

DIOCESE OF LICHFIELD
APPLYING FOR A FACULTY

NOTES FOR GUIDANCE – Procedure and Fees

A Petition is an application to the Consistory Court for a ruling. The Consistory Court operates as a Court of civil jurisdiction but has its own Rules and Fees Order. One important difference between the Court and most civil courts, however, is that in all cases, the Chancellor (or Judge of the Court) will consider whether the remedy sought is appropriate in the circumstances presented within the Petition; he or she is not simply determining the question between two parties in an adversarial sense. This means that, on some occasions, a Petition has to be heard in Open Court or dealt with under Written Representations, even if there is no objection by another party.

If the Petition is unopposed, the Chancellor may be happy to deal with it based on the documents you have already sent us; it may be that the Chancellor requires further statements from you. If that is so, we will tell you. Similarly, the Chancellor may direct that the Petition is to be heard in Open Court, if he or she feels that further questions arise which would be better dealt with orally in evidence or submissions before the Court. The practice in this diocese is that all petitioners are asked which procedure they would like to use, before the Chancellor makes his ruling as to the procedure to use. It is your right to call for a hearing. If you choose a written determination, the Chancellor may decide at any point that a hearing should be convened (though this is very rare in this type of case).

If the Petition is opposed, the Chancellor can still deal with the matter either by written representations or at a formal hearing in open court, so that the same questions arise.

We ask the Petitioner when the Petition is lodged, to complete and return the attached form to the Registry to say whether the Petitioner is content for the petition to be determined by the Chancellor on the documents that have been provided, **or** after further written representations **or** at a hearing of the Consistory Court. If the Petition is then opposed, we ask the question again, because the answer may be different at that point; and in those cases, we also ask the Objector the same questions. The Petition form should be supported by all evidence which the Chancellor needs in order to understand the basis on which the Petition is made, including any witness statements and documents needed to understand what you are seeking and why.

The initial fees due, on lodging the Petition are a cheque for £216 + VAT (£259.20) payable to “FBC Manby Bowdler LLP”, and a cheque for £52.00 (no VAT) payable to “Lichfield Diocesan Board of Finance”, in each case these are the fees due to the Registry and Chancellor respectively for the issue of the Petition.

In most cases these will be the only fees payable

ADDITIONAL FEES

However in some cases there will be additional fees payable which are prescribed in the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2021, but in summary the fees most usually applicable (including any VAT) are:

- If the Chancellor decides that he can decide the case on the basis of Written Representations, a further fee of £129.60 will be payable to “FBC Manby Bowdler LLP”. In addition a fee £136.00 will be payable to the “Lichfield Diocesan Board of Finance”.
- If the Chancellor decides *on the basis of a review of the papers lodged* that there should be a Hearing (whether in Open Court or not), then a fee of £133.20 is payable to “FBC Manby Bowdler LLP”; if instead the Chancellor holds a *hearing* to decide how to determine the case the fee payable will be £259.20. In addition a fee £136.00 or £274.00 will be payable to the

“Lichfield Diocesan Board of Finance” (depending on whether a hearing is held). In practice, it is very rare for a hearing to be required for the purpose of deciding this issue.

- If at any point in the matter the Registrar gives directions in relation to the case *on the basis of the papers lodged* then a fee of £133.20 is payable to “FBC Manby Bowdler LLP”.
- If the Chancellor holds a Hearing to *determine the Petition itself*, (that is to say, not simply a directions hearing covered as above) then then a fee of £325.20 per half day or less, and £649.20 per day (for any hearing longer than half a day) is payable to “FBC Manby Bowdler LLP”. In addition a fee £340.00 or £681.00 will be payable to the “Lichfield Diocesan Board of Finance” (depending on the length of any hearing).
- If there is other work involved in the matter, then the Chancellor may direct that fees are payable to the Registry based on a rate of £180.00 per hour of time spent. We do not generally seek such payments unless the case is opposed or otherwise complex.

Summary - fees

- ❖ For an ordinary, unopposed matter, which is completed on the basis of the petition alone, without the need for any further representations, the fees are therefore £259.20 plus £52.00 (to the LDBF) (in all £311.20);
- ❖ For a matter, dealt with through written procedures, the fees are likely to be £392.40 plus £188.00 (to the LDBF) (in all £580.40);
- ❖ For a matter which is opposed, and proceeds to a half day hearing, but without any preliminary hearing, the minimum fee would be £717.60 plus £664.00 (to the LDBF) (in all, £1,381.60). However, on a more complex matter the fees are likely to be significantly higher. It is not possible to give fee estimates in advance.

The Petitioner is responsible for the Registry and Chancellor fees. Where the Petitioner is a Parochial Church Council or Incumbent or Churchwarden then the Diocese will normally be responsible for the fees on the lodgement of the Petition and for any fees relating to a written determination. However the Diocese will not pay such fees if the Petition is retrospective. Nor will the Diocese pay fees if a hearing is directed.

Parties to Petitions should appreciate that they are responsible for any legal costs they incur themselves.

The Consistory Court has jurisdiction to make orders for costs between parties, or for payment of the Registry costs by a different party than the Petitioner; such orders are generally only made if the Court concludes that a party has behaved unreasonably. An application for such costs award should be made during the course of the proceedings.

Please note in particular that if the Chancellor issues a formal Judgment in relation to your Petition, then, because the Consistory Court is a public, civil, Court, the Judgment will be published on the Diocesan website and that of the Ecclesiastical Law Association, and may well be published in law reports, and other places. Members of the public including the media have access to the Judgments of the Consistory Court, and are free to publish details which appear in the Judgment. The purpose of the publication of Judgments is to explain to the public how decisions have been reached in particular cases and so as to assist the public in understanding the legal issues at stake; it also ensures transparency.

Andrew Wynne

Registrar of the Diocese of Lichfield

These notes are correct as of 1st January 2022 and are issued on the authority of the Diocesan Registrar and may be updated from time to time