

# Chancel Repair Liability: FAQ

## What is chancel repair liability?

Under ancient ecclesiastical law, landowners in England and Wales, including domestic landowners, may be liable for repairs to their local pre-1537 Church of England church. This is known as 'chancel repair liability' (CRL) or 'chancel tax'. 'Chancel' refers to the part of a church near the altar, reserved for the clergy and choir.

Thousands of homeowners around the country have been notified by the Land Registry that they are liable to pay CRL.

CRL dates back to the time of Henry VIII and gives some churches the right to demand from some local property owners financial contributions towards repairs to its chancel.

The liability is due whether or not the landowners are Anglicans, or even Christians.

Although the NSS values the great contribution to our heritage that ancient churches make, it is completely unfair that money for repairing them can be demanded simply on the grounds of what the Law Commission describes as "anomalous, uncertain and obscure" law.

That's why it's time this ancient law was consigned to the annals of history where it belongs and a fairer way is found to preserve our common heritage.

## What's the problem?

The Church is able to demand, in some cases, payment for the full cost of repairs. For such ancient churches, this can be very substantial indeed, sometimes running into hundreds of thousands of pounds.

The liability continues even after the property is sold.

Few potential buyers will contemplate taking on the burden of a property with CRL. Consequently, the value of most properties subject to CRL will be blighted and, in some cases, they may even become unsellable.

Some homeowners have been understandably traumatised when they discovered that their biggest asset had become significantly devalued.

## What do legal experts say?

The Law Commission and the Law Society have considered CRL thoroughly and concluded that the only equitable solution is for it to be phased out.

The Law Society noted that, "On 18 February 1982, the General Synod of the Church of England overwhelmingly supported a motion approving a phasing out of chancel repair".

CRL is an ecclesiastical obligation, coming under the jurisdiction of the civil courts only with the passage of the Chancel Repair Act 1932 as a reaction to a non-payer being jailed for contempt of ecclesiastical court. That Church of England parishes alone can impose such an obligation on others, regardless of their religious affiliations, is totally at variance with the modern concept of justice.

Despite all this, CRL remains, largely because no government has been prepared either to take over and fund the amounts the Church would levy on landowners for CRL, or to pass legislation to abolish CRL for lay rectors as happened for incumbent rectors in 1923. The Law Society suggested an interim levy "on stamp duty land tax" or "Land Registry fees" to phase out the CRL funding over a reasonable period.

## Why does chancel repair liability exist?

When Henry VIII took over the churches in around 1536, part of the responsibility for the repair of churches was transferred to owners of rectorial land which was sold off, normally close to the church. Such owners were designated as "lay rectors".

Further chancel repair liability was created by legal developments over ensuing centuries, and more recent reforms to eradicate unfair taxes have not dealt with lay rectors' CRL. This may have been through an oversight, as enforcement of CRL against lay rectors/landowners in the 4,000 parishes affected almost completely fell into disuse over the centuries.

In the twentieth century, legislation was passed to abolish CRL for incumbent rectors in 1923 (i.e. "religious" but not lay rectors) and in 1932 to transfer jurisdiction for enforcing CRL from the ecclesiastical courts to county courts.

The issue of CRL first hit the headlines in 2003 when Andrew and Gail Wallbank received a demand for almost £100,000 to fund repairs of their local medieval church at Aston Cantlow, a village in Warwickshire.

After a protracted legal battle, which was taken right to the House of Lords, the Wallbanks lost their appeal against the demand and faced a £350,000 bill including legal costs. They were forced to sell their whole farm to pay for it.

Until this case, this legal anachronism had largely been forgotten and had been little exercised for centuries and many purchasers of land were simply not aware of it.

CRL was not generally mentioned in deeds, but this, originally an ecclesiastical liability, can still be enforced, despite that.

Following the Wallbanks' case, the Government introduced a registration procedure enabling CRL to be shown on Land Registry documents.

## How many properties are affected?

According to the Land Registry, property in around 5,300 parishes in England and Wales is subject to CRL. Not all affected property is close to the church.

Registration notices have been served on around 12,000 properties but many of those receiving them may not yet realise just how damaging they are likely to be to their property.

Only around 250 parishes have registered CRL. Another 5,000 parishes that are eligible to do so, did not register. In some cases this was for practical reasons, in others it appears to have been out of concern about the adverse impact of registration on those registered and the effect this would have on the church's reputation in their local community.

Further properties are potentially subject to CRL, despite being not being registered for CRL and therefore not having had any notification from the Land Registry. They are less likely to face a charge for CRL.

The liability of land registered with CRL continues with new owners, but where not registered for CRL it ceases with a sale, which may not be for many generations as transfers by inheritance, for example, do not bring the liability to an end.

Since the Wallbank case, vendors have taken out insurance against purchasers' future liability. It has been relatively inexpensive but such cheap insurance is not available for properties that have been registered.

## **What is the Church's justification?**

The Church of England's own parliament, the General Synod, overwhelmingly supported the abolition of CRL in 1982.

Despite all this, abolition has not taken place. This is because the Church has changed its mind and is not now willing to forgo any revenue to repair its many ancient churches, regardless of the hardship and distress caused to many.

The arguments generally advanced for the retention of CRL are that it is a civil liability that landowners should have known about, although we do know of some who did not.

It is possible that the land was purchased at a discount in recognition of the liability, but this will be rare. The Church points out that it is responsible for maintaining 45% of the Grade I Listed Buildings in the country and the majority of all the parish churches are Grade II or higher, that it is unable to maintain these heritage buildings unaided, and so is reluctant to give up any source of income.

## **What is the NSS doing about it?**

The National Secular Society sees chancel repair liability as deeply unfair and anachronistic, and calls for its abolition.

The NSS has pointed out the gross inequity of CRL to the government at ministerial level, but it is clear that the government is not prepared to initiate any abolition of CRL, unless requested to do so by the Church.

We have been working with parliamentarians, and at the top levels of the Ministry of Justice and the Church, to find solutions to the unfairness of CRL, that is causing so much distress. We want to see CRL abolished at the earliest moment.

## **What can I do if I'm affected by chancel repair liability?**

**We hope that you will help us in our efforts to abolish CRL by providing information about your own experiences so that the case we make will be as strong and accurate as possible.**

Registration is not conclusive evidence of liability and registrations have been challenged, for example on the grounds that no proof can be found that a historical land transfer was made including the liability.

A statutory mechanism exists for CRL to be commuted or "compounded" by payment of a, probably substantial, amount to the diocese, but there are no known examples of this occurring and we are investigating the practicalities of such an exit route.

Those affected may care to co-operate locally to investigate the basis of the registration. Registrations can be challenged using Land Registry form UN4. **Please get in touch with us to help abolish this injustice, particularly if you are one of a small group of landowners liable for CRL of your local church. Please email [enquiries@secularism.org.uk](mailto:enquiries@secularism.org.uk)**