



Chancel Repair Liability

BRIEFING

What is Chancel repair liability?

- 1.1 The obligation to repair the Chancel (the east end of the church, usually containing the choir and altar) can be traced back to before the accession of Richard I in 1189. Historically, the Rector was responsible for repairing the Chancel, whilst the parishioners maintained the nave (the larger part of the church building, where the laity sit). By the 16th century, many monasteries had acquired rectorships, with all the property and liabilities that went with them.
- 1.2 Henry VIII dissolved the monasteries in the 1530s, and took over all their property. This property was then dispersed along with the attendant chancel repair liability. If the property of an individual rectory was sold to more than one person, then there was also a division of the liability. These owners came to be known as 'lay impropiators' or 'lay rectors'.

How do we know if anyone has a liability to repair the Chancel of our church?

- 2.1 Unfortunately, there is not a central register which records which properties in each parish have this liability.
- 2.2 Parochial Church Councils (PCC) should do the following:-

- Look carefully through the PCC records, including the quinquennial reports. This may show whether contributions have been made by a lay impropiator in the past.
- Talk to former churchwardens, PCC secretaries or older inhabitants. They will often recall (or have been told about) an intervention by a college, institution, or family, when repairs were needed in the past. This will help, too, in identifying a period for researching PCC records.
- Look in the parish records, including those held in the parish's box of records lodged at the diocesan archives (often the local County Record Office). PCCs should have a photocopied sheet listing the documents. However an actual visit is necessary as those descriptions are not very accurate and there may be incidental references in miscellaneous correspondence.
- Investigate local title maps and 'records of ascertainments', which can generally be found in county archives or via the National Archives which has a very helpful webpage:
www.nationalarchives.gov.uk/records/research-guides/chancel-repairs.htm
- Look at the *Victoria County History* series. This gives a full history of each church and



its associated charities. It is good practice to have a copy of the relevant entry in the PCC records. There is a website www.Englandpast.net on which there are limited records but which provides contact details.

- Look in the Chancel as it may provide evidence. A memorial to a lay person or major family in the Chancel may indicate the existence of a Lay Rector (but this is by no means always the case).

2.3 In some cases, a property will have the liability registered at the Land Registry. The liability is therefore protected and cannot be removed without the consent of the PCC (see section 6 below).

If we know someone has this liability how do we enforce it?

- 3.1 If the PCC decides to enforce the liability against one or more land owners, then it must use the procedure laid down by the Chancel Repairs Act 1932 ('the Act'). The Act requires PCCs to serve a notice to repair on anyone liable to repair the Chancel.
- 3.2 This notice must be in a statutory form, and there is a statutory timetable for it to be served, prescribed by the Civil Procedure Rules. It is important that you serve the notice in this form, and in accordance with this timetable before commencing any work. The process is

designed to enable the lay impropiator to have the opportunity to address the situation without resort to legal proceedings, if he wishes to do so.

3.3 If you do the work without following the statutory process, you may find it impossible to claim back the funds you will have spent. This is because the primary liability is to undertake the maintenance, not simply to pay for it.

3.4 There is no reason, of course, for you not to discuss and negotiate the issues with the lay rector informally at an earlier stage, and it will usually be very advantageous for you to do so. However, unless you have reached a legally binding agreement with him or her before commencing the work, you must follow the statutory process.

3.5 If the notice has not been complied with after one month, the PCC may issue proceedings in the County Court which may make a judgment for the payment of a sum which in the Court's opinion is necessary to repair the Chancel. Proceedings should not be issued lightly and it is advisable to take advice initially from your Diocesan Registrar.

'Compounding' the Liability

4.1 Alternatively, there is a procedure by which the lay rector may buy out or 'compound' his liability by paying a sum to



provide for future repairs of the Chancel and to produce the income necessary to insure it against destruction by fire. Again, there is a formal process for this under the Act, though it may be possible in certain limited circumstances to compound the liability in a more informal way.

- 4.2 The PCC should take proper legal advice before embarking on either of these options. In general, the Registry would only encourage the compounding of the liability on ordinary residential property. PCCs should think very carefully about the long-term effect of allowing large institutional bodies such as Oxford and Cambridge colleges to compound the liability.

Do we have to enforce the liability?

- 5.1 As a charity, a PCC has to maximise its assets; chancel repair liability is, for these purposes, an “asset”. Consequently, a PCC has to enforce the liability and secure as high a sum as is possible to repair or invest for the future repair of the Chancel. Bodies like English Heritage often will not assist with grants unless chancel repair liability has first been explored.
- 5.2 If the PCC decides not to enforce the liability and seeks to repair the Chancel out of its own funds, it would be advisable to take careful legal advice and record the PCC’s reasoning; otherwise, the decision might later be held to be a breach of trust,

leaving individual PCC members open to being required to reimburse the PCC for the funding they failed to secure from the lay rector.

What is the extent of the liability? Could the PCC require a lay rector to pay to have the Chancel rebuilt if the PCC wanted?

- 6.1 The liability is not unlimited. It is regarded as extending at the very least to ensuring the Chancel is kept wind and watertight and that essential fixtures are maintained. Failure to do so is likely to result in predictable damage to the interior, its furnishings and decorations, for which the lay rector will then become liable, in consequence of the initial failure to maintain the structure. Most lay rectors meet most of the insurance cover attributable to the chancel
- 6.2 There is no obligation to repair purely ornamental or decorative fittings nor to pay for the enlargement or improvement of the Chancel. However, if these improvements are carried out by the PCC then the lay rector is liable to maintain the Chancel in its new form.

What should PCCs do if they think they have the benefit of this liability?

- 7.1 Prior to 31 October 2003, chancel repair liability could burden a particular property without needing to be registered at HM Land Registry. The liability existed as an



overriding interest; in other words it perpetually affected the property (unless compounded) and a purchaser would buy the property subject to it even if they were unaware of the liability at the time of purchase.

7.2 Under the Land Registration Act 2002 (which came into force on 31 October 2003), chancel repair liabilities must be registered at HM Land Registry by 30 September 2013. If they are not registered, they will become unenforceable against any successor in title to the present lay rector.

7.3 It is important, therefore, that if your PCC thinks it may have the benefit of a historic chancel repair obligation, it should:

- Identify the land which is burdened by the obligation
- Register its interest at the Land Registry.

7.4 The steps to identify the land burdened by the obligation are outlined above (see section 2.2). To register your interest, you will need to enter either a 'caution' or a 'unilateral notice' at the Land Registry, against the particular land you have identified in that way. There are statutory forms for making these entries, and there are fees payable to the Land Registry for doing so.

What if researches reveal nothing?

8.1 If a PCC has conscientiously investigated this matter and has carried out the searches referred to in the answer to section 2, then it will have discharged its obligation to find out if it has this benefit.

8.2 PCCs should then pass a resolution recording the steps that have been taken and the conclusion that there is no such liability existing. A copy should be sent to the Diocesan Registry.

8.3 The suggested procedure will allow PCCs to demonstrate that no liability is believed to exist. This will be a great service to parishioners buying and selling properties with vaguely church names over the next ten years, and will help to reduce the number of enquiries received by the diocese, the Registry, and individual clergy on this difficult matter.

Can we help you?

9.1 Diocesan Registry staff may be able to assist with the process of identification and registration.

9.2 Do contact us, if you would like us to assist. We shall be glad to give initial guidance to PCCs under our statutory retainer, but will need to charge on a solicitor-and-client basis for further legal advice, assistance and correspondence.



For more information please contact:

Cordelia Hall
Solicitor : Winckworth Sherwood

DT: 01865 297207
E: cmhall@wslaw.co.uk