



Chancel Repair Liability

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Chancel repair liability derives from the privatisation of Church lands following the Reformation. Historically, the obligation to repair the church had fallen on the rector of the parish, who was able to raise a tithe from parishioners. After the Reformation, much church land was passed to lay landowners, but the liability of upkeep remained. In 1932 the *Chancel Repairs Act* gave Parochial Church Councils the right to bring court action if the lay rector failed to repair the chancel. In 1936 tithes were abolished. This created the anomaly that a lay landowner could be liable for chancel repairs without any means to cover (at least some of) the cost. A court case involving a family in Warwickshire has drawn public attention to the risk of chancel repair liability. In 2003 the Government changed the law so that after 13 October 2013, where interest has not been noted at the Land Registry, any purchaser of land to which the liability previously attached will not be subject to it. Current owners will, however, remain liable. In 2006 the Law Commission called for the abolition of chancel repair liability all together.

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A. Chancel repair

Chancel repair liability is an ancient interest which benefits some 5,200 pre-Reformation churches in England and Wales. It allows the Parochial Church Council to require owners of former rectorial land to meet the cost of repairing the church chancel. Historically, the obligation to repair the church – in particular the chancel (the area east of the transepts) fell on the rector of the parish. To enable him to meet this obligation, he was entitled to collect “tithes”, that is, one-tenth of the value of his parishioners’ labour. After the Reformation, much church land passed into private hands, but the liability for upkeep of the church remained, having passed to the lay landowner. Tithes were abolished in 1936.¹ Parochial Church Councils (PCCs) which had been created in 1921 as bodies that would better enable the lay members of the congregation to be represented, acquired under the *Chancel Repairs Act 1932* the right to bring a court action if the lay rector failed to repair the chancel. The anomaly thus developed that a homeowner, having purchased former church land, could find himself subject to an ancient financial obligation, without the corresponding local power of taxation (the tithe) which would enable him to defray (at least some of) his costs.²

B. The Wallbank case³

The Wallbanks were the owners of Glebe Farm in the village of Aston Cantlow in the county of Warwickshire. In 1994 the PCC served a notice on the owners under the 1932 Act calling on them to repair the chancel. They disputed liability and the PCC began court proceedings to recover estimated costs of £95,000. The Wallbanks’ case was that the PCC’s claim was unlawful under the *Human Rights Act 1998*, as an act by a “public authority” which infringed the couple’s right to peaceful enjoyment of their possessions.⁴ At the court of first instance, their case was rejected.⁵ They appealed and their appeal was upheld in a judgement in May 2001.⁶ The Appeal judges ruled that the liability imposed on the couple was a tax that operated entirely arbitrarily and therefore violated the Convention right contained in Article 1 of the First Protocol to the European Convention on Human Rights. However, the case then went to the House of Lords where this judgement was overturned on two grounds. First they said that a PCC was not a public authority for the purposes of section 6 of the *Human Rights Act 1998*. Secondly they ruled that the rectorial liability was similar to any other burden which attached to land and therefore did not amount to interference with the lay rector’s right to peaceful enjoyment of his possessions. The Wallbanks were required to pay a repair bill of £186,986 plus VAT and costs, approximately £250,000, plus £200,000 in legal fees.⁷

An article in *The Times* by Simon Jenkins from March 2000 also provides details of the case. Simon Jenkins argues that:

¹ *Tithe Act 1936*. Technically, this Act converted existing tithe rent charges into tithe redemption annuities. These ceased to be payable in 1977 (HC Deb 19 Feb 1997 vol 290 c627W)

² Ref: 2003/8/7SC

³ *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire (Appellants) v Wallbank and another (Respondents)* [2003] UKHL 37.

⁴ Section 6 of the Act makes it unlawful for a public authority to act in a way which is incompatible with Convention rights. However, it does not define precisely what is meant by a “public authority”.

⁵ *Times Law Reports*, 30 March 2000

⁶ *Times Law Reports*, 15 June 2001

⁷ www.chancelrepair.org

The liability of lay rectors is obsolete. It was notionally based on them receiving compensatory tithes, whether of corn or money. Since these were abolished, the rectors have no recourse to income that might sensibly balance their liability. They cannot spread the expense of maintaining the chancel round their tenants, or round the parish as a whole. When a chancel repair meant no more than sending a farmhand to replace a slate or mend a window, this was no big deal. But modern architects and builders like to live in style. They can run up bills of tens of thousands of pounds in a week.

A reasonable person would say that this liability lapsed with the tithes. In Germany and France, historic churches are financed from local taxes which supplanted church taxes in the last century. It is absurd that the local parochial church council, the civil parish council, the rector, fundraisers and friends could not form a consortium to do the work at Aston Cantlow. There must be a better way than taking one man to court for owning a particular field.

Nobody has local money for restoring churches. The one resort of most historic churches is to a London quango such as English Heritage or a lottery distributor, in other words to central government. The best way forward, as on the Continent, would be for elected parish or community councils to use their modest power to raise a penny rate and give it to churches in need. Parish councils are notoriously averse to using such money for an ostensibly sectarian purpose. Parish churches are equally averse to "secularising" themselves to widen the base of their local support.

Medieval churches remain the glory of almost every English neighbourhood. That there is no way of taxing parishes to keep them in repair is ridiculous. Ways must be found to do so. Everyone is in some sense a parishioner. This includes many who love visiting churches, who enjoy their physical presence, who may not worship in them but who would sorely miss them if they disappeared.

Agriculture may be in recession, but the villages and towns of rural England are rich. Parish churches should not go to court to prop themselves up. If nothing else, bring back the tithe.⁸

C. The latest position

In September 2003 the Government announced that it would introduce legislation to preserve the status of chancel repair liability within the land registration system for a period of ten years.⁹ Details were given in a press notice released on 24 September 2003 by the Department for Constitutional Affairs:

GOVERNMENT ACTS ON CHANCEL REPAIR LIABILITY

A Transitional Provisions Order covering Chancel Repair Liability has been made and will take effect when the Land Registration Act 2002 comes into force on 13 October 2003.

The Order preserves the status of Chancel Repair Liability within the land registration system for a period of 10 years. This was made necessary by a House of Lords ruling

⁸ "Bring back tithes for parish churches", *The Times*, 31 March 2000

⁹ HC Deb 14 October 2003 c 3WS

in the decision "Wallbank v Parochial Church Council of Aston Cantlow and Wilmcote with Billesley, Warwickshire, which, in effect, wrong-footed the Land Registration Act.

For the next 10 years, Chancel Repair Liability will now remain an interest that binds successive owners of a property even though it is not protected by an entry in a register kept by the Land Registry. After the 10-year period, however, the liability will only bind new owners of registered land if it is protected by an entry in the register.

Notes to Editors

1. Chancel repair liability (CRL) is an ancient interest benefiting some 5,200 pre-Reformation churches in England and Wales. It allows the Parochial Church Council to require owners of former rectorial land to meet the cost of repairing the church chancel. Under the Land Registration Act 1925 CRL is classified as an overriding interest in registered land. This means it is protected even without being registered. After the Court of Appeal's 2001 decision in *Wallbank v Parochial Church Council of Aston Cantlow and Wilmcote with Billesley, Warwickshire*, CRL was deemed to be unenforceable. Reference to CRL was therefore omitted from the Land Registration Act 2002, which received Royal Assent on 26 February 2002. The Court of Appeal's decision was reversed by the House of Lords in June 2003.

2. The combined effect of the House of Lords' decision and the impending repeal of the Land Registration Act 1925 on 13 October 2003 by the Land Registration Act 2002 would be that CRL would have to be protected by a register entry to bind successive owners. This could cause practical problems for the Land Registry and may raise human rights issues.

3. The Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003 aims to avoid such an outcome by putting CRL on broadly the same footing as comparable rights, such as payments in lieu of title, Crown rights and manorial rights. The Land Registry intends to waive the fee for protective entries, on the basis that no fee is payable for protective entries in respect of comparable rights.

4. The Land Registration Act 2002 will bring into force new procedures for making a protective entry on the register, through the Land Registration Rules 2003. Information on the Rules can be obtained from the Land Registry's website, www.landregistry.gov.uk, or by calling the Land Registry's Actionline on 0870 9088061.

Therefore, after 13 October 2013, where an interest has not been noted at the Land Registry, any purchaser of land to which the liability previously attached will not be subject to it – current owners will, however, remain liable.¹⁰ The Church is currently trying to find out all the properties for which chancel liability exists, so as to register them before 2013.

In 2006 the Law Society made a submission to the Government which called for the abolition of chancel repair liability and its replacement with a more sensible system for funding the maintenance of historic buildings.¹¹ They believed that the chancel repair liability system is unsatisfactory for a number of reasons:

¹⁰ http://icclaw.com/devs/uk/re/ukre_002.htm

¹¹ <http://www.lawsociety.org.uk/influencinglaw/policyinresponse/view=article.law?DOCUMENTID=308395>

- It is uncertain and capricious because it is often very difficult to ascertain the existence or extent of the liability.
- It increases the cost of conveyancing.
- It is discriminatory, benefiting churches of one denomination only.

A letter published on www.chancelrepair.org from the Bishop of Coventry in February 2007 explains the Church's position:

I have received a number of similar letters and do understand the strength of feeling.

It may help if I explain the difficult position in which the Church finds itself both as regards the maintenance of its parish churches and specifically regarding chancel repair liability.

The Church of England, in its parish churches, is responsible for maintaining 45 % of the Grade 1 Listed Buildings in the country and the majority of all the parish churches are Grade II or higher.

Quite apart from being centres of worship, the parish churches are an essential part of the heritage and landscape of England. In most villages and in many towns and cities our churches are by far the most significant buildings and I know how painful to a local community the loss of its parish church can be. Most churches are lovingly cared for by their local communities and especially the church congregations but the financial burden is enormous.

Contrary to popular belief, the Church has no central funds available to maintain its parish churches. These are the entire responsibility of individual parishes and in particular the Parochial Church Councils.

There is no assured state funding for parish churches unlike some continental countries where there is a church tax and the community as a whole maintains the building.

Parishes rely on the sacrificial giving of their congregations with voluntary donations of varying levels from other members of the community.

Applications for grants can be made to English Heritage and indeed English Heritage helps so far as it can with its limited resources.

But here is the dilemma in which the Church finds itself. In applying for a grant to English Heritage there is one question which has to be answered - does the church have a lay rector? If the church does have a lay rector then English Heritage would expect the lay rector to be approached in respect of any repairs to the chancel before any grant is made.

Parishes who have a lay rector are therefore disadvantaged in seeking grants from English Heritage.

Furthermore the statutory responsibility for maintaining parish churches falls upon the Parochial Church Councils. These are subject to the provisions of charity and trust law and they are under a duty in carrying out their statutory responsibility to seek what funds are legally available to them of which they are aware.

Turning now to the position of lay rectors. I do not know of any instance (although there may be some) where lay rectors have purchased land without knowing about the liability and have been called upon to meet the liability. I understand that Mrs Wallbank's father purchased the land at Aston Cantlow at auction knowing that the land carried with it the responsibility to repair the chancel of the parish church.

Indeed, I know of another case in this diocese where purchasers have recently purchased an estate knowing that a part of the land carried with it chancel repair liability and negotiated a discount. The landowners in that case fully recognise their liability. In most instances landowners owning land with chancel repair liability accept their responsibility and have done so for many years. In the case of Mr and Mrs Wallbank, they decided to challenge the legal position as was their right on the ground that the liability infringed their human rights. The House of Lords decided that this was not the case.

Having said all this, I entirely agree that chancel repair liability is an anachronism and should be replaced. However, this can only be done (now that the House of Lords has made its decision) by legislation, as recommended by the Law Commission.

I have every sympathy with Mr and Mrs Wallbank and all other lay rectors. While in strict law I have no jurisdiction regarding lay rector's liability I do intend raising this issue with the Government and am urging them to consider introducing legislation to deal with the matter as soon as possible.

In the meanwhile, I understand that English Heritage is considering whether it might be able to make grants to lay rectors who are affected.¹²

D. Sources of further information

The National Archives has also produced a leaflet on Chancel Repairs available at <http://www.nationalarchives.gov.uk/catalogue/RdLeaflet.asp?sLeafletID=223>

Peterborough Diocesan Registry also has some helpful information on their website <http://www.peterboroughdiocesanregistry.co.uk/chancels.html>

¹² www.chancelrepair.org/10.html