions – Jersey, the Isle of Man and the UK

Probate in Jersey is administered by the Probate Registry at the Judicial Greffe. The fees are set out in Table 7 below.

Table 7 – Jersey Probate Fees

Net Value (£) if the personal estate is sworn:	Fee (£)
Not to exceed 10,000	0
Not to exceed 100,000	50 for each 10,000 or part thereof
To exceed 100,000 but not to exceed 13,360,000	500 in respect of the first 100,000 plus 75 for each additional 10,000 or part thereof
To exceed 13,360,000	100,000

Probate in the Isle of Man is administered by the Probate Office. The fees are set out in Table 8 below.

Table 8 – Isle of Man Probate Fees

Gross Estates Value (£)	Fee (£)
Does not exceed 10,000	25.00
Exceeds 10,000 but not 50,000	150.00
Exceeds 50,000 but not 125,000	437.50
Exceeds 125,000 but not 250,000	937.50
Exceeds 250,000 but not 500,000	1875.00
Exceeds 500,000 but not 1,000,000	3750.00
Exceeds 1,000,000	7500.00

Probate in the UK is administered by HM Courts and Tribunals Service. The fees in relation to UK probate are fixed at £215 in all cases where the net estate (ie the amount remaining in the deceased's sole name after funeral expenses and debts owing have been deducted) is over £5,000. If the net estate does not exceed £5,000 there are no fees associated with the granting of probate.

It is of interest that the Guernsey Ecclesiastical Court's probate fees are structured such that there are eighteen different bands of fees payable, seventeen of which are for sums under £80,000. Conversely, Jersey and the Isle of Man have much flatter fee structures, with just four and seven bands respectively between them. Whilst the local structure may seem somewhat complex relative to other jurisdictions, this does mean that probate fees can be matched more closely to and proportionately with the value of the estate, at least at the lower levels. Additionally, however valuable the estate, the probate fee remains at roughly 0.35%, making it consistent at all levels and, interestingly, in its submissions to the Department, the Court has noted that recent discussions with the UK have indicated that it might consider introducing a staged fee approach, not dissimilar to that currently applied here. A banded fee structure is also consistent with the fees charged in Guernsey's Magistrate's and Royal Courts, where fees⁷ vary according to the value of the cause or application in civil matters.

The Dean has stressed that each of these points is worth noting in the context of the attractiveness of the probate system to those high-net worth individuals who might seek to invest in Guernsey, as opposed to elsewhere (also noting that there may be other more – or less – attractive systems in existence elsewhere which have not been explored here).

Whilst it is difficult to perform a meaningful comparison of the fees charged across these jurisdictions due to the different scales applied, Table 9 below sets out a 'snapshot' of the different fees charged. It should be noted that the value of the estates has been calculated differently in each jurisdiction: Guernsey and the Isle of Man fee scales are based on **gross** value of estates, the UK and Jersey on **net**⁸ value. It should also be noted that Guernsey probate fees are not strictly comparable with the fees in the other jurisdictions represented.

⁷ Royal Court (Costs & Fees) Rules, 2014; Magistrates Court (Fees)(Amendment) Rules, 2014

⁸ Whilst definitions of 'gross' and 'net' are not available for each jurisdiction, in relation to Guernsey, gross is defined as the value of the estate as at the time of death before the deduction of liabilities and not to include any investments with a post-mortem maturity date, and in relation to the UK, net is defined as the amount remaining in the deceased's sole name after funeral expenses and debts owing have been deducted.

For example, in the UK, the estate of a deceased person includes real estate (above a certain value) and would be subject to inheritance tax, neither of which apply in Guernsey.

Table 9 – Probate Fees – Comparisons with Other Jurisdictions

Value of Estates (£)	Fees (£)			
	Guernsey	Jersey	Isle of Man	United Kingdom
5,000	25.00	0	25.00	0
10,000	31.00	0	25.00	215.00
50,000	107.50	250.00	150.00	215.00
100,000	225.00	500.00	437.50	215.00
500,000	1625.00	2500.00	1875.00	215.00
1,000,000	3375.00	5000.00	3750.00	215.00

f) The possibility of providing the States of Guernsey with authority to approve future increases in the fees charged by the Court

The 1985 States Report regarding the review of the Court included a recommendation that there should be no increase in the scale of fees payable to the members of the Commissary or Registrar without the prior approval of the former Advisory and Finance Committee. This recommendation was rejected by the States at that time.

As set out above, the Court remains responsible for setting its own fee levels, although it has not made any changes since 1987⁹. It is evident, therefore, that the Court has not sought to use this authority for over 25 years. Whilst this in itself is welcome, it should not be used to deflect the fact that current levels of fee income are generally exceeding the running costs of the Court.

It could be argued that it is inappropriate for the Ecclesiastical Court to have the authority to set its own fees. However, it is noted that this type of arrangement is not without precedent in Guernsey. For example, under the provisions of the Royal Court (Costs and Fees) (Rules) Law, 2014, the Royal Court has authority to establish fees that are payable by court users for civil and criminal proceedings. It also has similar authority to establish fees that are payable in the Magistrates Court and for Matrimonial Causes. These are set by Order of the Royal Court without reference to the States.

4. Other Matters

It is considered that, owing to the largely financial focus of this review and the completeness of the information received from the Court, it would not benefit from consultation with other parties at this time. However, it is noted that if the review were expanded to encompass other matters associated with the Court, consultation would be an important part of the process, including with the Guernsey Bar, the Royal Court, Alderney and Sark.

⁹ See note 5.

It is understood that observations have previously been made by representatives of the finance sector and other parties in relation to the existing probate system, specifically, that it could be perceived as anachronistic to some client bases outside the island and incompatible with certain religious legislative frameworks, for example, Islamic Sharia Law. This matter has been raised with the Commerce and Employment Department and it is understood that it is currently liaising with the industry to test whether or not it has experienced any difficulties or has any concerns in respect of the Court's operations. This piece of work is ongoing, however, it is noted that any consequential considerations in relation to the matter of the possible transfer of probate jurisdiction would fall outside of the scope of this review.

5. Conclusions

The review has highlighted a number of key factors and considerations around the funding arrangements for the Ecclesiastical Court, as follows:

- The Court has not sought to exercise its authority to increase the tariffs for probate matters since 1987 and, given the trend in probate application numbers, the increase in fee incomes can be attributed to an increase in the value of estates since that time.
- In recent years, the Court has generated income which far exceeds its requirements in terms of running costs. The surplus revenue is currently split between the Deanery Fund LBG and a reserve fund.
- Probate fee levels compare favourably with Jersey and the Isle of Man, particularly as the value of the estate increases.
- The banded fee structure adopted by the Court is arguably fairer than a fixed fee, given that it relates to the value of the estate (and, therefore, ability to meet the costs).
- From an accountability perspective, there is a clearly defined relationship between the Court and its Registrar, which is documented in a Service Agreement. This sets out his roles and responsibilities and fixes the associated levels of remuneration. Importantly, the Registrar's remuneration is no longer based on a percentage of the Court's fee income.
- Governance arrangements around the Deanery Discretionary Fund have improved with the incorporation of a company LBG. Importantly, there is a clearly defined schedule of delegated authority that addresses the allocation of the Fund's resources, taking into account the purposes of the Company set out in its Articles and Memorandum of Incorporation.

On the basis of the information received thus far and the review thereof and, accepting that a clear policy in relation to reserves has been established in recent years, it is concluded that there are no substantial matters of fundamental concern arising from the current funding arrangements associated with the Ecclesiastical Court.

Nevertheless, the review has clearly highlighted that a significant amount of the Court's annual income is transferred to the Deanery Fund LBG (and previously the Deanery Discretionary Fund) for community projects which benefit the wider Guernsey community as well as supporting Church of England property maintenance and projects. The Court's

position has clearly evolved since the 1980s, when fee income was intended to cover the costs of administering its activities, to one where it now generates sometimes significant surpluses that are funding a range of Anglican Church and other community activities.

It is noted that, following previous agreement by the Board, a copy of an earlier draft of this report was shared with the Court so that it might comment on the factual accuracy of the information and provide any further information and evidence to enable conclusions to be drawn in relation to the review. This version incorporates the comments, observations and factual corrections received from the Dean on behalf of the Court.

24 March 2016