



Simple Guide to PCCs' Options for Chancel Repair Liability after Research

1. Chancel repair liability is a long-standing and legally enforceable liability to repair (or to contribute to the cost of the repair of) the chancel, which is usually the easternmost part of a church.
2. The continuation of chancel repair liability based on land was affected by the Land Registration Act 2002. This is a very complicated subject and PCCs are advised to read the related linked documents on the Church of England's website to get a thorough feel for the actions they need to take and the options open to them.
3. This note offers general advice on research and registration of liabilities and also contains a summary of the alternatives open to a PCC if they have concerns about registering liabilities against land.
4. PCCs affected or potentially affected must take their own legal advice but in baldest summary any liabilities coming under Categories 4(c) and (d) of the Records of Ascertainment (available at National Archives) and any "pure" land (non tithe-based) liabilities are candidates for registration by the PCC.
5. The Land Registry will charge a fee for this. The matter needs to be completed before any sale of the subject land after 13 October 2013. If it is not so completed, the relevant portion of the liability is lost.
6. If the PCC wishes to pursue this, then either (a) a caution (of chancel repair liability) needs to be entered against first registration of unregistered land; or (b) notice of the liability needs to be entered against registered land.

7. This note assumes that the PCC has managed to identify the subject land through one of the means available to it. For the most part (albeit greatly simplified) this will involve obtaining the relevant tithe maps (or plan of the liable land if it is a “pure” land case) and the related modern Ordnance Survey maps. Where tithe fields are involved, the PCC should prepare a spreadsheet record which will show each tithe field as a percentage of the whole.
8. The PCC or its Researcher should compare the historic plan of the area subject to CRL with the modern OS map. This is an essential step as it is only by getting a feel for the areas involved and their demography that PCCs can take an informed view on the right way forward for them.
9. There is some additional material on the Church of England websites (notably [the Opinion of the Church of England Legal Advisory Commission](#) and [CRL FAQs](#)) which will help the PCC take a view on the feasibility, practicality and politics of undertaking the registration process. There is also some helpful advice from the [Charity Commission](#).
10. Ultimately however, only the PCC can properly decide which course of action it wishes to pursue and it should do so after careful consideration of the factors involved, and reference to the Archdeacon and/or Diocesan Registry as appropriate.
11. A PCC **must** investigate the position where there is clear evidence that there is a third party responsible for their CRL. PCC members are charity trustees and these financial responsibilities cannot be lightly set aside without careful research and thought. This is not to say that a PCC has to pursue a (or every) lay rector but that decisions not to do so have to be taken on an informed basis.
12. For example, if a PCC discovers that thousands of houses sit on land affected by CRL, it may well consider that the fractional sums that might be requested of each household make it entirely uneconomic to register CRL (the liability would have to be registered against **each** separate house title which would have heavy cost implications) and then pursue CRL.
13. Otherwise, PCCs will want to consider the risk of very real pastoral damage by registering CRL against an individual’s

land, especially if the liability had seemed dormant for many years. This might be seen to hinder the Church's charitable objectives.

14. One approach that PCCs may want to consider as an alternative to registration is seeking to compound all or part of the relevant liabilities, whereby a property owner might compound his or her share of the liability in exchange for a capital sum. The formula for arriving at the appropriate capital sum can be found in Section 52 of the Ecclesiastical Dilapidations Measure 1923. A note providing more details on this can be found here ([Compounding Chancel Liabilities](#)).
15. Any PCC considering compounding should take advice from the Diocesan Registrar as the requisite receipt (signifying diocesan consent) needs to be very carefully drawn so that it is only the element of liability which is the subject of the compounding transaction which is deleted (and becomes the PCC's liability in its place).
16. PCCs will recognise that the formulae set out in the 1923 Measure can produce some very high figures which would-be compounders of liability might find alarming and off-putting. Also, and other than for sums below £10,000, for the most part the funds so raised would have to be held in trust by the DBF for chancel repair/insurance. Only the income arising therefrom could be used for chancel repair/insurance purposes. Potentially, sums below £10,000 can be applied to general parish use. For more details please see Charity Commission leaflet on "[Spending Permanent Endowment](#)".
17. A possible alternative to the statutory compounding under the 1923 Measure would involve a non-statutory arrangement whereby in return for a capital sum the PCC agrees not to enforce chancel repair liability. This does not involve the formal extinguishment of liability. In practice all the parties subject to the liability would need to join in the agreement in order to ensure that a liable party who has not joined the agreement cannot seek to recover a contribution from a party who has joined the agreement. Otherwise, any agreement would have to be drafted in such a way that all liable parties could benefit from the PCC's decision not to enforce liability.

18. PCCs considering this non-statutory arrangement will need to take advice as to the level of capital contribution required from liable landowners. On the face of it they should have regard to the amounts arrived at by reference to the 1923 Measure, although the non-statutory nature of the arrangement may afford some flexibility in this respect (not least on pastoral grounds). The Diocesan Registrar should be asked to advise on the nature of any legal documentation.
19. Where a PCC concludes (after taking appropriate advice) that it is either uneconomic or pastorally damaging to seek to register a liability, it would be wise for the PCC to make a written request for the Charity Commission's advice pursuant to s.110 of the Charities Act 2011 that it is acting properly in not pursuing the matter. In accordance with the Commission's advice, the PCC will need to demonstrate that it has undertaken proper research and the reasons for its proposed course of action. The PCC will also need to show that they believe that there is a real risk of its decision being challenged and why. If the Commission agrees with the PCC's position, PCC members will be deemed to have acted properly and not to be in breach of their charitable obligations. The same would apply if a PCC wanted to go down the non-statutory route outlined in Paragraphs 17 and 18 above.
20. Paragraphs 14 to 19 offer advice on alternatives to CRL registration. We underline the point made in Paragraph 11 however that PCCs must investigate the position where there is clear evidence that a third party is liable for all or part of the cost of repairing their chancel.
21. Where the Commissioners are owners of liable land, it is essential that PCCs contact us before attempting any kind of registration, as our policy is to offer Deeds of Indemnity against our liable land avoiding the need for PCCs to pursue registration.
22. In cases where liability is based on land the Commissioners formerly owned, but retained the liability on sale, it was previously open to PCCs to register this liability against the land and look to us directly for repair contributions. However, as with land we still own, we will be prepared to offer a Deed of Indemnity. This will not only benefit both PCC and us, but

also negate any pastoral difficulty the PCC may risk by registering against third parties.

23. Whatever the outcome of the PCC's researches into CRL, it is essential that clear records of the outcome of those researches be maintained and, as mentioned elsewhere in this note, the Archdeacon and/or Diocesan Registry should be consulted, especially if a PCC is planning not to pursue registration nor enter a Deed of Indemnity with the Commissioners.
24. For the most part, we strongly recommend that where possible PCCs should employ professional help to deal with the actual registration process, which is best undertaken by a Solicitor. This will clearly have cost implications (including if the Diocesan Registry is approached), especially for built-up areas where there may be a large number of individual titles involved.

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