

History of Chancel Repair Liability

As Christianity became established in this country, the parochial system developed. The local landowner would be converted to Christianity and he would give land and build a church on it.

He would also provide a house for a priest and give land as glebe to produce an income to support him. Having provided all of that, the landowner would reserve to himself the right to choose the priest for the bishop to appoint and so the system of patronage developed at the same time.

The priest would also have the right to receive tithes, the scripturally based payment of 1/10th of the produce of the land in the parish, in the form of crops, livestock or dairy products. In time, tithes were paid in cash instead of in kind. The income was not just for the priest and he used some of it for the support of the poorer parishioners. The income from the glebe and the tithes was the property of the priest (or rector) and was called **rectorial property**.

The parish church had to be maintained and the general custom in England was that the **rector maintained the chancel at the east end of the church**¹, which was used by him, while the parishioners were responsible for the rest, being the part of the church which they used. The rector paid for the repair of his part of the church out of his **rectorial property**.

The responsibility for maintaining the chancel was a charge on the rectorial property and so **whoever held the rectorial property had that responsibility**.

The medieval period, saw the rise in power of the monasteries. The right to appoint a priest, which had been reserved by the original landowners who set up the parish church, had a value, because the priest, once appointed, had the right to the income from the rectorial property. The right of presentation, called an advowson, could be bought and sold or given away.

Many monasteries acquired advowsons. An advowson could only be exercised in favour of an ecclesiastical person in other words a priest. However, a monastery was also an ecclesiastical person, albeit a corporate ecclesiastical person. Having acquired an advowson, all the monastery had to do was to wait until the priest died and then exercise the advowson in its own favour and appoint itself as rector. The monastery then acquired the rectorial property, the glebe and tithes. It could not, as a monastery, look after the cure of souls in the parish but it was able to do that by appointing a deputy or 'vicar'. The monastery would provide for the vicar by allotting to him a portion of the glebe and the tithes, while keeping the balance for itself. As a result, monasteries grew rich and powerful and sometimes unpopular as a result.

Because the monastery owned the rectorial property, it thereby also had responsibility for maintenance of the chancel. Henry VIII had a well-publicised problem with his wives and his succession but more importantly with the French and was continually strapped for cash. Famously he dissolved the monasteries and appropriated their property, including the rectorial property which they had owned. He then sold this and pocketed the cash.

When he sold the rectorial property, the chancel repair liability went with it. And if the property was divided between a number of new owners, the chancel repair liability was also divided.

Some former monasteries became cathedral churches of new dioceses and Henry allowed them to retain some rectorial property as an endowment. Some monastic property was transferred to existing cathedrals. Some went to lay institutions, notably Oxford and Cambridge colleges. Some went to Henry's favourites.

Much was sold to lay people. All of these were called lay impropriators or lay rectors. They, in time, sold it on to others and the former rectorial property became fragmented and the number of lay rectors increased. Accordingly, there could be a large number of people with responsibility for repairing the chancel of a particular church. **That liability was joint and several so each lay rector**

¹ The liability is not unlimited. It extends to ensuring the chancel is kept wind and watertight and that essential features are maintained.

could be made responsible for the full cost of repairs, although they had rights to recover from the other lay rectors according to the respective values of their portions of the rectorial property.

Not all advowsons had passed to monasteries and where that had not happened the individual priests, the rectors, continued to receive income from the rectorial property and so forever continued to be responsible for the repair of the chancel.

Tithes became extremely unpopular. From the end of the 17th century onwards there was an increasing tendency for common land to be enclosed, fenced off and appropriated to particular owners. There were a number of Acts of Parliament which allowed enclosure awards. Such an award often allotted part of the former common land to the rector in place of rectorial tithes. Such an appropriation meant that the amount of former common land available for villagers was diminished but at least what was left for them was freed from the liability for tithes. Any land acquired by a rector in this way was subject to chancel repair liability. If he sold the land, the liability passed with the ownership.

In 1836 the Tithe Act was passed. That converted any tithes that were still subsisting into tithe rentcharges, a payment attached to a piece of land. If the rector was still the priest, then, instead of a tithe rentcharge, **he could be allotted land and that land would carry with it responsibility for chancel repair.**

The Tithe Act 1936 abolished tithe rentcharges. Those entitled to them were compensated by 3% redemption stock issued by the government. To fund this, those who had previously been liable to pay tithe rentcharges, paid instead tithe redemption annuities to the government over a period of time. That should have gone on until 1996 but in fact the arrangement was terminated prematurely in 1977. The stock is held by each diocese and the income is paid to each PCC.

However, **this change did not affect chancel repair liability arising** because of ownership of ancient glebe, uncommuted tithes or land allocated in lieu of tithes under an enclosure award.

In the 1930's the Tithe Redemption Commission investigated responsibility for chancel repair liability. They produced a document known as a record of ascertainment for each parish. It divided the liability into a number of classes. It identifies land in the parish by reference to tithe maps and attributes a portion of the liability to particular tithe numbers. That entitles the PCC to a proportion of the repair costs shown for that person's land in the record of ascertainment.

There are a number of people who now may be liable to contribute to chancel repair liability as follows:

1. The Church Commissioners, deans and chapters of cathedrals, Oxford, Cambridge and Durham universities and their constituent colleges, Winchester School and Eton College.
2. The owners of former glebe which passed into lay hands following the dissolution of the monasteries.
3. Owners of land which was allotted in lieu of tithe to a lay owner of tithe under an enclosure award.
4. Persons and bodies who are still entitled to receive pre 1836 corn rents (and other similar payments) in lieu of rectorial tithes.
5. Owners of land in which the right to tithe or tithe rent charge has been merged as identified in the records of ascertainment and on the attendant tithe maps.

Aston Cantlow and Wilmcote with Billesley PCC v Wallbank

Partly because of the complications of discovering who is liable for chancel repair liability, PCCs rarely sought to enforce it. However, a case in the 1990's brought the liability to public attention.

Mr and Mrs Wallbank owned Glebe Farm in the parish of Aston Cantlow and Wilmcote with Billesley. The Farm House stands on a field once known as Clanacre which was allotted by an enclosure award of 1743 to Lord Brooke in exchange for other land which he owned as lay impropriator of the rectory. This made Clanacre rectorial property and so responsible for keeping the chancel of the parish church in repair.

Mr and Mrs Wallbank inherited Glebe Farm and when their predecessor had purchased it, he was made aware of the chancel repair liability and, indeed, insured against it. Sadly the Wallbanks allowed the insurance cover to lapse.

By 1990 the chancel of the church of Saint John the Baptist, Aston Cantlow was in serious disrepair. The PCC obtained estimates and the cost of repair exceeded £95,000. They applied to English Heritage for a grant but that was turned down and one of the reasons given was that the Wallbanks were liable to repair the chancel, so a grant was not necessary.

In 1994 the PCC served notice on the Wallbanks calling upon them to repair the chancel and issued proceedings in the county court. The case eventually reached the House of Lords which upheld the liability.

Following this case the law was changed so that chancel repair liability will be unenforceable unless the liability is registered with the Land Registry by October 2013. As the clock ticks down to October 2013 it is necessary that the trustees of Parochial Church Councils, in discharge of their trustee obligations, should seek to identify the land which is the subject of the obligation in order to register the appropriate entries. Thereby it would ensure that the relevant land owner remains liable to pay for chancel repair.