

CHANCEL REPAIR LIABILITY

ADVICE NOTE

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Recent case law and legislation have led to widespread confusion and panic about chancel repair liability, and a peak in interest in insurance. But are the policies really worth their cost to clients?

Chancel repair liability (CRL) has been much in the news following the judgement in the *Aston Cantlow v Wallbank* case, which was certainly a surprise to many people and a tragedy for the landowner concerned. However, do the very special and unusual circumstances of that case warrant the widespread panic it appears to have created?

By clever marketing, a massive business has been created for CRL insurance which is probably out of all proportion to the actual risk posed to the average homebuyer, particularly in areas of dense urban development. The Law Society's campaign for the abolition of CRL seems to have made little or no progress, and consumers are being put under pressure to purchase policies which may not provide any worthwhile protection or even cover the very remote risk of liability that exists in most cases.

What is more, misunderstandings about the legal status of CRL seem to have become widespread, even among solicitors.

I recently undertook the sale of the leasehold of a flat in London. Not only was the property some distance from the church referred to in the chancel search but it was separated from it by hundreds of terraced houses, a public open space and a mosque. Even more importantly it is almost certainly legally impossible for a CRL to attach to a leasehold interest. Probably the only liability to the owner of the flat would have been if a claim were made against the freeholder, who then tried to recover it through the Lease from the individual flat owner; the buyer's conveyancer's real concern should have been whether the freeholder had either the resources to pay any claim in the unlikely circumstances one was made, or some form of insurance policy. However, she insisted that my client pay for a CRL insurance policy which would not, in my view, have reimbursed the leaseholder for any additional service charge or, more importantly, provided any protection to any diminution in the value of the flat as a result of a liability.

Unfortunately, there has never been a comprehensive register of liability for chancel repair. A search can only reveal there is definitely no liability. Where it identifies a possible liability, this confers no certainty, either that there would ever have to be a payment, or, if there were, how much would have to be paid. CRL is not a charge on the land. The liability is the landowner's personal responsibility. The parish claiming the payment has no recourse to the land. The personal liability arising from the ownership of a particular parcel of land but not charged on it is analogous to council tax liability.

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Even a landowner who knows that he is responsible for the cost of chancel repairs can have no idea of the extent of any future liability, because it would depend entirely on the nature and extent of the repairs required.

There also seems to be some uncertainty within the profession about the implications of the Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003. It provided that CRL retained its status as an overriding interest, but only for a period of 10 years. This does not mean that CRL will then be completely abolished – the order neither confers, nor destroys the substantive liability. Its effect is limited to the effect on the liability of the registration. From 13 October 2013, CRL will only be enforceable against new first registered proprietors (under sections 11 and 12 of schedule 1) and new purchasers (under sections 29 and 30) if it is protected by an entry on the register – such registration would confer permanent protection. However, if it is not protected on the register, **any purchaser** after October 2013 will buy the land clear of any potential liability. If a piece of land which is subject to CRL is presently unregistered and remains unregistered, after 13 October 2003 it will remain subject to that liability.

In the case of the flat in London, the position after October 2013 is probably of academic interest only, because the owner of the freehold (a residents' company) is unlikely ever to sell the freehold, so there will be no purchaser to benefit from non-registration.

If the profession is to retain its position in the conveyancing market, it can only do so by providing reliable, informed and easily understandable professional advice, based on a proper understanding of the law and the realistic risks to a client from a particular transaction.

'Tick box' conveyancing is not based on a proper understanding of the law or any intelligent analysis of risk, and which relies upon the indiscriminate sale to consumers of insurance products, will have serious consequences for the profession and spell the end of our involvement in the conveyancing process as we know it.

If you would like any further information relating to any of the above, please contact Paul Marsh on 01483 861848 or p.marsh@downslaw.co.uk.