

**ARCHBISHOPS' COUNCIL**  
**Remuneration and Conditions of Service Committee**

Guidance for Church of England Hospital Chaplains, Incumbents,  
Diocesan Boards of Finance, and Hospital Trusts in relation to  
Funeral Services and Church of England Parochial Fees

**Frequently Asked Questions**

To be read in conjunction with:

*Guidance for Church of England Hospital Chaplains, Incumbents, Diocesan Boards of Finance, and Hospital Trusts in relation to Funeral Services and Church of England Parochial Fees*, initial distribution to Chaplains' network on 24<sup>th</sup> February 2015.

Further relevant documents:

*Church of England Parochial Fees from 1 January 2015 Frequently Asked Questions* published on the Church of England website at:

<https://www.churchofengland.org/media/1480935/2014%2012%209%202015%20faqs%20answers.pdf>; and

*Church of England Parochial Fees from 1 January 2015* at:

[https://www.churchofengland.org/media/1562401/2014%2012%209%20%20guide%20to%20church%20of%20england%20parochial%20fees%20\(2015\).pdf](https://www.churchofengland.org/media/1562401/2014%2012%209%20%20guide%20to%20church%20of%20england%20parochial%20fees%20(2015).pdf)

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## **1. What is the role of the Remuneration and Conditions of Service Committee?**

The Remuneration and Conditions of Service Committee (RACSC) has a role in advising the Archbishops' Council on setting, and considering matters in relation to, parochial fees. RACSC is also charged by its constitution with the function 'to monitor and advise in consultation with interested parties on sector and chaplaincy ministries within the total ministry of the Church'.

## **2. Does the Guidance represent a new position?**

The legal position has not changed. RACSC issues Parochial Fees Tables in accordance with legislation made by the Archbishops' Council and approved by the General Synod and Parliament. RACSC also issues an accompanying Guide to Parochial Fees in January each year. In 2013 a new paragraph in the Guide to Parochial Fees was included for the first time setting out the legal position in relation to chaplains taking services:

'Chaplains, for example hospital chaplains, prison chaplains, school chaplains, have never been entitled to receive parochial fees. Where a chaplain who is a clerk in holy orders or a licensed deaconess, reader or lay worker officiates at a service in respect of which fees are prescribed under a parochial fees order, as a matter of law the fees belong to the DIOCESAN BOARD OF FINANCE and PCC in the same way as they do when the parochial clergy officiate. However, where chaplains take a service they may receive a payment, in the same way as other non stipendiary ministers, if the DBF has decided to make payments to non stipendiary ministers.'

## **3. Why issue the guidance?**

Seeing the legal position set out in this formal manner caused concern amongst some healthcare chaplains. The Mission and Public Affairs Division (which is responsible for supporting several areas of chaplaincy within the church, including healthcare chaplains) received a number of questions from chaplains about the circumstances under which healthcare chaplains can receive fees for taking funeral services. Two key questions were:

1. In what circumstances can chaplains lawfully take funerals? and;
2. If chaplains can take funerals, are fees payable?

These questions are a matter of law and the February 2015 Guidance sets out the legal position regarding the requirement to obtain the consent of the deceased's incumbent and the legal entitlement to fees.

The principles expressed in the Guidance are that:

"It is important that hospital chaplains feel able to respond to the pastoral needs of those to whom they minister and are able to build on the relationships that they have established with the recently bereaved. Furthering the Church's mission and making it easy for the bereaved to encounter the love of God through their primary contact with the Church, whatever that may be, must always be the priority, notwithstanding the need for funeral ministry to be performed in an appropriate way that complies with the law."

## **4. What is being said that hasn't already been said?**

Where standing arrangements are in place and relationships have been established between chaplains and incumbents, both report positively on their ability to provide for

the pastoral needs of the bereaved. The February 2015 Guidance encourages such standing arrangements as the best way to ensure that pastoral care through funerals is delivered by the most appropriate minister, whether parish priest or chaplain.

#### **5. Who has been consulted?**

The February 2015 Guidance was issued as a result of questions about the law raised by chaplains. The law has not changed, and the Guidance is simply intended to explain it. RACSC and the Mission and Public Affairs Division are interested not only in the law but in facilitating good pastoral practice. To that end, they have liaised with colleagues in the Church's Funerals Project, the Church's Funerals Group, the Church's Diocesan Secretaries Liaison Group and the Legal Office of the National Church Institutions. The Guidance states the existing legal position and offers suggestions as to how to make it work in practice. Were it decided to pursue a change in the law a consultation would be conducted with chaplains and all other key stakeholders.

#### **6. Doesn't this undermine the pastoral work that chaplains do?**

The legal position concerning the need for the incumbent's consent for the performance of services in a parish, and regarding the destination of parochial fees, is not new. There is nothing to suggest that it has had an adverse effect on the work of chaplains in the past. Maintaining a working relationship with the incumbent of the parish and the Diocesan Board of Finance (DBF) is likely to assist the chaplain's position.

Parish clergy are part of the geographical structure of the Church of England which offers ministry to all on the basis of parish, diocese and nation. Chaplaincy, across numerous sectors, focusses ministry and mission through non-geographical sectors of life. The parish ministry and chaplaincy are complementary. However, the great majority of occasional offices, and hence the payment of the majority of fees, take place through the parochial structure and the law concerning the offices and fees reflects this. As it would be unwieldy to operate parallel legal and financial structures which could accommodate every mode of ministry within the Church of England, for the purpose of occasional offices and fees, the law reflects the parish system and the present guidance points to pragmatic ways for the ministry of chaplains to operate within this structure.

#### **7. Why is the question of the fee so important?**

The rationale behind the setting of fees is that they are:

1. Justifiable, in relation to costs;
2. Uniform across the Church of England;
3. Inclusive, leaving 'extras' to those matters over which people have a genuine choice and;
4. Affordable.

A diocese's income from occasional offices or other special services is important in supporting their wider mission and ministry in communities. The Church should feel confident in the value of the services it has to offer, and should not be embarrassed about requiring a contribution towards the provision of ministry in the form of a legally payable fee. The law which gives the PCC or DBF the right to fees for occasional offices expresses the pastoral responsibility of the Church of England to all the people of every parish.

Fees legislation also aimed to prevent a "market" from emerging in provision of the offices and to address the concerns expressed amongst chaplains and others about the so called "crem' cowboys" who were a source of frustration to their ministries.

## **8. Why should the Diocesan Board of Finance receive the fee?**

As expressed in the Guidance, parochial fees are not payable to hospital chaplains or to hospital trusts in respect of services taken by a chaplain employed by the trust. They are payable only to the bodies prescribed in the primary legislation and the Fees Order. Depending on the fee, this could be the DBF, PCC, or both. Now that parochial clergy are no longer in receipt of fees, it would be invidious if chaplains were retaining them for their own income.

The discretion is with the Diocesan Board of Finance as to how to use the DBF part of the fee. Legally it is the DBF's money, and it is for the DBF to decide how to use its money to promote effective ministry. DBFs can direct that a payment should be made to a minister who took a service or that minister's employer, but it is for the DBF to decide whether to make such a payment and, if it does decide to make such a payment, how much it should be. Most DBFs have recommended amounts that can be paid out of the DBF part of the fee for non stipendiary ministers, and this could be a basis for any payment that might be made to a hospital trust.

Where the arrangement with the local DBF is unclear, chaplains are advised to open discussion with the DBF, possibly through the Bishop's Adviser for Healthcare Chaplaincy in that diocese.

## **9. What about fees where the incumbent has freehold?**

The question of whether an incumbent holds under freehold or common tenure has no bearing on the issue of parochial fees. The only exception to the normal position under which fees are payable to the DBF is where:

- an incumbent was in office on 1<sup>st</sup> July 2011;
- the incumbent had not assigned his or her fees to the DBF;
- the incumbent notified by the bishop by 31<sup>st</sup> December 2011 that he or she wished to preserve his or her entitlement and;
- the incumbent continues to hold the same office he or she held on 1<sup>st</sup> July 2011.

Where this exception applies, the fees that would normally be payable to the DBF are payable to the incumbent instead. The DBF should have details of the very small number of incumbents to whom the exception applies and be able to direct payments accordingly.

## **10. Shouldn't hospital trusts be compensated for the time involved by their employees?**

The use that is to be made of parochial fees which are legally payable to the DBF is a matter for that DBF to decide. It is open to a DBF to decide to assign fees arising from services performed by hospital chaplains to the hospital trust.

## **11. Does this create a conflict of interest with chaplains' NHS Contract of Employment?**

We are not aware of provisions in chaplains' contracts of employment that are in conflict with the legal position explained in the guidance.

## **12. What does it mean to be licensed under the Extra-Parochial Ministry Measure 1967?**

The Extra-Parochial Ministry Measure 1967 enables the bishop of the diocese to license a member of the clergy to exercise ministry (including conducting services) on any premises that belong to a university, college, school, hospital or public or charitable institution. The exercise of ministry in accordance with the licence does not require the consent of the minister of the parish in which the institution is situated. The Chaplain's licence should state the basis on which it was issued and what services the chaplain is authorised to perform. The chaplain can take funeral services on the premises of the institution to which he or she is licensed if the licence so provides. In a case of doubt, advice should be sought from the diocesan registrar.

### **13. The task of making contact with the resident incumbent is burdensome.**

#### **What can be done?**

The task of making contact with the resident incumbent and confirming to the chaplain that such consent has been obtained should form part of the normal duties of the funeral director. The chaplain should not be expected to do this himself or herself, although there is nothing to prevent a chaplain contacting the incumbent if that is the most effective and pastoral way forward. The Bishop may invite all incumbents to agree a blanket consent, which would be circulated to funeral directors and chaplains. Provision for such consent could be added to the documents a new incumbent is invited to sign early on arrival. During a vacancy in a benefice, the giving of consent would default to the bishop.

In a case where no funeral director is engaged, then this may fall to whoever is carrying out the administrative arrangements for other aspects of the burial or cremation process. It is helpful for the minister of a parish to know that a parishioner has died and indeed that arrangements for the funeral have been made. It is not uncommon for a parish priest to be approached by congregation members or parishioners perplexed as to why he or she has not taken a particular funeral service. It is important for the vicar's pastoral ministry for them to be able to give a reply on such an occasion, as it may be they will not meet that particular individual again for some time. To say that the service was taken by the hospital chaplain, at the request of the family or for whatever other reason would be usually a sufficient response to allay any concerns that the vicar was not fulfilling their pastoral duties properly.

### **14. What can be done about incumbents who won't grant permission?**

In the unlikely event that an incumbent does not grant consent for a chaplain to officiate at the funeral of his or her parishioners, or in his or her parish, the incumbent would be responsible for conducting the service himself or herself. Where this might cause pastoral problems, the matter should be raised with the archdeacon.

### **15. What is the meaning of resident?**

The 1992 Measure does not define the meaning of the word 'resident' as it is used in the Measure.

The Oxford English Dictionary definition is 'A person who lives somewhere permanently or on a long-term basis'. Clearly, it is unlikely that someone who dies in a hospital would have been regarded as 'resident' there, according to the definition, because hospitals are intended primarily to be places where medical care is given, not as places where people who are not live-in staff members or their families live.

On the other hand someone who dies in a hospice, or other live-in institution which provides palliative care for the dying, could well be a 'resident' of that institution if they have lived in the institution for some time, and no longer can be said to have a home elsewhere. Whether an individual is a resident of an institution or not will depend on the facts of the particular case.

A baby will normally be considered as being resident at its parents' or guardians' home. Considerations of residence are not material to the case of a non-viable foetus. Fees do not arise in the case of the funerals of those under 16.

#### **16. What is the position in relation to 'contract' funerals?**

Healthcare chaplains regularly take what are called 'contract' funerals. These are funerals which the hospital is required by law to arrange for people who die in hospital if no one else is prepared to make the arrangements, provided certain conditions are met. Each hospital has a contract with local undertakers to conduct these funerals at crematoria. A large proportion of such funerals are for babies. If these funerals are taken with the incumbent's consent (which could be under standing arrangements), as the law stands there are no legal issues. No fees are payable for the funerals of persons aged under 16.

Fees in the case of most 'contract' funerals for those over 16 would be waived, as there would be no one to pay them, but if the chaplain takes a service and there is someone to pay the fees, they will be payable to the DBF and PCC as provided for under fees legislation. In relation to payment between the DBF and the hospital trust it is recommended that there should be a standing arrangement between the hospital (at whatever structural level is most appropriate, given that NHS structures are not static) and the DBF. A payment would not then have to be negotiated every time.

As addressed in answer to the question: "What is being said that hasn't already been said?", earlier in this document, where standing arrangements are in place the incumbent's consent would normally be secured on a blanket basis for all contract funerals at a particular hospital. It is envisaged that chaplains should not have to contact the incumbent every time.

#### **17. What is the position in relation to the funerals of babies and still-born or non-viable foetus?**

The position, regarding authority to officiate at the funeral and whether the incumbent's consent is needed, is the same as it is in respect of any other funeral. However, as outlined above, if the chaplain has a standing arrangement with the relevant incumbent, there would not, in any event, be any need to go to the incumbent on a case by case basis. No parochial fees are payable.

#### **18. Does the requirement to seek the permission of the incumbent undermine confidentiality and breach Data Protection law?**

The Data Protection Act is concerned with protecting data which relates to a living individual; not persons that are deceased. In relation to a still-born or non-viable foetus, it is unlikely that the relevant incumbent will require information from the chaplain that would identify the mother. If a chaplain says that she or he has been asked to officiate at a service for the burial etc. of a foetus of a patient the incumbent is likely to grant permission and not ask for details of the individual(s) concerned. In the unlikely event that an incumbent did ask for personal details before she or he was prepared to decide whether to consent, the chaplain would need to obtain the explicit consent of the individual(s) concerned before passing on any personal data (i.e. data from which a living individual could be identified).

#### **19. What is the position in relation to conducting the funeral of a hospital staff member?**

The position in relation to the staff of a hospital is the same as it is in relation to patients.

## **20. Does the legislation apply to other Church of England chaplains?**

The position of other chaplains in regard to taking services is the same as that for healthcare chaplains: they can only take services as of right on premises that belong to the institution to which they are licensed, and only to the extent that the licence provides.

## **21. What's the position in relation to chaplains of other faiths?**

This legislation applies to Church of England chaplains only. If a person or relative asks for a funeral to be taken by a chaplain of another denomination or faith, for example Methodist or Muslim, no question arises of a fee being payable under the Parochial Fees Order. Anything further is a matter for the internal rules of their denomination.

## **22. What would need to happen for chaplains to have the right to conduct funerals and to receive fees without the consent of the incumbent?**

Changes to primary legislation would be required to enable hospital chaplains lawfully to take funerals without the consent of the incumbent and changes to primary legislation would also be required in respect of the payment of fees.

If pursued, changes to the legislation could take a number of years to implement, so a non legislative approach is necessary, at least for the short term, in order to ensure good pastoral practice within the law as it stands. Any future change to the rights of chaplains would have implications for the rights of incumbents and for the income of DBFs and PCCs. RACSC has given consideration to, and decided against, recommending to the Ministry Council and the House of Bishops to amend primary legislation at this time.

The Fees Order approved by General Synod in February 2014, effective from 2015, will last for five years from 2015. A new Fees Order will be put before Synod in February 2019 to come into effect in 2020. In the interim, RACSC will continue to gather and consider issues raised by the wider Church in relation to the principles, methodology and application of fees.

## **23. As a chaplain what am I to do now?**

- 1) Check the terms of your license;
- 2) If you don't already have a satisfactory agreement, talk to your DBF and the local incumbent to agree one;
- 3) If that doesn't resolve things to your satisfaction, talk to your archdeacon and/or bishop's adviser for healthcare chaplaincy.

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## **ARCHBISHOPS' COUNCIL**

### **Remuneration and Conditions of Service Committee**

# **Guidance for Church of England Hospital Chaplains, Incumbents, Diocesan Boards of Finance, and Hospital Trusts in relation to Funeral Services and Church of England Parochial Fees**

## **Introduction**

1. The role of hospital and hospice chaplains is becoming more prominent at a time when death and dying are becoming increasingly medicalised and institutionalised, fewer people have links with their parish church and the bereaved have a preference for funerals to be taken by a minister with whom they have had personal contact.
2. The legislation governing funeral services is based on the principle that responsibility for pastoral care lies with the deceased's incumbent. The law, therefore, gives the incumbent the duty to bury his or her parishioners and, if there are good pastoral reasons for someone else to take the funeral, he or she needs to give his or her consent. Legislation in relation to fees follows the same principle.
3. The Remuneration and Conditions of Service Committee (RACSC), the Committee with responsibility for parochial fees matters, has been asked to clarify the circumstances in which hospital chaplains may take funeral services. This Guidance aims to:
  - Reflect the legal position in respect of chaplains taking Church of England funeral services;
  - Indicate when it is necessary for the chaplain to obtain the consent of the deceased's incumbent;
  - Demonstrate how arrangements can be made between the hospital chaplain, hospital trust, incumbent, and DBF to enable chaplains to take funerals with the consent of the deceased person's incumbent when pastoral reasons make this appropriate;
  - Explain who in these circumstances is legally entitled to receive parochial fees.

## **Principles**

4. It is important that hospital chaplains feel able to respond to the pastoral needs of those to whom they minister and are able to build on the relationships that they have established with the recently bereaved. Furthering the Church's mission and making it easy for the bereaved to encounter the love of God through their primary contact with the Church, whatever that may be, must always be the priority, notwithstanding the need for funeral ministry to be performed in an appropriate way that complies with the law. We hope that this guidance (summarised in the attached flowchart) will be helpful in clarifying the position.

## Chaplains and funeral services

5. A chaplain licensed under the Extra Parochial Ministry Measure 1967 can, if the duties for which the chaplain is licensed include officiating at funeral services, take funeral services:

- a) on premises that belong to the institution to which he or she is licensed,<sup>1</sup> or
- b) in any crematorium or cemetery if the deceased person, immediately before he or she died, was **resident<sup>2</sup> in**, or was **employed by**, or **enrolled as a student at, the institution to which the chaplain is licensed.**<sup>3</sup>

In neither of those two cases, does the performance of the funeral service require the consent of the minister of the parish in which the service takes place.<sup>4</sup>

6. In any other case, if a chaplain is invited to take a funeral service, he or she needs either:

- a) to be acting on behalf of the minister in whose parish the deceased died, or the minister of the parish which he or she was resident in, or on the church electoral roll of, immediately before his or her death,<sup>5</sup> or
- b) the consent of the minister of the parish in which the service takes place.

7. If the chaplain's licence under the Extra-Parochial Ministry Measure does not provide for the chaplain to take funeral services in the institution to which he or she is licensed, the chaplain **cannot take any funeral service** unless it is on a basis described in paragraph 6. This applies to funeral services within the hospital or other institution to which the chaplain is connected, as well as funeral services elsewhere.

## Chaplains and parochial fees

8. Parochial fees are not payable to hospital chaplains or to hospital trusts in respect of services taken by a chaplain employed by the trust. Statutory parochial fees are not contractual - they are set by law in the form of the Ecclesiastical Fee Measure 1986, as amended, and are payable only to the bodies prescribed in a Fees Order. Depending on the fee, this could be the Diocesan Board of Finance, the Parochial Church Council, or both.

9. The discretion is with the Diocesan Board of Finance as to how to use the DBF part of the fee. Legally it is the DBF's money, and it is for the DBF to decide how to use its money to promote effective ministry. DBFs can direct that a payment should be made to a minister who took a service or that minister's employer, but it is for the DBF to decide whether to make such a payment and, if it does decide to make such a payment, how much it should be. Most DBFs have recommended amounts that can be paid out of the DBF part of the fee for non stipended ministers, and this could be a basis for any payment that might be made to a hospital trust.

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<sup>1</sup> By virtue of section 2(1) of the Extra-Parochial Ministry Measure 1967.

<sup>2</sup> The Oxford English Dictionary definition of 'resident' is 'A person who lives somewhere permanently or on a long-term basis'. This would exclude most people who go into hospital for medical treatment.

<sup>3</sup> By virtue of section 2(3) of the Church of England (Miscellaneous Provisions) Measure 1992.

<sup>4</sup> Section 2(2) of the Extra-Parochial Ministry Measure 1967 and section 2(1) of the Church of England (Miscellaneous Provisions) Measure 1992.

<sup>5</sup> Section 2(2) of the Church of England (Miscellaneous Provisions) Measure 1992. For the purposes of section 2, "minister" means (a) the incumbent; (b) in a case where the benefice to which the parish belongs is vacant (and paragraph (c) below does not apply), the rural dean; (c) in a case where a suspension period applies to the benefice to which the parish belongs, the priest-in-charge (if any); and (d) in a case where a special cure of souls in respect of the parish has been assigned to a vicar in a team ministry by a scheme under the Pastoral Measure 1983 or by his licence from the bishop, that vicar

## **Procedure when chaplains are asked to take a service which they are not licensed to take**

10. If a hospital chaplain is invited to take a funeral service for someone whose funeral he or she is not licensed to take, and he or she wishes to take the service, the chaplain should seek to establish the identity of the minister who has primary responsibility for the funeral and burial of that person and seek either an invitation to act on the minister's behalf as described in paragraph 5a) or the minister's consent as described in paragraph 5b).

11. This will usually involve the chaplain establishing where the deceased person lived immediately before he or she was admitted to hospital. This could be in the same parish as the hospital is situated or a different part of the country.

### **Which incumbent?**

12. Usually, when a person dies, the **incumbent of the parish where they were resident, or were on the electoral roll**, would be the minister who has primary responsibility for the funeral and burial of that person.

13. If the person who died in hospital was not resident in, or on the electoral roll of, any parish elsewhere, the **minister of the parish in which the hospital is situated** will be the minister who has primary responsibility for the funeral and burial of a person who dies in the hospital.

### **Regular arrangements**

14. **Officiating at services** - If it is likely that the chaplain would be asked to take services for the parishioners of a particular parish on a regular basis, and the circumstances described in paragraph 5 do not apply, it is important that a mutually acceptable working arrangement is in place, in the form of a standing request to act on behalf of the minister with primary responsibility for the funeral.

15. **Payments for the service** - The Diocesan Board of Finance could be invited to consider whether a payment should be made to the hospital trust from the DBF fee. This could be done on each occasion the question arises; alternatively the DBF could agree to a standing arrangement under which a payment would be made to the trust on each occasion.

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## Guidance for Chaplains Flow Chart

