



Law
Commission
Reforming the law

THE OLD RECTORY

Chancel Repair Liability and Registration

Summary of the Consultation Paper

THE LAW COMMISSION'S PROJECT ON CHANCEL REPAIR LIABILITY AND REGISTRATION

	Who are we?	The Law Commission of England and Wales is an independent body established by statute to make recommendations to Government to reform the law in England and Wales.
	What are we doing?	We are conducting a public consultation on our provisional proposals to reform the law governing chancel repair liability and the registration of land.
	What is this project about?	Our project is about chancel repair liability – which is the obligation to repair the chancel of a parish church that may affect some landowners.
	Where can I find the Consultation Paper?	The full Consultation Paper along with other documents, can be found at https://lawcom.gov.uk/project/chancel-repair-liability-and-registration/ .
	What happens next?	After reviewing all responses, we will decide on our final recommendations for law reform, which we will publish in a final report.

THIS SUMMARY

This Summary explains what the project is about and sets out the core issues with which the consultation paper is concerned. It does not summarise everything that is in the consultation paper.

Detailed discussion and all of our reform proposals can be found in the full consultation paper

Where we mention our consultation paper in this Summary, we are referring to our full Consultation Paper on Chancel Repair Liability and Registration.

Chancel Repair Liability and Registration

We are undertaking a project on chancel repair liability and its registration, and have published a consultation paper.

The issues discussed in the consultation paper are both historically and legally complex. Readers are welcome to read the full analysis by starting at the beginning of the consultation paper and proceeding all the way through. But if readers prefer to read a shorter and simpler version of our historical and legal analysis, they are invited to begin reading from Chapter 6 of the consultation paper.

The summary in this document is a further distillation of our work. The full consultation paper is available on our website at <https://lawcom.gov.uk/project/chancel-repair-liability-and-registration/>.

Chancel repair liability (“CRL”) is an obligation to repair the chancel of a parish church whenever it falls into disrepair. The “chancel” is the eastern end of the church, where the altar is found. It is often divided from the main body of the church by a step.

Historically, in England and Wales, the obligation to repair the chancel sat with the parish priest. The parishioners were responsible for maintenance of the rest of the church.

CRL is attached to most parish churches that were built prior to the Reformation, which was the break between the Church of England and the Roman Catholic Church during the reign of Henry VIII.



Picture of a chancel taken from the main body of the church.

Financial Impact of Chancel Repair Liability

The costs of repairing the chancel of a church can be considerable. An example of that is a case involving Mr and Mrs Wallbank and land in the parish of Aston Cantlow, Warwickshire.

Aston Cantlow Parochial Church Council v Wallbank¹

Mr and Mrs Wallbank were the owners of Glebe Farm in the parish of Aston Cantlow, which Mrs Wallbank had inherited from her parents in 1974. Glebe Farm consisted of about 180 acres of land, some of which was subject to “the repairs of the chancel of Aston Church.” St John the Baptist Church in Aston Cantlow dates back to the 13th century and is known for being the church in which William Shakespeare’s parents, John Shakespeare and Mary Arden, were married in 1557.

By 1994, the chancel of the church was in disrepair and the Parochial Church Council decided to exercise its rights against those liable. The Wallbanks were initially pursued for around £95,000 in 1994. The Wallbanks fought the claim through the High Court, Court of Appeal, and House of Lords (now the Supreme Court). They argued that enforcement of CRL breached their right to private property under Article 1 of the First Protocol of the European Convention of Human Rights and the Human Rights Act 1998. They lost.

The final repair bill was assessed by the High Court in 2007 to be nearly £189,000 (plus VAT). The Wallbanks were also required to pay around £250,000 in legal costs. They ended up selling their home. In order to ensure that the property was marketable and that subsequent owners would not be liable, the Wallbanks spent a further £37,000 to buy out the liability.

The existence of CRL also adds to the costs of conveyancing in general.

- 1) When dealing with the purchase of land, many conveyancers arrange for a chancel repair search to be carried out. These searches involve the checking of parish records to assess whether the land being acquired may potentially be subject to CRL. We understand that searches typically cost £30 to £40 but can cost more than that.
- 2) Additionally, or instead, conveyancers arrange for chancel repair liability insurance to be taken out in many transactions. CRL insurance can be as little as £15 but the price will vary depending on the insurer’s risk assessment and whether a CRL search has been obtained.

Whilst the costs of chancel repair searches and insurance for a single transaction may, in general, be seen as modest, they cumulatively add millions of pounds each year to the costs of property transactions across England and Wales.

The Problem

On 13 October 2013, there was a change in the law which affected CRL and registered land. From that date, CRL ceased to be an “overriding interest” under the Land Registration Act 2002 (“the LRA 2002”).

It was thought that, from 13 October 2013, if CRL was no longer listed as an overriding interest, then the LRA 2002 would apply to it as it applies to interests in land in general. It was thought that CRL would need to be protected by entry of a notice in the land register in order to be enforceable against a purchaser of registered land.

Land Registration Act 2002 – The LRA 2002 is the statute that currently governs registered land in England and Wales. It governs the land register, which aims to record all details of land ownership across England and Wales.

Registered land – Land and its ownership which has been registered on the land register, maintained by HM Land Registry.

Overriding interest – In the context of the land registration regime, an overriding interest is a right that affects registered land and that automatically binds purchasers of the land even if the right has not been registered.

However, the law governing CRL is obscure and uncertain. There may be doubts about whether the LRA 2002 applies to CRL in the way that was expected. Although CRL is no longer an overriding interest, purchasers of land still routinely obtain chancel repair searches or chancel repair insurance, even where no liability is registered against the title.

This uncertainty in the law is explored further in Chapter 5 of the consultation paper.

The History of Chancel Repair Liability

CRL was historically a personal duty on a type of parish priest known as a “rector” (or “parson”). A rector was a parish priest who was given property to provide a living and to support his work in the parish. This property consisted of a residence, areas of land (known as “glebe”), and a right to collect “tithes” (a form of ecclesiastical tax involving taking a tenth of the produce of land in the parish). The rector was required to use the profits from this property to keep the chancel of the church in good repair.

The religious living of a rector – the religious office together with the supporting property – is called a “rectory”. Before the Reformation many rectories in England and Wales had been acquired by monasteries and other religious houses. The monasteries enjoyed the profits from the rectorial land and tithes, but they were also bound by CRL.

During the Reformation, Parliament dissolved most of the monasteries in England and Wales and transferred their property to the Crown. This

transfer included the religious livings, or rectories, owned by the monasteries.

The Crown gave many of these rectories to lay persons (persons who were not members of the clergy). These recipients were called “lay rectors”. As they were not clergymen, they could not perform the role of a parish priest and were required to appoint deputies to minister to the parish. These deputies were known as “vicars”. But lay rectors still had many of the rights and obligations that had belonged to the monasteries and to parish priests before them, including CRL.

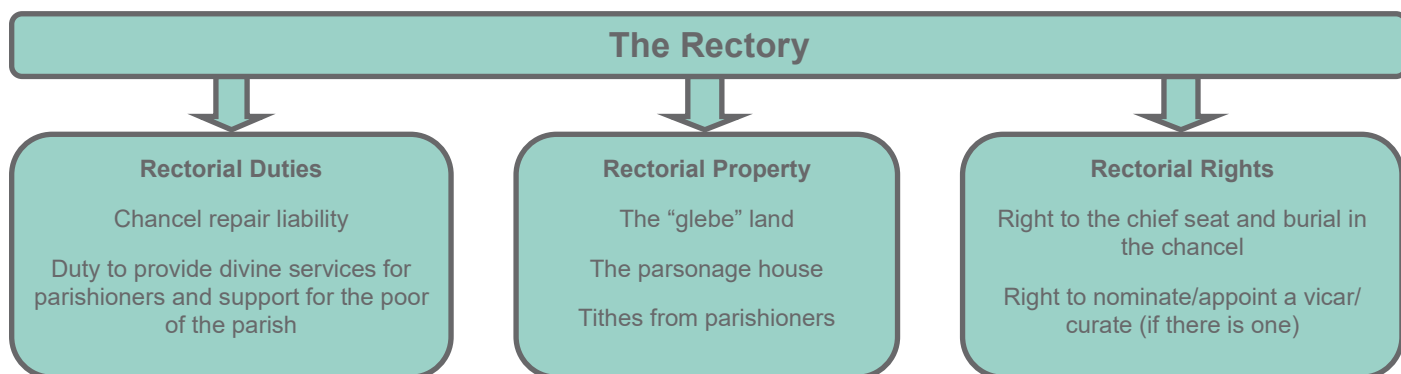
There were changes to the nature of lay rectories over the centuries following the Reformation. A substantial amount of the common land enjoyed by communities in England and Wales was enclosed by a series of Inclosure Acts from the 17th to the 19th century. Lay rectors’ rights over common land (including rights to tithes) were replaced with grants of land. Tithes were then abolished by a sequence of Acts, beginning with the Tithe Act 1836.

Enclosure – The Inclosure Acts were a series of Acts from the 17th to the 19th century which privatised (enclosed) lands of common across England and Wales.²

Most importantly, unlike “spiritual” rectors (rectors who were members of the clergy), lay rectors were free to sell or divide up their rectorial property. Many lay rectories were affected by the Inclosure Acts. By the 20th century, much of the land that had belonged to lay rectories had been divided and sold to separate owners.

There are some difficult legal questions about what happened to CRL when lay rectories were divided. We examine these questions in Chapters 3 and 4 of the consultation paper.

The structure of a rectory



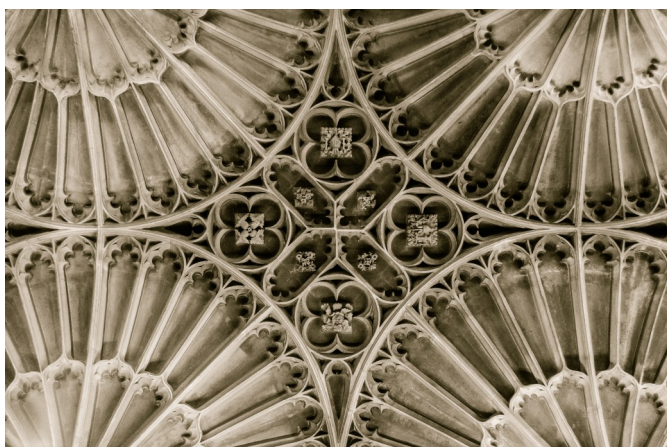
The History of Chancel Repair Liability Registration

For more than 100 years, CRL was treated as an overriding interest under land registration statutes. (It was first listed as an overriding interest in the Land Transfer Act 1897.) This changed with the LRA 2002, but the history of how the LRA 2002 came to deal with CRL is complicated.

From 1995, a joint working group between the Law Commission and HM Land Registry began reviewing how the Land Registration Act 1925 could be replaced and updated by a new Act. This project resulted in the publication of a report and draft bill (Land Registration for the 21st Century: A Conveyancing Revolution) in July 2001.³

In May 2001, two months before the report was published, the Court of Appeal gave judgment in *Aston Cantlow Parochial Church Council v Wallbank*.⁴ The Court of Appeal held that enforcing CRL was unlawful (as a breach of the Wallbanks' right to enjoyment of property under Article 1 of Protocol 1 to the European Convention on Human Rights). Consequently, the 2001 report said nothing about CRL. The LRA 2002, which implemented the bill published with the report, also said nothing about CRL.

However, in June 2003, the House of Lords reversed the decision of the Court of Appeal, and the need to address CRL re-emerged.⁵ The LRA 2002 had not yet come into force. As a result, the Lord Chancellor made an order in September 2003 which amended the LRA 2002.⁶ The order specified that CRL was to remain an overriding interest until 13 October 2013. But the order made no other changes to ensure that CRL would be registrable under the LRA 2002 after that date.



Dissolution of monasteries
Rectories seized by the Crown and sold to private landowners.

1537-1547

Inclosure Acts

Common land is privatised, and lay rectors are given plots of land as compensation for extinguished rights to tithes.

1603-1876

Abolition of tithes

Under a series of Tithe Acts, tithes are commuted into tithe rentcharges, which are then subsequently abolished.

1836-1936

1862

Land Registry Act 1862

Creation of the land registration system.

Land Transfer Act 1897

CRL first listed as an "overriding interest".

1897

1925

Land Registration Act 1925

CRL continues to be listed as an "overriding interest".

Chancel Repairs Act 1932

The Act allows CRL to be enforced in the county courts, removing the jurisdiction of the ecclesiastical courts.

1932

May 2001

***Wallbank v Aston Cantlow PCC* [2001] EWCA Civ 713**

The Court of Appeal decides that CRL is unenforceable.

Land Registration Bill

The Law Commission and HM Land Registry publishes a draft bill on land registration which does not refer to CRL.

July 2001

Feb 2002

Enactment of the LRA 2002

The Act implements the 2001 Report's recommendations and does not refer to CRL.

***Wallbank v Aston Cantlow PCC* [2003] UKHL 37**

The House of Lords reverses the Court of Appeal's decision.

June 2003

Sept 2003

LRA 2002 (Transitional Provisions) (No 2) Order 2003

The LRA 2002 is amended to include CRL as an overriding interest for ten years until 13 October.

The Legal Nature of Chancel Repair Liability

The local parochial church council (“PCC”) of each parish is the church body with the authority to enforce a CRL. Following a legal case in 1955,⁷ it is widely believed that, if a person buys a piece of land that formerly belonged to a rectory, they automatically become bound by CRL.

CRL is a personal and several liability.⁸

- 1) The liability is personal to the landowner: it is not limited to the value of the landowner’s land. Legally speaking, a parochial church council can ask a person to pay more for chancel repairs than their property is worth.
- 2) The liability is several: if many landowners are all liable to repair the same chancel, the parochial church council can pursue any one of them for the full amount. The landowner who is required to pay can then try to recover a contribution from the other affected landowners.

However, the legal nature of CRL is unclear. In Chapters 3 and 4, the consultation paper explores some doubts about whether CRL does automatically bind anyone who acquires former rectorial land. But there is also a more important uncertainty. It is unclear whether CRL is still an obligation on lay rectors (an obligation of the office of rector) or whether it has become a direct burden on rectorial land.

This uncertainty about the nature of CRL is important because the LRA 2002 applies to “interests affecting estates in land”. It is not clear that the LRA 2002 applies to personal obligations on officeholders. So, if CRL is still an aspect of the office of rector, then it is arguable that it is not registrable under or affected by the LRA 2002. It is therefore not certain whether purchasers of registered land may still be bound by unregistered CRLs, despite the change in the law from 13 October 2013.

We examine the legal nature of CRL in detail in Chapter 5 of the consultation paper.

A summary of our analysis is provided at paragraphs 6.6 to 6.12 of Chapter 6.

Our Proposed Reform

In Chapters 6 and 7 of the consultation paper, we set out provisional proposals to amend the LRA 2002. We propose to clarify that a purchaser of registered land will only be bound by a CRL if it is noted against the title to the land. We also wish to clarify the effect of the first registration of an unregistered estate in land on CRL.

We provisionally propose that the amendment of the LRA 2002 should apply retrospectively, ensuring that the amendment applies to any transfers of registered estates or first registrations of unregistered estates that have occurred since 13 October 2013.

Our aim is to put to an end any doubt that exists about the effect of the land registration regime on CRL by making certain it does what it was understood to do in 2003 when the LRA 2002 came into force.

Chancel Repair Liability in Wales

We are keen to hear from any consultees in Wales who are subject to a CRL or have the benefit of a CRL. The Welsh Church Act 1914 ended the application of ecclesiastical law in Wales. Although the 1914 Act preserved some types of CRL, it appears to us that the scope of CRL in Wales was significantly reduced. We would, therefore, welcome information about the extent of any liabilities that still survive.

We discuss CRL in Wales in Chapter 4.

What We Want to Know from You

We are seeking views on our provisional proposals and have asked a number of questions in Chapters 6 to 8 of our consultation paper. Primarily, we wish to hear consultees’ views on whether our proposals will create more certainty in the law governing CRL. In Appendix 3 to the consultation paper we have set out a clause which could be enacted by Parliament to effect the change in the law we have proposed. We would welcome views on that also.

We invite all consultees to provide us with information about any experiences or encounters they might have had with CRL, or any matters directly related to it.

Endnotes

1. (2001) 81 P. & C.R. 14; [2001] EWCA Civ 713; [2003] UKHL 37; [2007] C.L.Y. 1082.
2. The Inclosure Acts use the old-fashioned spelling of “Inclosure”, rather than the modern spelling “Enclosure”.
3. (2001) Law Com No 271.
4. [2001] EWCA Civ 713.
5. [2003] UKHL 37.
6. The Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003 (SI 2003/2341).
7. *Chivers & Sons Ltd v Air Ministry* [1955] Ch. 585.
8. Following *Wickhambrook Parochial Church Council v Croxford* [1935] 2 KB 417.

