

Chancel Repair Liability

**Advice for Parochial Church
Councils**

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Introduction

Chancel land accounts for approximately 40% of all land in England and Wales.

Chancel land and chancel repair liabilities can trace their roots back to medieval times, when every parish had its own priest or rector. The rector by the nature of his status, had a number of rights, including certain taxes or income from the land of the parish. The cost of repairs to the church was split between the rector and the parishioners, with the parishioners traditionally being responsible for the western end of a church (the area where they sat) and the rector was responsible for repairs to the chancel (the eastern end of a Church). The rector being able to pay for repairs from the income of his 'Glebe' land and tithes.

Since these times, although the land may have been broken into many thousands in some cases of small parcels, the liability for these repairs has continued to exist and has on occasion been enforced or claimed by the Church.

Section 2 of the Chancel Repairs Act 1932 gives PCCs the power to serve notices to repair on those affected, and if a notice is not complied with, the church can issue proceedings to recover the cost of repair.

A case arose in Warwickshire in the 1990s that set something of a precedent. A field on a farm in the county was identified as part of a rectory liable for chancel-repair costs that were claimed by the local PCC.

The Wallbanks, the couple who had inherited the farm, fought the case to the House of Lords, but, in the end, the Church prevailed, and the couple had to pay out hundreds of thousands of pounds.

Despite campaigns for its abolition by the Land Registry, the Law Society and scathing comments by the courts about how unfair this ancient law is, unless an Act of Parliament is passed abolishing it, it will continue to haunt property owners for many years. There will be some certainty however, in 2013 as chancel repair liability will not affect specific properties if:

- the liability has not been registered against the property by 12 October 2013; and the property is sold to a new purchaser, who would then take the land free from any chancel repair liability.
- This means that after 12 October 2013 new purchasers of a property can be satisfied there is no liability if nothing is registered against that property, but existing owners are still liable.

It is therefore extremely important that PCCs proactively identifying and register land that is subject to a chancel repair liability before the 2013 deadline.

The Legal Advisory Commission of the Church of England, which is the most authoritative source of legal advice in the Church of England, advises that PCC members are charity trustees and have a duty to take reasonable steps to investigate whether a liability to repair exists in relation to any church within their parish. They may then have a duty, if such liability exists, to register it and to enforce it. However, there may be circumstances in which they should not register it or enforce it if to do so would hamper the PCC's work in terms of its mission and its ability to raise money. If the PCC felt that by registering the chancel repair liability against an individual landowner within the parish, that landowner might not respond favourably

to the church's mission or may be deterred from giving the church money, then the PCC could decide not to register the liability or, if it had already registered it, not to enforce it.

To comply with this advice a PCC must investigate the liability. You need to answer these questions.

Is there any chancel repair liability for the parish?

To answer this you need to see the Record of Ascertainments, a record of the liability in the 1930s. Some PCCs will have an amateur historian who may be prepared to obtain a copy from the County Records Office.

The National Archive also holds records which might contain the information PCCs require and they can search for it on payment of a fee and supply you with the information (if found). The advice produced by the National Archive for searching for chancel repair liabilities can be found here:-

<http://www.nationalarchives.gov.uk/records/research-guides/chancel-repairs.htm>

If there is a liability is it worth investigating?

In other words is the cost of investigating the ownership of the plots affected and of registering the liability justified by the benefit to the PCC of the liability.

Investigating the ownership of the plots affected

First you must estimate the costs of discovering the names and addresses of the current owners.

To do this you need to know how many plots are affected. If your parish has not changed much since the tithe map was prepared in the 19th century you may be able to recognise fields and buildings shown on the map. If there have been changes you will have to compare the tithe map with a modern Ordnance Survey map to identify the land as it now is. It may be, for instance, that a plot has been subdivided for housing so the one plot is now many plots.

Let's say that the Record of Ascertainments shows 50 plots are affected in your parish and the lay out has not altered much.

Some of the plots will probably be registered at the Land Registry and if so it is possible to discover the name of the current owner. That is done by carrying out an index map search. That will tell you if the plot is registered and if so the Land Registry reference number. The fees payable will depend upon the number of plots to be searched. For 50 plots the fee is £20.

You use those reference numbers to obtain office copies of the register for each of the plots. Those office copies will tell you the name of each plot owner. The Land Registry fees for this for 50 plots would be £4 per plot, so for 50 plots the fee would be £200.

If you instruct solicitors their fee will depend upon the amount of work involved and also will vary between different firms but is likely to be £500 + VAT for 50 plots.

So the total charge for investigating whether 50 plots are registered with the Land Registry and the names of the owners is likely to be £800.

If the land is not registered, ascertaining the owner will be difficult and local enquiries will be necessary. If PCC members do not know the names of the owners a local estate agent or enquiry agent may be able to assist, although clearly they will charge fees.

Registering the liability

Next you must investigate the costs of registering the liability against the plots.

If the PCC does decide to register the liability, it makes an application to register the liability against that owner's property. Land Registry fees will be payable and legal fees if solicitors are used.

The Land Registry fees will be £50 per title, so for 50 plots the fee will be £2,500. Solicitors' charges will vary but are likely to be £600 plus VAT and could be much more if they have to deal with queries from the owners of properties against which the liability was registered. So to register 50 plots the total fees and costs may be £3,320.

If a plot is not registered with the Land Registry a caution against first registration is registered. The fees will be £50 per title, so for 50 plots will be £2,500 and the solicitors' charges will be in similar to registration of the liability. So to register cautions against 50 plots will cost £3,320. The problem with registering a caution is that you will need to know the name of the owner first, so you may need to spend a substantial sum discovering that.

Investigating the value of the chancel repair liability

You must then estimate the value of the liability. You should consider the state of repair of the chancel and the possible cost of repair over the coming decades. Your quinquennial church architect may be able to help you, although he may charge a fee for the advice.

Let's say that he advises that a new roof will be required at some point over the next 50 years at a cost of £20,000 and general repairs over that period of £20,000 – a total of £40,000. But only a proportion of the cost of repair of the chancel is payable by individuals who own land. To work out the proportion you need to go back to the Record of Ascertainments.

Balancing

You should then balance the cost of the investigation and registration, against the possible value of the liability in the future. Clearly you should not proceed further if the cost of investigation and registration is likely to exceed the benefit.

If in our example there were 50 plots, the cost of investigation and registration would be £800 (the cost of investigating whether the plots are registered) + £3,320 (the cost

of registering) = £4,120. In addition there is the cost of investigating the ownership of plots that are not registered. If the value of the benefit is less than £4,120.00 then clearly the cost of investigation and registration exceeds the possible value of the liability in the future and the PCC may well decide not to proceed further.

If there is liability, should the PCC register it?

If the PCC decides to investigate the ownership of the plots affected it will find out the names of the owners of some or all of the land subject to the liability. It must then consider whether to register the chancel repair liability against the land of each one. In making that decision the PCC should carefully consider the advice of the Legal Advisory Commission.

What if we do not register it?

If you do not register the liability by 2013 the PCC will lose the right to enforce it against the owners of land subject to the liability. That means that if repairs are needed to the chancel the PCC has the duty to carry out the repairs and must find money from its own resources and not from those who had a liability.

In addition, if the PCC applies for a grant to English Heritage for work to the chancel, English Heritage will take the liability into account when deciding how much grant to offer. The grant will take into account the liability under chancel repair liability, whether or not the liability has been registered.

Further, if an insurance claim is made in respect of repairs to the chancel, the insurance company will similarly take into account the liability of the land owner to pay for the repairs whether or not chancel repair liability has been registered.

Should we obtain advice from the Charity Commission?

If the PCC decides not to investigate, register or enforce chancel repair liability it can make an application to the Charity Commission for formal advice under section 29 of the Charities Act 1993. If the PCC follows such advice, its members will be protected from any subsequent criticism or claim.

The Charity Commission takes the view that PCCs should:

- act in good faith solely in furtherance of their charitable aims,
- not take account of inappropriate considerations,
- preserve and protect charitable assets, including claims and
- where the case calls for it, take into account appropriate legal and other professional advice

The information that the Charity Commission needs to give formal advice will vary depending on the particular circumstances of each case but the Commission will probably want to see that the PCC has:

- considered the financial cost of surveying, identifying and registering the liabilities
- considered the likelihood of the need for chancel repairs
- considered the potential loss of grant from funders if the PCC have not registered a liability

- consulted the Diocesan Registrar and, where appropriate, taken their own professional advice

Conclusion

It is clear that all PCCs are under a fiduciary duty to investigate whether there is any chancel liability for their parish. The above advice should assist PCC members to comply with their obligations. However, if you require any further information please contact the Diocesan Registrar.