

## **Chancel repair liability update**

Some of you may know people who, when buying a house in the last few years, have been advised to take out insurance against the land having chancel repair liability attached to it. This is an ancient liability, which attaches to pieces of land and makes the owner of the land bound to pay for all or part of the cost of repairs to the chancel at the altar end of the church. It re-surfaced in the national consciousness in the 1990s after rather more than a century of being very largely forgotten in most parishes, including this one. It has been a great worry to many householders, because although the conveyancers may tell you about it if you are moving and buying a different house (and insurers take a premium from you), the liability, if it is there, exists just as much in land which someone has owned for years and years. It has been an equal worry to the church, although from the other side of the equation from the householder. The church is the potential beneficiary, but to enforce the liability would be likely to come as a great shock to many affected and would probably cause expensive legal dispute, anxiety and hostility to the church. We are certain that some of the land in Ombersley carries this liability but it is not at all clear which, and nobody has mentioned it for a least 75 years, and perhaps much more. Fortunately, we have been able to persuade the Charity Commission that it is not in the interests of the church to resurrect this liability in this parish, and have been able to obtain from the Heritage Lottery Fund an acknowledgement that our decision not to do so will not affect our grant applications to the Fund.

### **Origins of chancel repair liability and tithes**

For those who are interested in legal and social history the tale of chancel repair liability is really quite absorbing. It begins in pre-mediaeval times with tithes; at its simplest a form of tax for the church based on what each patch of land could produce. The church would have no financial problems now if we all paid it a tax of one tenth of the annual value of our land, as everyone then did. Tithes were much reformed in the early nineteenth century when most were converted into another form of liability, and they were abolished almost completely in 1936. Some relics of them, however, escaped and survived as what is nowadays known as chancel repair liability. Historians may also be interested to know that the enclosure process which began in the late eighteenth century, by which land formerly used in common in villages was divided up amongst the landowners large and small, produced as a side effect some chancel repair liability which also escaped the statutory reforms. There are some other forms of this liability also, but these two are the ones which we know we have in Ombersley. The first carries a duty to pay a defined proportion of the repair

bill; the second carries a duty to pay all of it, and the payer would be left to try to recoup what he could from anyone else also liable.

### **The Parochial Church Council (PCC) dilemma**

A good story from a historical point of view this may be, but it does not take much imagination to see what havoc it could cause in a village where, we suspect, over a hundred pieces of land may perhaps carry one sort of the liability or another, without the owners having suspected it for about three generations at least and without it being possible to be sure about all the people liable. Both the General Synod of the Church and the Law Commission recommended complete abolition in the late 1990s, but the Government declined to accept the recommendation. This was in part because in some other parishes the liability had been well understood and openly accepted, for example where the payers were big educational or other institutions, such as Oxbridge colleges or indeed the Church Commissioners. Instead, the Government changed the law to make the liability registrable against the ownership of the land. That will solve the problem for future house-buyers, but it does nothing for those who are not moving and whose existing land is liable, and so it also does nothing for the church's problem on the receiving side of the equation. The PCC members are trustees for the church. Their duty is to take all reasonable steps to maximise its income. Did this mean a duty to enforce a long forgotten mediaeval liability, whatever the pastoral consequences ?

In Ombersley this has been a major worry for the PCC for the last three years or so, although without the publicity which one or two other parishes have generated. A way has been found to apply to the Charity Commission for a formal recognition that the consequences of enforcement in a particular parish would be so disastrous that it would be counter-productive and hence not the duty of the PCC as trustees. After a great deal of work, the Charity Commission has now accepted our case that this is our situation. The PCC might still have had to take the step of enforcing, if to decline to do so would queer our pitch when applying for grants for building repairs, chiefly from the Heritage Lottery Fund. Happily, the HLF has accepted that the Charity Commission decision means that it will not do so. This strategy has been made possible in part through the very helpful mediation of Sir Peter Luff MP and others at Westminster, an example of unsung but immensely valuable work behind the scenes.

This means that we are now able to report that the PCC will not take steps to enforce chancel repair liability. We hope very much that this will reassure parishioners.

The PCC regards its decision as a final one. Technically, it cannot bind its successors, and its decision not to enforce chancel repair liability does not in law remove that liability. So a theoretical possibility does remain that if conditions change radically a future PCC could conceivably revisit the decision, however improbable this seems. The only way the liability could be completely extinguished would be for the person liable to buy it off for a lump sum. The PCC has no intention of seeking this kind of payment, although it is willing to consider it if asked by a landowner to do so. For what we hope are obvious reasons, the PCC is not in a position to give legal advice and so cannot advise on whether a particular piece of land carries the liability or not. One of the reasons why the present decision has been taken is because of the uncertainty.

It has only been possible to arrive at this satisfactory position because of a great deal of hard work, in Ombersley chiefly by a well-known local historian, to whom the PCC is immensely grateful.

### **The next repair work**

The next big repair which the church needs is to the large east window behind the altar. This is of course in the chancel and would, without these decisions made by the Charity Commission and HLF, have meant a very expensive call on those who are liable. The need to pay for this essential repair (around £133,000) will not of course go away and it should be recognised that HLF will only offer a percentage of the required funds.

We shall, again, have to ask for meaningful contributions from all parishioners and others if the work is to go ahead. The PCC believes that this, our traditional route of fund raising, is preferable to having recourse to the unfortunate few who might have been liable under the medieval rules.

[When the present church was built (finished 1829) everyone who owned land in the village paid a three-shilling in the pound rate (15% of annual land value) for a number of years to meet the part of the cost not paid by Lord Sandys' ancestor, the Marchioness of Downshire. Taxation was very different then, largely by way of rates. There was no income tax from 1816 to 1841, but also no gift-aid relief against it.]

We trust you will continue to support us, as you always have.

AH.