

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 usually carried 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 that is 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. Legal 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 quite 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 its parishioners 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 land-owner accepts and pays it. In most cases the land-owner is a large institution, often the Church Commissioners.

Parishes in this diocese have already been advised that after October 2013, those rights will be of no effect against transferees of land registered at the Land Registry unless the parish has registered the liability before the transfer. To date, no parish has asked me to assist in this process.

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.

Parishes have also been asked to inform me or their archdeacon of cases where they claim the right to enforce chancel repair liability. The following parishes have done so:-

Exning, Ilketshall St Andrew, Kersey and Wingfield (in addition to those claiming from the Church Commissioners)

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 land-owners. Parishes that do claim also 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. Other factors may also be relevant, for example:-

- (a) Chancel repair liability is only of relevance to pre-Reformation churches 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. Therefore land still vested in the ecclesiastical rector at that time, including glebe land, parsonage land and churchyard, is not subject to chancel repair liability and does not become so subject on a sale after 1923. The liability of lay rectors for their land is what is relevant now.
- (c) The deeds to the property belonging to Mr and Mrs Wallbank expressly referred to chancel repair liability. I think that the PCC claimed it reluctantly, largely because they had disclosed their right to do so on a grant application form and the grant had been reduced by the amount that they could recover from the Wallbanks.
- (d) Neither the diocese nor I offer any facility to parishes to track down lay rectors liable to repair chancels where they have not already been identified. Old PCC records may provide some clue, e.g., at times of earlier repairs to the chancel. I am very happy to assist if a parish does think it has the right to claim and/or it wishes to register that claim at the Land Registry. However this will be at the expense of the parish concerned and additional research may need to be done by a specialist.

There is a good introductory leaflet on the subject published by the National Archives on www.nationalarchives.gov.uk/catalogue/RdLeaflet.asp?sLeafletID=223.

If you wish to speak to me personally about the subject, please contact me at 20-24 Museum Street, Ipswich, Suffolk, IP1 1HZ or by email james-hall@birketts.co.uk or by phone (01473) 406270.

J S Hall
Diocesan Registrar
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