

Notes of Meeting with Commissioners at Sintons, Newcastle 12 December 2011

Present: Richard Pratt, Kevin Roberts, (Carlisle)
Peter Robinson (Archdeacon of Lindisfarne),
Jane Lowdon, (Sintons)
Alan Guthrie-Jones, Matthew Crowe, Shaman Durrant (Church
Commissioners)

Introduction: Lay Rectors

The liability for the repair of chancels lies with Lay Rectors. It may come from either a former right to receive tithes (i.e. based on Rights) or ownership of rectorial land (based on Land). There are some situations where the rights from the tithe and the rectorial land are merged, so producing a third category.

Lay Rectors are typically liable for some proportion of the chancel repairs and they will also be liable for the same proportion of the insurance of the chancel. When they do need to make a repair it must be a “good and substantial repair without ornament”, so that PCCs should insure ornaments themselves even when there is a Lay Rector – this would include stained glass.

Legal basis

The original piece of law was the Tithe Act 1936. Then there was the Aston Cantlow case in the late 1990s; in this case the family had acquired the land ‘for a song’ because it was known that the land had liabilities, although in fact the PCC did not know that. The Solicitors for the family must, at some point, have informed the PCC about the duty of the owners to repair the chancel and the PCC then sued the owners for a very large sum of money. They appealed on a Human Rights basis that they had the right to enjoy their property unhindered and they lost after several Appeals. One result of that case was a 2002 Land Registration Act, which laid down that the **chancel liability based on land had to be registered by October 2013**. If it is not registered by then, the current owners will still be liable but when they sell it new owners will not.

The tithe liability for chancel repair is unaffected and stays forever, but the tithe liability is usually held by some corporate body, like an Oxford or Cambridge College, a Dean and Chapter, or the Church Commissioners. This liability for chancel repair is an issue for HLF and English Heritage Grants, for example, because from their point of view somebody else, not a charity, should pay for the repair. The Commissioners are trying to persuade HLF and English Heritage to exercise some clemency in this matter, but do not have high hopes. So, when applying for a grant, applicants should only say that there is a Lay Rector if they really do know that there is a Lay Rector, otherwise they should put down “not known”.

Records of Ascertainment

The 1936 Tithe Act meant that the Tithe Commissioners did a huge amount of work producing Records of Ascertainments for parishes. These are kept in the Record Office at Kew. Some will also be held in parishes themselves still, and some will be held in local Record Offices. A parish would only have a Record of Ascertainments if there were a tithe. In 10% of the cases the chancel liability is purely land based and these cases will not show up, but on the whole these cases are corporations like the Oxbridge Colleges, the Cathedrals, the Commissioners and the great land owners.

The Records of Ascertainments show four types of Tithe: a), b), c) and d). a) and b) are not land based and so if these are the only tithes, there is no need for registration. It is only c) and d) tithes which are land based (because they are merged in land out of which the tithe arose), and which will have to be registered and which concern us.

The Records of Ascertainments give valuations to all of the fields in £.s.d. and these are converted up to pennies and then expressed as a percentage in the Church Commissioners' documents. The Records of Ascertainment refer to field numbers on tithe maps and the tithe maps are kept at the National Archive, although there are some at local record offices.

Liability: the Church Commissioners

The Commissioners will register land where it is theirs except that they cannot register the land when they have sold it, even though they will normally honour the liability for the Chancel repair that went with the land before they sold it (unless it is found that the liability was specifically passed on). In this case, as it is the PCC who have an interest (in the money from the liability), it is the PCC who must register. In this sort of situation probably the new landowner would need some reassurance that they were not going to be hit for a chancel liability but that the Commissioners would continue to honour their liability.

The Commissioners currently help Cathedrals with grants towards their liability for insurance for chancels and for repairs to chancels – a two-thirds grant in both cases. They cannot guarantee that this grant scheme will last for ever.

In looking at this work we can leave the Commissioners' liabilities until last as we know they will honour theirs on their land or land they have owned in the past. It is unlikely that the Commissioners will finish their registration of their own land by the end of 2013.

Liability : others

The liability for those now owning the land with the liability is joint and several, in other words all of them owe everything in pure land cases, or within one particular tithe field. There does seem to be a moral difference between people who buy land at

a reduced price knowing that there is this liability and people typically, for example on a housing estate, each owning a small piece of the whole, and for whom the whole thing comes out of the blue.

PCCs and pursuit of liability

There are some questions about who it would be proper for PCCs to pursue for chancel liability. Would we go after landowners on the basis of ability to pay? The advice from the Charity Commissioners is that we do not have to pursue those who do not have the ability to pay, though we would need to provide details and get a Section 29 waiver. The Charity Commissioners might also accept pastoral reasons if the PCC had debated it and made a minute of this and had the backing of the Archdeacon.

Should we take the line that the church should only expect support from the church and not look to those outside the church to pay for it? On the other hand the church is a charity, whose life is woven into the life of the country. We have a responsibility to all our parishioners and we are responsible for a huge proportion of the historic buildings of our nation, without very much national help; is it so very wrong that they should fulfil their responsibilities, where there are some, to us?

If no one in the parish knows of a Lay Rector and nobody has paid a penny for 50 or more years, it is probably not worth digging things up and the answer to the question about “is there a Lay Rector” would be “none known”.

Registration

The implications of registration are:

1. Registration means that the liability lasts for ever. This might mean that you had felt it appropriate to pursue a particular person for their liability now, but in subsequent years when that person had sold on to those whom it was not appropriate to pursue, we would still be stuck with it and so would they.
2. Registration will potentially reduce the value of the land.
3. There could be pastoral and mission reasons for not pursuing Chancel Repair Liability – doing so is unlikely to endear us to those against whom we make a claim.
4. If the PCC researched the liability and discovered that there was one big landowner and a number of little ones, would it be moral or appropriate to only go after the one big one? The Charity Commissioners and the Law perhaps might accept that the cost of pursuing the large number of small landowners meant that it was not pragmatically worth doing, whereas the cost of pursuing one single large landowner was definitely worth doing. So the Charity Commissioners would not be enthusiastic about a blanket waiver; they would be more likely to be sensitive to cost arguments than pastoral arguments. PCCs could decide not to pursue below a certain percentage, simply because of the cost of researching and registering land. There are difficulties about being prescriptive from the centre – what happens if the Archdeacons give wrong advice? On the other hand, the PCC’s are going to look for a steer from the Archdeacons.

5. The Commissioners' view is that parishes may need to pay a researcher to do this. It has taken two professionals with some very fancy software months to do the more complicated cases.

Resources

The National Archive do a good leaflet. It is also on the disk supplied by the Commissioners. James Derriman has written an excellent book, "Chancel and Repair Liability: How to Research it". You can get it from Amazon at about £20.

Next Steps for Archdeacons

1. Write to all parishes, asking if they know of Lay Rectors (NB. not the same as Patrons).
2. Get parishes to find their Records of Ascertainments or otherwise their land-based lay rector. If there is no Record of Ascertainments, and no local knowledge of a lay rector, then there is nothing to do. If there is a Record of Ascertainments we only need to take action whether there are c) tithes and d) tithes.
3. The next step for a tithe case would be to consider whether the percentage in the c) and d) tithes makes the chancel repair liability worth pursuing against those people. As we have said already, if it is a very small percentage (less than 2% for example) then probably not worth it.
4. The next step is to get the tithe map for the parish and relate it to a current Ordnance Survey map. If you are going to register you need to draw the land in question neatly on an Ordnance Survey map to a scale of 1 : 1250 in urban areas and 1 : 2500 in rural areas. From that point on Jane Lowdon will know what to do. Solicitors are able to present claims to the Land Registry directly. Lay people would have to go in person to Plymouth.
5. The next step for a pure land case would involve drawing the land neatly on an Ordnance Survey map and contacting Jane Lowdon.

Numbers

The Law Commission estimate that 5,000 churches have chancel repair liability. The Commissioners think that their liability covers about 1,000 of those, so there are 4,000 other chancel liabilities to research.

Notes

On the Commissioners' paperwork QAB stands the Queen Anne's Bounty; CRL stands for Chancel Repair Liability; the fourth column is the total number of pence.

In the National Archive we are looking at the IR series. IR29 are the details of the Tithe Districts and IR30 is the maps series.

The definition of a chancel is not absolutely clear. For example, if the original chancel had been destroyed or demolished and then rebuilt, is it still the chancel for which the liability existed? The chancel is normally defined as having 3 walls and a roof, so the chancel arch is not part of the chancel.

For redundant churches the Pastoral Measure provides that all liability (except of DBF for the liability for the building generally) ceases.