

DIOCESE OF ST EDMUNDSBURY & IPSWICH
CHANCEL REPAIR LIABILITY

A note for parishes, landowners, buyers, sellers and their solicitors

This is not a comprehensive statement of the law on this complicated subject. Nor is it a comprehensive or reliable source of information about those churches that are able to claim chancel repair liability or about the land that is subject to it.

In medieval times the rector of a church was responsible for repairing its chancel, whilst the parishioners maintained the nave. Many rectorships were acquired by the monasteries and, when he dissolved them, Henry VIII took over the former rectorial property. The liability to repair the chancel attached to that property and, as it was disposed of, the liability went with it to the new owners who became known as lay impropriators or lay rectors.

Rectorial property included the right to receive tithes and the history of chancel repair liability is closely associated with the history of tithes. There is no central register that contains a comprehensive or conclusive list of land or persons subject to the liability. The starting point in any research is usually the Record of Ascertainments prepared under the Tithe Act 1936 for each parish and held at the Public Record Office. Searches that do not actually look at the details of the Record will be of limited value.

The publicity given to the decision of the House of Lords in the claim by the PCC of Aston Cantlow against Mr and Mrs Wallbank has led to a marked interest in the subject. Insurance companies and search agencies have exploited anxieties within the legal profession and are marketing their services enthusiastically. The result is that many more sellers are finding it harder to sell their homes because of their inability to demonstrate that their property is free of chancel repair liability. Buyers are requiring sellers to pay for insurance policies or are faced with the expense of one themselves. Solicitors are reluctant to proceed without some sort of search, often with an inconclusive result, and without some sort of insurance cover. Lenders rely on solicitors to advise them and most solicitors adopt the solution that it is of least risk to them, i.e. search plus insurance. In many cases, the expense will be unnecessary.

The Church of England is not running a campaign, nationally or locally, to claim chancel repair liability where it has not done so before. Churches find it as difficult as buyers to identify what land is subject to chancel repair liability. They are fully aware of the damage that can be done to local relationships if a church sues parishioners previously unaware of their liability for contributions to the cost of repairing the church.

In nearly all cases where chancel repair liability is actively claimed, the church and land-owner are well aware that it exists and the landowner accepts and pays it. In most cases the landowner is a large institution, often the Church Commissioners.

After 13th October 2013, rights to claim against land subject to the liability will be of no effect against transferees of the land unless the parish has registered the liability at the Land Registry before the transfer. Until such a transfer takes place parishes may, however, continue to claim and to register.

All parishes have been asked to inform the diocese of cases where they claim the right to enforce chancel repair liability. In the following parishes the Church Commissioners have admitted liability for most or all of the chancel repair liability: Bramford, Brundish, Burstall, Fressingfield, Henley, Hoxne, Mendlesham, Tannington, Westhall, Winston. The deans and chapters of Ely and Norwich cathedrals are responsible for the majority of the liability at Lakenheath and Wingfield respectively. King's College, Cambridge is responsible for some or all at Kersey. Exning also has a claim.

If parishes claiming chancel repair liability have not informed me, will they please do so as I think it is important and helpful for information to be shared with landowners. Parishes that do claim need to consider whether they need to register their rights at the Land Registry.

Buyers and their solicitors must take whatever steps they think appropriate, but the information above may be relevant in their assessment of the risk. In addition:

- (a) Chancel repair liability is normally only of relevance in parishes that had or have a pre-Reformation church with a chancel.
- (b) Chancel repair liability has not attached to spiritual/ecclesiastical rectors since it was transferred from them to parochial church councils by the Ecclesiastical Dilapidations Measure of 1923. In 1976 all glebe land was transferred to the

diocesan board of finance and any remaining liability removed from it. Therefore, acquisitions of glebe from the diocesan board have been and are free of the liability.

- (c) The deeds to the property belonging to Mr and Mrs Wallbank expressly referred to chancel repair liability. The PCC claimed it largely because it had disclosed its right to do so on a grant application form and the grant-making body declined to make a grant because of the Wallbanks' liability.
- (d) Neither the diocese nor I offer any facility to parishes to track down land or lay rectors liable to repair chancels where they have not already been identified. Any such work will be at the expense of the parish concerned and additional research may need to be done by a specialist.
- (e) If buyers make enquiries of the local church, they will prejudice their ability to buy insurance.
- (f) There are a range of search agencies available but a comprehensive search will cost well over £100 and anything less will certainly not be conclusive.
- (g) Paragraph 2 of the Record of Ascertainments (see above) may mention liability. In the case of paragraph 2(a) the liability was transferred to the local church and in the case of 2(b) the persons liable are named specifically. Entries in paragraphs 2(c) and/or 2(d) are the ones buyers and parishes need to study, because they indicate that there was at one time land with chancel repair liability that may still be so liable. Using the schedules to the Record of Ascertainments and the tithe map, it may be possible to identify whether a particular property is or is not affected. Even if not mentioned in the Record, a property may be subject to chancel repair liability, so certainty is always difficult to achieve.
- (h) The fiduciary duties of members of a P.C.C. include a duty to give proper consideration to whether chancel repair liability exists, and if it does, whether it should be registered (where it is land-based) and enforced. The answers may well differ in each case. Please see my separate note to PCCs about how to discharge this duty.
- (i) Because of its fiduciary obligations a PCC should only agree to release land from chancel repair liability or to commute it after taking proper advice.

There is a good introductory leaflet on the subject published by the National Archives on <http://www.nationalarchives.gov.uk/records/research-guides/chancel-repairs.htm>

If you want guidance on how to conduct detailed research, then buy James Derriman's "Chancel Repair Liability – How to research it" from Wildy Simmonds

and Hill, Lincoln's Inn Archway, Carey St., London WC2A 2JD (ISBN 9781898029847) £19.95. Further information for parishes is available at <http://www.stedmundsbury.anglican.org/index.cfm?page=yourchurch.content&cmid=368>

If you wish to contact me, please write to me at Diocesan Registry, 20-24 Museum Street, Ipswich, Suffolk, IP1 1HZ or email james-hall@birketts.co.uk or phone (01473) 406270.

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Updated August 2013