

BRIEF TO THE PCC ON CHANCEL REPAIR LIABILITY (CRL): 9th OCTOBER 2012

Section One: A Brief History:

Detail in the attached document "History of CRL.docx"

Section Two: Parochial Church Councils (PCCs) and CRL

It is clear that trustees of PCCs need to check if there is a liability in the parish and consider whether to register that interest with the Land Registry before 12 October 2013. Registration will allow the PCC to enforce the liability against **future** owners of the land concerned.

The argument for preserving this historic liability is that the Church of England has financial responsibility for 45% of the nation's Grade 1 listed buildings and many other architectural important churches. 70% of repairs is met by local fund-raising with only a minority coming from English Heritage, lottery funds and other non-church sources. This places a considerable financial burden on PCCs. Against this background, the Church cannot be expected to forego sources of funding to which it is entitled **unless it receives adequate compensation**.

English Heritage, for example, will not provide grant aid to a PCC for repairs to the chancel of a church where there is a lay rector who is responsible for its repair.

General Principles

A PCC is a **charity** so its members are subject to the same general duties as charity trustees, including **the duty to exercise their powers in the charity's best interests**. Where a chancel repair liability exists, the right to enforce that liability is an asset of the PCC which must be appropriately managed. This does not mean that it has to be enforced in every case. However, **the PCC members must actively consider whether it should be registered and enforced, taking account of their PCC's particular circumstances to reach a decision**.

Decision making

By looking at judgments made by the courts and from Charity Commission documents, I have identified the framework for trustee decision making which, if followed, will help us to fulfil our legal duties.

In short, the framework for decision making by charity trustees means they must:

- **act within their powers** - this means:
 - only making decisions which **advance**, or support activities that advance, **their charity's purpose** for the public benefit
 - **using the correct procedures** - these may be those set out:
 - under the general law
 - specifically in the charity's governing document
 - under the established rules and procedures for dealing with issues of the kind under consideration
- **act in good faith and only in the interests of the charity**
- **adequately inform themselves**
- **take into account all relevant factors (their 'duty of consideration')**
- **disregard any irrelevant factors**

- **make decisions that are within the range of decisions that a reasonable trustee body would make**
- **avoid conflicts of interest.**

By following these principles when making decisions about whether to register or enforce chancel repair liability, PCC members can protect themselves and the charity. They can also reduce the likelihood of their decisions being successfully criticised or challenged.

Relevant factors

The relevant factors when making the decision will vary according to the particular circumstances of the PCC. However, the following are likely to be relevant in all cases:

the financial costs of surveying, identifying, registering and enforcing the liabilities compared to the value of the potential asset;

the likelihood of the need for chancel repairs;

the impact on the ability of the PCC to carry out its objects (mission) and to raise funds in the parish;

the impact on the ability of the PCC to raise funds from other sources (some funders may refuse a grant for the repair of the chancel if they found the charity had not maximised a potential asset available to it).

PCCs need to demonstrate they have considered and balanced all relevant factors when making their decision, in the best interests of their charity.

Liability of PCC members

In general terms, if charity trustees act in breach of their duties, they may be held personally liable. However, in practice they will be protected from liability if they can show that they **acted honestly and reasonably and ought fairly to be excused.** PCC members must therefore be satisfied that any decision not to register chancel repair liability is consistent with their duties, taking account of their PCC's particular circumstances.

The Role of other Organisations

Decisions about whether to register and enforce chancel repair liability are a matter for the trustees of the relevant PCC charity **alone**, acting with the benefit of professional advice where appropriate. This may include the diocesan registrar. PCCs are able to take a decision about whether to register and/or enforce the liability without the involvement of the Charity Commission.

Some PCCs do go to the Charity Commission to seek confirmation that their decision not to register or enforce chancel repair liability is reasonable. Such advice would be provided under section 110 of the Charities Act 2011. Section 110 advice can provide additional reassurance for PCC members that they have acted correctly and in accordance with their duties by protecting them against the possibility of any subsequent legal challenge to their decision. The Commission is willing to consider providing such advice where PCCs consider there is a real likelihood of their decision being challenged and they are able to present it with a substantive case explaining how they have reached their decision.

Section Three: Legal Advisory Commission of the General Synod.

The Opinion is in the attached document Registration and Enforcement of CRL by PCCs.

Section Four: Way Ahead

PCC members must actively consider whether it should be registered and enforced, taking account of their PCC's particular circumstances to reach a decision and therefore some initial enquiries must be made. The starting point is to discover how to establish whether a liability may exist, what it might be and how much effort would be required to discover the detail. To this end:

I have asked the Diocese for an opinion. Previous enquiries by the Diocese have suggested that no liabilities exist for East Meon and that the nearest parish with a known liability is Catherington.

The Diocese also suggest that we consider very carefully the decision making criteria before coming to any conclusion and that discussion should be richly minuted.

George Bartlett has kindly offered to help us with any information he can discover.

I have asked the Diocese of Winchester to see whether they hold any historical records of redemption stock created by the 1936 Tithe Act and if there are records in the ledgers for East Meon.

I have established that tithe maps and awards, 1851-2; plan of tithe free lands, 1852; altered tithe apportionments, 1852-1934; tithe redemption certificates, 1889-1924; enclosure plans are available in the HRO.

I have established that Records of Ascertainment that will show the likelihood of a liability of a given property or land is available at the National Record Office at Kew under IR 104/107 dated 1936. If there is no entry for East Meon, or if the entry is annotated in a certain way, then there is no further record.

I would suggest that after an adventure into these documents, the PCC tests the findings against the factors above before taking the matter further.

Section Five: Resolution

Whatever the findings of the PCC and its subsequent decisions, those decisions must be tested in committee against the decision criteria above step-by-step and formally recorded in the minutes. I suggest that, exceptionally, we asked the Diocese to hold a copy of these minutes for safe keeping and public record.