

## COSTS IN FACULTY PROCEEDINGS

### A SHORT GUIDE – FEBRUARY 2014

#### Introduction

The purpose of this short guide is to explain to petitioners and objectors why, and when, orders for costs can be, and may be, made by the Chancellor of the diocese in faculty cases.

#### **Q.1. What are the costs?**

There are two types of costs:-

- (i) *Court Fees* are the Diocesan Chancellor's and Diocesan Registry's fees and expenses which are payable in faculty cases whether the petition is opposed or unopposed. In addition payment can be required in respect of disbursements such as hire of rooms or travelling and other expenses incurred by the Diocesan Registry.

Different level of fees are payable depending on whether the petition is determined on the initial papers; on whether there is a determination on written representations; or after a hearing. The fees are laid down in the nationally determined Fees Order (a copy of which can be obtained from the Registry). Some of the fees are fixed and for others a range is laid down and the Chancellor will decide which figure in permitted range is appropriate. He does this after considering the time taken up and the complexity of the matter. The Chancellor acts in accordance with the national "Guidance on the Award of Costs in Faculty Proceedings" (a copy of which can also be obtained from the Registry).

- (ii) *Costs between parties* are the costs incurred by the petitioners and objectors themselves when there is a dispute which has to be determined by the Chancellor, either at a public hearing or upon the consideration of written representations from the parties.

#### **Q.2. Who has to pay the Court Fees?**

The Church of England operates the faculty system controlling the use of consecrated land and buildings without any public funding. So the principle is that the cost of running the system has to be met by those who use it. In practice the Court fees for most unopposed petitions which are for the benefit of a parish are paid for by the Diocesan Board of Finance up to £250.00, above that level, the Board exercises a discretion as to payment.

**This means that private petitioners, eg for reservations of grave spaces, exhumations, memorial stones, or repairs to memorial stones must pay the Court fees arising from their petitions.**

The Board does not usually pay the Court fees on contested faculties or in cases where a hearing is ordered for some other reason; in those cases it is for the petitioners to pay for the Court fees unless a different order is made. But the Board exercises a discretion in such matters.

#### **Q.3. Does responsibility for the Court Fees depend upon who "wins" the case?**

No. The normal rule in a contested case is that unless a different order is made, those who seek a faculty (whether the minister and churchwardens or a private individual) are responsible for paying the Court fees, even where there is an objection, and whether or not a faculty is ordered.

This is so whether or not the petition is successful.

**If a petition is opposed, an objector will not normally be ordered to pay anything towards the Court fees unless his behaviour was felt to be unreasonable etc (But see Q.7. on "unreasonable behaviour").**

#### **Q.4. Can costs be awarded against me if I write one letter of objection?**

No, provided that the letter:

- sets out all you wish to say by way of objection;
- says that you do not want to make any further representations; and
- confirms that you do not seek to become a formal objector in the case.

#### **Q.5. Can costs be awarded against me if I become a party to enable me to make further representations and to respond to arguments put forward by others in relation to the petition?**

If you send in formal written particulars of objection (this is usually done on the form provided by the Registrar), then you will become a party. You will not automatically become liable for any costs but the principles explained in answer to questions 6 to 10 below will apply to you. Please read these answers carefully.

#### **Q.6. In a disputed case does the “loser” have to pay the other party’s costs?**

As a general rule the parties are expected to meet their own expenses; that is to say, that no award of costs is made between the parties. An award of costs does not therefore depend upon or follow automatically from the “success” of a party to the proceedings, as is normal in the secular courts. The approach taken is much closer to that which applies in a secular planning appeal than that in the secular courts. The Chancellor has a discretionary power to make an order that any party pays the whole or part of another party’s costs, (that is, costs between parties) where that party has behaved “unreasonably” in the conduct of the case.

The Chancellor also has power to order that a particular party other than the petitioner should pay the Court fees; if this power is exercised, it should be noted that the Chancellor is directing another party to indemnify the petitioner against those costs, not absolving the petitioners from the liability. This power is often exercised where action has been taken without authority – eg where a memorial is introduced without permission, or work is carried out to a building without permission, so that the person responsible for the action may be ordered to pay not only the whole of the Court fees, but also to pay the other parties’ fees, including those of an intervening archdeacon where this is necessary.

#### **Q.7. What is “unreasonable behaviour”?**

Whether a party has behaved unreasonably will depend upon the facts in a particular case. Awards of costs are not made simply because one party won an argument and the other lost it. The Court exists to resolve differences of opinion about complex issues. It welcomes representations made in good faith even in cases where it decides not to accept those representations. It will frequently be the case that different people hold strong and opposing views but where each party is reasonable in its position. The Court does not wish to prevent people expressing their views, and doing so trenchantly where appropriate. But it will direct costs to be awarded if the views are held without foundation, or are advanced without consideration of the overall basis on which the Court acts.

It is also important to note that if a party has caused the other party to incur unnecessary expenses, it is likely to be condemned in costs: for example, by failing to comply with procedural directions from the Chancellor; or failing to provide information in good time; or making no attempt to seek a compromise solution. The fact that occasionally an award of costs may be made in such circumstances is intended to ensure that a sense of discipline is introduced into proceedings.

#### **Q.8. Are the principles in relation to costs the same when “conservation” issues are involved?**

Yes The Chancellor welcomes and values the contributions made by English Heritage, Local Planning Authorities, and the Amenity Societies. Extensive guidance is available to petitioners as to the role of English Heritage, the local Planning Authority and the National Amenity Societies (the Conservation bodies) in the “Guidance on Award of Costs” booklet referred to above. It is only in the most exceptional of cases that he will consider making such a body contribute to the Court Fees or to the costs of another party.

Individual objectors ought to study carefully any reports of these expert bodies before deciding whether to take up the time of the Court on any issued considered in those reports. If there is a hearing and a faculty is in due course granted, an individual objector (who lacks expertise and has not called any expert witness to challenge the evidence of a conservation body) could be held to have behaved unreasonably and be ordered to pay at least a contribution towards the costs between parties.

The involvement of any conservation body usually results in extra work being carried by the Registrar. In accordance with the principle explained in answer to Q.3 above, any additional fees ordered under the Fees Order will normally have to be paid by the petitioners.

**Q.9. Do the same principles in relation to responsibility for costs apply to cases dealt with on written representations as to cases where there is a hearing?**

Yes, although the Court Fees fixed by the Fees Order (see Q1) are lower for cases dealt with on written representations.

However, although the parties may wish to have a decision on written representations, the Chancellor may decide that a hearing is necessary in order for the evidence to be tested by way of cross-examination. The fixed fees for a hearing will then apply. But costs between parties are likely to be lower than where a hearing takes place in contested proceedings.

**Q.10. Can costs be saved if a party amends a petition or objection or withdraws at some stage in the proceedings?**

Yes. The Chancellor is concerned to ensure that disputes are dealt with in a manner which is as inexpensive as is consistent with a fair and proper resolution of the dispute. The opportunity exists for either party to amend or withdraw if that party considers it appropriate to do so at any stage in the proceedings. If this is a reasonable step to take with a view to saving costs, it will operate in favour of the party concerned when the subject of costs is dealt with at the end of the hearing.

**Q.11. Is there a right of appeal if an order for costs is made?**

Yes, with the leave of the appellate court, which is the Court of Arches in the Province of Canterbury.

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