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Chancel Repair Liability

Under ancient ecclesiastical law, some landowners in England and Wales, including domestic landowners, are liable for repairs, known as “chancel repair liability”, to their local Church of England church. Owners with property in an area liable to pay chancel repairs are likely to see a fall in the value, or even saleability, of the property. The National Secular Society sees this ecclesiastical obligation as deeply unfair and anachronistic, and calls for the abolishment of it.

What’s the issue?

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. Most so liable will by now have received notification from the Land Registry of a “chancel repair liability” (CRL). [The chancel is the part of a church including the altar.] Particularly if registration has taken place, owners with property in an area subject to CRL are liable to pay any CRL levied and are likely to see a fall in the value or even saleability of the property. The more premises on the land subject to this liability, the less the burden on individual landowners.

Regular headlines are appearing as more discover their liability through a new registration process. Real hardship is being caused, particularly among poorer people and those whose property, often their sole asset, is one of few having to bear the cost of repairing the local ancient church.

Insurance may mitigate the problems but could be expensive. A statutory mechanism exists to buy out the CRL liability from the Church, but little is known about the sums likely to be payable.

Legal institutions have recommended abolition of this liability¹, and the Church of England Synod has even agreed to this. Abolition has not taken place because the Church is not willing to give up revenue to repair its heritage churches and the Government is not willing to require it to, or bridge the funding gap.

The National Secular Society is campaigning to abolish CRL, but until this happens we have been working with the Government and parliamentarians, relevant professionals and other interested parties, to find ways of mitigating hardship.

Origins: up to 2003

When Henry VIII took over the churches around 1536, part of the responsibility for repair of churches was transferred to owners of rectorial land which was sold off, normally but not necessarily, close to the church². 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 1923³ (i.e. “religious” but not lay rectors) and in 1932⁴ to transfer jurisdiction for enforcing CRL from the ecclesiastical courts to county courts.

It was over a half century later that the issue resurfaced; in 1990, the parochial church council (PCC) of Aston Cantlow in Warwickshire was refused repair funding by English Heritage on the grounds that the PCC could recover costs through CRL. They therefore demanded a substantial sum from the Wallbanks, owners of a local farm, which had CRL noted in its deeds⁵. They reluctantly offered to give up a field worth £25,000 in full and final settlement, but this was rejected by the PCC. The Wallbanks started a legal battle and won at the Court of Appeal. This ruling was reversed in 2003 by the House of Lords⁶ (now the Supreme Court), costing the Wallbanks around half a million pounds, including legal fees, necessitating sale of the whole farm.

The Church of England initiated this final appeal to retain this source of revenue throughout England and Wales, and succeeded.

The Wallbanks’ case resulted in sellers routinely taking out CRL insurance to indemnify potential purchasers from CRL. Although premiums were relatively inexpensive, it was lucrative for insurers as cover was bought whether or not there was any potential liability and claims were few if any.

Post 2003 and registration

Until the Wallbanks’ landmark case, purchasers and even solicitors were often unaware of CRL, or it was thought, in retrospect unwisely, to be a law that no longer had any force. CRL was mentioned in the Wallbanks’ deeds, but it is enforceable even if it is not mentioned, as is often the case. To help relieve this uncertainty, Parliament made it a requirement to register

¹ For example,

http://michaeljameshall.files.wordpress.com/2011/03/submission_chancelrepairliability.pdf

² <http://www.churchofengland.org/media/1377826/national%20archives%20chancel%20leaflet.pdf>

³ <http://www.legislation.gov.uk/ukcm/Geo5/14-15/3/section/52>

⁴ <http://www.legislation.gov.uk/ukpga/Geo5/22-23/20/contents>

⁵ <http://www.chancelrepair.org/2.html>

⁶ <http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030626/aston-1.htm>

overriding interests (which was intended to include chancel repair liability) at the Land Registry⁷.

Those with overriding interests had an incentive to register them within ten years (by 12 October 2013), as overriding interests could not be claimed on land transfers after that date unless registration had been made by 12 October 2013. The Church encouraged PCCs to register, noting that failure to do so could render PCC members personally liable as trustees. This has led PCCs to rush into registering CRL. On the other hand, many PCCs who could have registered did not do so, generally because of the justified fear of opprobrium from parishioners and residents, but also because of the specialist labour needed and difficulty of searching old records and the complexity of ascertaining whether a liability existed. As the deadline approached, it became accepted that under some circumstances, such as in Broadway (see below), PCC trustees declined to register CRL they knew to be enforceable if they had come to a reasoned conclusion that doing so would harm the mission of the Church.

In some cases, residents learned of the registration only when receiving a letter from the Land Registry. The residents of the Cotswold village of Broadway were so incensed on receiving theirs, they organised a mass boycott of the church, resulting in the vicar revoking the registration on the grounds that the registrations undermined the church's mission⁸. Welcome though that revocation will have been, that action of Broadway's PCC does not bind future PCCs, who could in the future register CRL on properties that had not changed hands since October 2013.

Post October 2013

Parliament's intention was that purchasers of property after 12 October 2013 (the end of the ten year period) for which no CRL had been registered – the vast majority of properties – would take it free of any liability for CRL; and the PCCs would lose their right to enforce it⁹.

Property Transfers of unregistered property resulting from gifts or inheritance, as opposed to purchase, do not become free of any CRL liability, so the exposure could remain for generations until a sale for value occurs.

The Land Registry hasn't yet released figures to enable an assessment of the extent of registrations at the end of the 10 year period, but an unofficial sources suggest around 12,000 properties. Registration can continue indefinitely, although if it has not occurred by 12 October 2013 there is less chance of this happening in future and those in an area with potential CRL may be able to insure this, but the premium is likely to reflect the higher risk.

⁷ <http://www.legislation.gov.uk/ukxi/2003/2431/article/2/made>

⁸ <http://www.todaysconveyancer.co.uk/guest-blog/government-rejects-chancel-repair-liability-reform/5>

⁹ The Law Society refer in their official submission to the government in 2006 a strand of legal opinion maintaining that CRL is not an overriding liability, but is more akin to Council Tax (which is not mentioned in deeds either); therefore the failure to register it in the Land Registry post 12 October 2013 does not bar a PCC from imposing CRL. This technical question can only be resolved through a legal precedent. To access the Law Society's submission, see here:

http://michaeljameshall.files.wordpress.com/2011/03/submission_chancelrepairliability.pdf

Potential costs and insurance

Peter Luff MP, however, told the Commons in 2012 that typically (based on numbers in Broadway in his constituency) only 30 householders share the liability for each church and he estimated that 15,000 householders could face costs equating to £700 per annum¹⁰.

There will be cases where the cost impact is a great deal more or a great deal less than Mr Luff's example. The extreme example of the former, was the Wallbanks where several hundred thousands were demanded and this was because a large tract of their land was liable. But there are also many small villages where the entire CRL burden will be shared among very few, so will be potentially very expensive. In these cases there is likely to be extreme hardship caused. In contrast, where the land subject to CRL has a high residential density, the total cost could be shared among perhaps a thousand landowners. We are aware of a PCC in such a location inviting householders to buy a complete release of the liability for just £25 – but it is an area of economic hardship and even an offer at this level has brought the Church into disrepute.

As Mr Luff also told the Commons in the same 2012 debate “[E]very landholder aware of his liability, which continues until the time of first sale after October 2013, cannot obtain insurance and, until his property is sold, could still face the possibility of a future PCC coming after him for the costs of chancel repair”¹¹. Bad though this sounds, the reality is even worse if the implication is that the liability ceases on sale. While the registration remains, so does the liability in perpetuity. Registration therefore potentially badly blights the value of the property, with the possibility of making it unsellable, particularly if the liability is being shared by relatively few.

The period of cheap CRL insurance is over for those whose properties are registered, and, to a lesser extent, those in areas where registration could still take place. While the law remains as it is, insurance may be a partial solution where householders whose properties are believed to be subject to CRL, whether registered or not. Those in this position may wish to seek insurance (a) against CRL arising during the remainder of their ownership or (b) to indemnify a purchaser against CRL, although normally this would be for a specified period rather than being indefinite, in which case it may not give a purchaser the comfort they require.

Insurance is no panacea, however, as the premiums will reflect the insurance companies' assessment of the likely outgoings, plus administration and profit. We doubt if insurance companies have yet adjusted to the new situation where, at least in the longer term, premiums, if they are offered at all, will have to reflect the very different scenarios outlined above.

What is the Church's justification?

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 income¹².

¹⁰ <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121017/halltext/121017h0002.htm#12101767000148>

¹¹ <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121017/halltext/121017h0002.htm#12101767000148>

¹² <http://www.parliament.uk/briefing-papers/sn04535.pdf>

Why has Chancel Repair Liability not been abolished?

The National Secular Society opposes CRL in principle as a remnant of ecclesiastical taxation long overdue for abolition as were tithes.¹³ We are not alone. The Law Commission¹⁴ and the Law Society¹⁵ have considered CRL thoroughly, in 1985 and 2006 respectively, 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 1932¹⁶ 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 (noted above)¹⁷. 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.

What has the NSS done?

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.

The NSS is continuing to campaign energetically for abolition. Nevertheless, recognising that this may have to be a medium-term goal, it is also seeking to broker solutions which in the meantime mitigate the most inequitable impositions of CRL. This work has been undertaken by conversations, meetings and correspondence with the relevant government Minister and head of civil law at the Ministry of Justice, as well as a number of MPs and parliamentarians, specialist lawyers and other interested parties.

If you are affected by Chancel Repair Liability

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. Those affected may care to co-operate locally to investigate the basis of the registration. Useful information may be available at the Chancel Repair Liability blogspot. 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

¹³ A tithe is a custom dating back to Old Testament times and adopted by the Christian church whereby lay people contributed a 10th of their income for religious purposes, often under ecclesiastical or legal obligation. In England in 1836, the tithe was commuted for a rent charge depending on the price of grain, and in 1936 the tithe rent charges were abolished.

¹⁴ LAW COM. No. 152

¹⁵ http://michaeljameshall.files.wordpress.com/2011/03/submission_chancelrepairliability.pdf

¹⁶ <http://www.legislation.gov.uk/ukpga/Geo5/22-23/20/contents>

¹⁷ <http://www.legislation.gov.uk/ukcm/Geo5/14-15/3/section/52>