

Chancel Repair Liability and Parochial Church Councils

Stephen Crossley
Diocesan Registrar

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naphthens
solicitors

Introduction

- Legal status of Parochial Church Councils
- Legal status of PCC members
- Fiduciary duties of PCC members
- Chancel repair liability as an asset
- Three stages of enquiry
- If CRL exists should we enforce?



Legal status of PCCs

- The council is a body corporate by the name of the parochial church council of the parish for which it is appointed, and has perpetual succession
- PCC therefore has its own 'legal personality'
- See section 3 of the Parochial Church Councils (Powers) Measure 1956



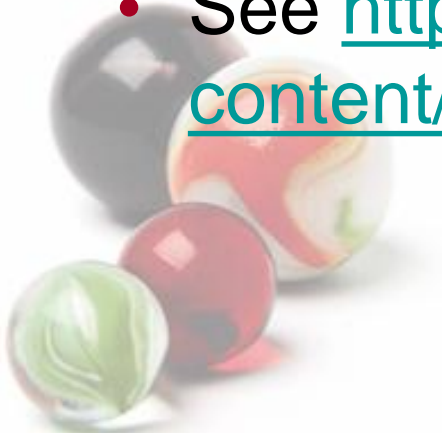
Legal status of PCCs

- PCCs are also charities and are accepted as such by the Charity Commission
- PCCs with an annual income of over £100,000 are required by law to register with the Charity Commission



Legal status of PCC members

- Members are in a position analogous to trustees of trust property
- Subject to fiduciary duties
- Must act in the best interests of the PCC
- Duty to protect and preserve the PCC's assets
- See <http://www.parishresources.org.uk/wp-content/uploads/Trusteeship-leaflet-8pp.pdf>



Legal status of PCC members

- If a PCC member breaches their fiduciary duty they may be required to make good any loss incurred as a result of that breach
- May also face an enquiry by the Charity Commission
- Possible sanction of removal from office



Chancel repair liability as an asset

- The right to enforce chancel repair liability is vested in the PCC
- The right to enforce therefore represents an asset of the PCC



Fiduciary duty to investigate

- Prima facie a PCC must:-
 - (a) take reasonable steps to investigate whether a liability to repair exists in relation to any church within their parish and;
 - (b) if it does, register and enforce that liability



Cost of investigating

- Duty to protect assets of a charity does not require charity trustees to expend more on protecting an asset than it is likely to be worth
- It is however doubtful that the cost of carrying out initial investigations as to the position would ever be so high as to justify not investigating
- Therefore a PCC must, at the very least, carry out an initial assessment of the possible existence of CRL in the parish



Is it likely that CRL exists in the parish?

- As a general rule, chancel repair liability affects churches built before 1840 or that have been rebuilt after 1836 on the site of an earlier church
- If your parish church does not fall within these two categories it is highly unlikely that CRL will exist in your parish



Churches built after 1840 not on the site of an earlier church

- If your church was built after 1840 not on the site of an earlier church a minute must be made at your next PCC meeting to record that you have considered the issue of CRL in your parish but because of the unlikelihood of its existence you have decided not to make any further enquiries



Churches built before 1840

- If your church was built before 1840 it will be necessary for the PCC to conduct investigations to ascertain whether CRL exists in the parish



Churches built after 1836 on the site of an earlier church

- If your church was built after 1836 on the site of an earlier church it will be necessary for the PCC to conduct investigations to ascertain whether CRL may exist



If no CRL is found

- If after conducting its investigations the PCC establishes that there is no CRL, evidence of its investigations must be kept and a minute made in the minutes of the next PCC meeting recording the outcome of the investigations



If CRL is found in favour of another church

- If CRL is found in the parish but the benefit is in favour of another, usually more ancient, church outside of the parish the PCC will have to decide whether it should notify the church that enjoys the benefit of CRL in its parish



If CRL is found in the parish

- If the PCC identifies CRL in its parish it must decide whether to enforce that liability
- Prima facie members of the PCC are under a fiduciary duty to protect the asset by registering their interest in the land with the Land Registry before 13th October 2013
- However, certain factors should be taken into account when deciding whether to enforce the liability



Cost balancing

- If the cost of identifying and registering the interest of the PCC is in excess of the likely benefit to be received then a decision may be made not to enforce the liability
- For an example of how to perform a cost benefit analysis please see the guidance produced by the Registry in August 2012

<http://www.blackburn.anglican.org/images/Information/201208%20chancel%20repair%20liability.pdf>



Adverse impact on the mission of the church

- If registering the liability could hamper the PCCs work either by adversely affecting its ability to pursue its object of promoting in the parish the pastoral mission of the church or alienate potential financial support the PCC may decide not to pursue CRL in its parish



Lord Scott in *Aston Cantlow*

“The PCC could have decided not to enforce the repairing obligation. They could have so decided for a number of different reasons which, in particular situations, might have had weight...They may have taken into account excessive hardship to Mr and Mrs Wallbank in having to find £95,000. Trustees are not always obliged to be Scrooge.”

Lord Scott at 591 of [2004] 1 AC 546

But...

- Before a PCC can decide not to enforce CRL in their parish it **must** carry out a ‘balancing exercise’



Balancing exercise

- The greater the amount of chancel repair liability, the greater the pastoral or financial damage that would be needed to justify not enforcing it
- So the potential financial benefit must be calculated **before** any other factors are taken into account



Balancing exercise (continued)

- Is the subject of the liability an individual or a corporation or an institution?
- *Enforcement against corporations or institutions is less likely to give rise to adverse pastoral or financial consequences*



Balancing exercise (continued)

- Could failing to enforce CRL affect funding from other sources such as English Heritage?
- *It is a real possibility that English Heritage will not grant aid to PCCs to repair a chancel if a liability that exists in the parish has not been registered and or enforced*



Balancing exercise (continued)

- Is the subject aware of the liability?
- *If the subject is aware of the liability there is a reasonable possibility that they will be insured against the risk*



Balancing exercise (continued)

- When was the liability last enforced?
- Was the landowner aware of liability when he purchased the land?
- *These may be relevant considerations in so far as they might influence perceptions of the PCC's behaviour and thus the pastoral impact of a decision to register a notice and or enforce a liability*



Balancing exercise (continued)

- Having weighed these and other relevant factors carefully a PCC must make a decision whether or not to register and or enforce its interest in the subject land
- An approach could be made to the owner of the land subject to the liability to ascertain whether they would be prepared to 'buy out' the liability
- PCCs may wish to obtain legal advice or consult the Charity Commission



Charity Commission

- If a PCC considers that it would be contrary to its interest to enforce CRL or to register notice of it the PCC should seek formal advice from the Charity Commission on whether not enforcing the liability would be consistent with the fiduciary duties of its members



s110 Charity's Act 2011

- Under section 110 of the above Act the Charity Commission has power to give the trustees of a charity its,

“opinion or advice on any matter affecting the performance of their duties as such”

- Trustees who act in accordance with their advice are deemed to have acted appropriately
- Simple way to obtain protection against the consequences of not enforcing CRL but only if the Charity Commission agrees with your decision not to enforce!



s110 Charity's Act 2011

From the Charity Commission's website

“The Charities Act allows us to give general advice to charities, but also allows us to give specific formal advice. The trustees of a charity, including an exempt charity, can write to us for formal advice about whether they would, by taking a particular course of action, be acting properly as trustees.”

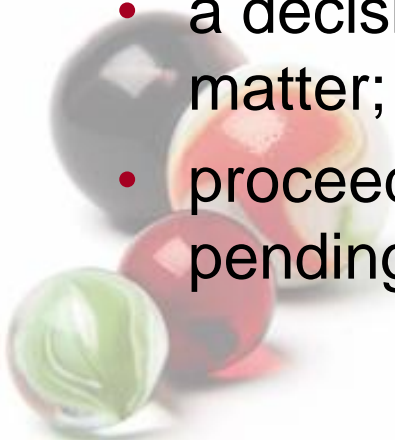


s110 Charity's Act 2011

From the Charity Commission's website

The trustees, in acting on that advice, are deemed to have acted in accordance with their trusts unless they know or have reasonable cause to suspect that:

- the advice was given in ignorance of material facts;
- material facts have changed since the advice was given;
- a decision of the Courts has been obtained on the matter; or
- proceedings to obtain a decision of the Courts are pending.



Deadline

- Notices of CRL **must** be registered before midnight on 12th October 2013



Next steps

- Was your church built after 1840? If so make a minute that no investigations into CRL are to be conducted
- If your church was built before 1840 or after 1836 on the site of an earlier church immediately commence investigations
- If no CRL found or the CRL found is in favour of another church keep evidence of your investigations and make a minute of the outcome



Next steps

- If CRL is found carry out the cost balancing exercise. If the cost of registering the liability exceeds the benefit do not proceed, keep evidence of your enquires and make a note in the minutes.
- If, after carrying out the cost balancing exercise, the value of the liability exceeds the cost of registering it perform the balancing exercise



Next steps

- If after performing the balancing exercise the PCC determines that the financial value of the liability outweighs any adverse pastoral or financial impact, the PCC **must** register its interest in the land before 13th October 2013



Next steps

- If after performing the balancing exercise the PCC determines that the adverse pastoral or financial impact outweighs the financial value of the liability the PCC should make a section 29 application to the Charity Commission and keep a record of the advice it receives
- If the Charity Commission does not agree with the PCC's decision not to enforce the PCC should register their interest in the land



Questions?

