

# A Guide to... Chancel Repair Liability

## What is this liability?

The history of chancel repair liability is ancient and complex, demonstrating how some of the more historic aspects of ancient property ownership have survived to current times. The liability relates to the historic responsibility for upkeep of a church being divided between the rector and the parishioners. Parishioners' responsibilities were eventually transferred by legislation to the church and do not pose a problem in property ownership. However, Rectors were historically responsible for the upkeep of church chancels and when the lands of the rector later became divided by sale into private ownership the responsibility to repair the chancel would have passed with the proportions of the land sold off to the successor owners to the rector. An important aspect to note here is that the land need not necessarily be adjacent to an identifiable church.

## How are the liabilities enforced?

Under the Chancel Repairs Act 1932 a Parochial Church Council ("PCC") has the power to serve a demand for the cost or contributions towards the cost of repairing the church chancel. In the event that the owner fails to pay then the PCC can enforce the demand through the courts.

## How many churches are affected?

It is estimated that up to one third of parish churches may be entitled to recover chancel repairs from persons who own all or part of lands that would have historically been owned by the rector of the parish. In 1983 the Law Commission noted that there were 5,200 chancels for which a repair liability existed of which only 1,200 were the liability of the Church Commissioners, Cathedrals and educational foundations. Liability only affects land in parishes where the church is

from the medieval period or earlier.

The liabilities do not generally apply to the same extent with Welsh churches following the dis-establishment of the Church in Wales in 1920.

## How can you discover whether a property is subject to the liability?

The liability has been described by the Law Commission as unpredictable and its application as highly irregular. The existence of the liability can be difficult to discover because of the historic fragmentation of rectory lands. The liability may also be joint and several so that one individual deemed able to pay may ultimately be expected to suffer the entire cost of repairs. Particular caution needs to be applied where a property address or road name contains words such as "Vicarage", "Rectory", or "Glebe" or similar derivative.

There is no quick and inexpensive conveyancing search that can practically be done to definitively discover liability. However there are web based services which check through data obtained from the National Archive to establish whether a property may fall within an area that has a potential chancel repair liability. Where appropriate, we use the most commonly used service provided by 'Chancel Check' who provide a quick and relatively inexpensive data check. Where the result of the Chancel Check search establishes the potential for liability we highlight this to our purchasing clients providing the option of an insurance policy which will cost approximately £60 for 25 years of cover up to £250,000. Policies covering successors in title which can be offered on a future sale can also be arranged but at a greater premium.

Allowing a little more time and expense, a formal Chancel Repair Search can be commissioned at the records office of the National Archive for approximately £150. One issue to highlight in considering a formal search is that if you discover an actual liability, you will not be able to insure against the risk of 'potential' liability. Similarly, making enquiries of the local PCC or Vicar may also place interested parties on notice, alerting them to the need to register their interest against a property title, and removing the ability to obtain insurance.

## Isn't this all just a historic nonsense?

Regrettably not. A notorious recent case in a Stratford-on-Avon parish, the PCC of Aston Cantlow and others v Wallbank (2003) (House of Lords) provided very real evidence of enforceability. The owners of a property were ultimately held liable for chancel repairs to their local parish church exceeding £95,000. The House of Lords did highlight on several occasions in their judgement the unfair nature of the liability calling upon the Law Commission to repeal the laws surrounding this ancient problem.

The good news is that legislation is now in place requiring PCCs to register chancel repair liability against affected property titles before 13th October 2013. Our understanding is that any liabilities that are not clearly recorded against the property title will cease to be enforceable after that date. We predict that some PCCs will actively seek to record their interest before this legislative cut off date. In the event that a PCC sought to register their interest against a property title, the owner would be notified by the Land Registry and would be given the opportunity to object to the registration.



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