THE LAW COMMISSION'S CONSULTATION ON CHANCEL REPAIR

The ChBA is a specialist bar association for barristers practising Chancery law. The Chancery field is very diverse, spanning finance, business, insolvency, property, intellectual property, trusts and estates, fraud, asset tracing, and specialist areas such as charities, pensions, and tax. The ChBA has a membership of more than 1,500 barristers practising in England and Wales.

The Chancery Bar Association (ChBA) welcomes this consultation on Chancel Repair. It agrees that chancel repair liability ("**CRL**"**) increases the time and cost of conveyancing for little practical benefit.**

Further, the ChBA would like to acknowledge the thoughtful and detailed analysis provided by the Law Commission's paper. The consultation paper ("CP") is impressive in its academic rigor which it translates into practical proposals for reform.

The ChBA sent a questionnaire to its membership on 24 September 2025 and has drawn on the expertise of its leadership team. Please find below the ChBA's responses to the questions posed at chapter 9 of the CP. We have only responded to questions which directly relate to the practice of our members.

1. **Are there any relevant authorities, canons, or legal or historical commentaries which the Law Commission has not considered in Chapter 2 ("*The origins of chancel repair liability*")?**

   The ChBA does not have any authorities to add to Chapter 2.

2. **Are there any relevant authorities, canons, or legal or historical commentaries which the Law Commission has not considered in Chapter 3 ("*Chancel repair liability after the dissolution of the monasteries*")?**

   ***Hoare v Osborne* (1865-66) L.R. 1 Eq. 585**: *The case concerns the charitable status of a bequest. It was held that a gift to repair the chancel is good charitable gift.*

3. **Are there any relevant authorities, canons, or legal or historical commentaries which the Law Commission has not considered in Chapter 4? ("*Later developments in the law governing chancel repair liability*")**

***Attorney General v Parr* [1920] 1 Ch. 339**: The case concerned the construction of a trust deed, dated 1620, which granted certain lands to trustees on condition that the rents and profits should be received and employed by the churchwardens of the parish. The issue before the court was whether the income could be applied to the general expenditure of the church (which included chancel repairs) in circumstances where the income was placed in the hands of the churchwardens who, to the grantors' knowledge, were not concerned with chancel repairs. Astbury J held that the income was applicable to general expenditure about the church including repairs of the chancel.

Re Welsh Church Acts 1914 & 1919 [1940] Ch. 607 (CA): The case concerned whether the claimants were "*lay impropriators*" within the meaning of s. 28 of the Welsh Church Act1914 and were therefore not liable for the repair of the chancel.

4. **We provisionally propose that the LRA 2002 should be amended to clarify that:**

> **(1) a notice is capable of being entered in the register of title in respect of chancel repair liability; and**
> **(2) chancel repair liability only binds a purchaser of a registered estate where it is recorded in the register (by entry of a notice) at the time of the purchase.**

Do consultees agree?

Yes. It reflects current perceptions of the position in law (and promoted by the 2003 Order and the 2013 expiry of CRL as an overriding interest). It also counteracts the adverse effect of publishing the technical legal issues which were not previously widely known.

There is not (yet) extensive litigation on the matter. This is perhaps because of the lack of resources amongst Parochial Church Councils ("**PCCs**"), the reputational damage of enforcement and the desire for compromise. The frequency of inquiries in conveyancing transactions (which take time and therefore cost money) and the outlay on insurance justifies this clarification.

The use of the notice procedure strikes a fair balance between the interested groups. PCCs should have acted in the period 2003 to 2013 and so the clarification by these means should not be disadvantageous (and any disadvantage will have been self-inflicted through long delay)

5. **9.5 We provisionally propose that the amendment of the LRA 2002 set out in Consultation Question 4 should operate retrospectively.**

Do consultees agree?

Yes, primarily for two related reasons: (i) it removes an even more recondite uncertainty of a period existing between regimes; and (ii) the proposals could otherwise mostly be redundant (PCCs having, presumably, protected most CRLs by notice in or before 2013, and the hypothesis at Para.6.38 ascribes far too high a degree of expertise to most PCCs – indeed, most PCCs were likely to have been advised that it was their duty to protect CRL by way of notice. Para. 6.39 is on point).

It will do no more than confirm what was commonly thought to be the case in any event.

9.6 We invite consultees' views about whether a retrospective amendment of the LRA 2002 could cause any prejudice or unfairness to anyone affected by or with the benefit of a chancel repair liability.

Do consultees agree?

There is unlikely to be any impact of this nature and the provision will give a higher degree of certainty than would otherwise have been the case, which is appropriate to the circumstances. We are not aware of any evidence to the contrary.

6. We invite consultees' views about the draft clause set out in Appendix 3, including about whether the clause could successfully implement our provisional proposals in Consultation Questions 4 and 5.

The amendment appears to be effective for the purposes intended.

7 9.8 We invite consultees' views concerning chancel repair liabilities in Wales, including about which (if any) bodies are still bound by these liabilities and whether chancel repair liability burdens any land in Wales.

We do not consider it appropriate for the ChBA to comment on the liabilities of individual bodies, but we have identified no basis for departing from the reasoning set out in the CP.

9.9 We invite consultees' views about whether our provisional proposals in Consultation Questions 4 or 5 for the reform of the Land Registration Act 2002 requires any modifications in relation to its application to land in Wales.

We consider that a consistent approach for England and Wales is appropriate in this case and minimises the room for further controversy. We note in this regard that land registration is not devolved to the Senedd Cymru (Para.6.46)

8 9.10 We invite consultees to tell us if they believe or have evidence or data to suggest that our provisional proposals in Consultation Questions 4 or 5 could

result in advantages or disadvantages to certain groups or based on certain characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).

We do not consider that any group would be particularly advantaged or disadvantaged. Indeed, given the great variety of religion and belief in England and Wales, the clarification and registration of a liability of general application which arises only in the context of the established church is considered generally beneficial.

9 **9.11 We provisionally propose that the Land Registration Act 2002 should be amended to clarify that:**

(1) **chancel repair liability only binds an estate following first registration where the liability is recorded in the register (by entry of a notice) during first registration; and**

(2) **a caution against first registration is capable of being lodged in respect of chancel repair liability.**

Do consultees agree?

Yes, as drafted. It is noted that this does not engage with the issue addressed in "Updating the Land Registration Act 2002" (2018) Law Com No 380 (Paras.7.43 and 7.66) relating to "*mistake*" and which we consider ought also to be implemented to maximise the utility of the currently proposed provision.

10 **9.12 We provisionally propose that the amendment of the Land Registration Act 2002 set out in Consultation Question 9 should operate retrospectively. Do consultees agree?**

9.13 We invite consultees' views about whether a retrospective amendment of the Land Registration Act 2002 could cause any prejudice or unfairness to anyone affected by or with the benefit of a chancel repair liability.

Our response to question 5 is repeated.

11 **9.14 We invite consultees' views about the draft clause set out in Appendix 3, including about whether the clause could successfully implement our provisional proposals in Consultation Questions 9 and 10.**

Save for the caveat in answer to question 9, yes.

12 **9.15 We invite consultees' views on whether our provisional proposals in Consultation Questions 9 and 10 require any modifications in relation to their application to Wales.**

No. We consider that a consistent approach for England and Wales is appropriate in this case and minimises the room for further controversy. We note in this regard that land registration is not devolved to the Senedd Cymru (Para.6.46).

13 **9.16 We invite consultees' views if they believe or have evidence or data to suggest that our provisional proposals in Consultation Question 9 or 10 could result in advantages or disadvantages to certain groups or based on certain characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation).**

Our response to question 8 is repeated.

14 **9.17 We invite consultees' views about whether the law governing unregistered conveyancing should be reformed to ensure that a purchaser of unregistered land is not bound by chancel repair liability unless it appears in an appropriate register.**

No. The impetus towards the making registration universal militates against further interference with unregistered conveyancing. Nor do we consider the issue hypothesised at Para.7.67 would warrant any changes: it is a remote possibility and could be resolved by closure of the registration gap (albeit that is a work in progress).

9.18 If consultees consider that reform is required, we invite consultees' views as to whether:
(1) chancel repair liability should be registrable as a local land charge under the Local Land Charges Act 1975;

It is noted that this is a convoluted solution requiring an exception to the usual working of LLCs (i.e. necessarily disapplying compensation – Para.7.68) and the end of the use of Notices (Para. 7.70 or additional exceptionality) which constitutes the usual and preferable solution by reason of transparency.

(2) chancel repair liability should not be binding on an estate that is registered for the first time unless a caution against first registration relating to the liability has been lodged under the Land Registration Act 2002; or

This appears an unnecessarily burdensome approach and would modify the nature of such cautions (Para. 7.72).

(3) chancel repair liability should be registrable as a land charge under the Land Charges Act 1972.

PCCs would be unduly burdened by this and LCA 1972 is sufficiently unsatisfactory as it currently operates without extending its range.

9.19 If any of these reforms were to be pursued, we invite consultees' views about what transitional period should be applied to give parochial church councils a reasonable opportunity to protect any chancel repair liabilities that benefit them.

If contrary to the above, one of these was implemented, then (1) and (3) would warrant a long transitional period (10 years by parity of reasoning with the 2003 Order). The use of (2) could be shorter, say three years, since it engages with the current legislation thought to be applicable.

Additional observations from the review team:

1. Para. 1.1 fn 2 and *passim*. The disestablishment of the Church in Wales was not quite comprehensive. At least one parish split between England and Wales (Llanymynech) voted to stay in the Church of England and remained in the Diocese of Lichfield under the provision of Section 9(1) of the Welsh Church Act 1914.[1]

2. Paras. 1.5, 4.5 and *passim*. – "*inclosure*" is sometimes used as a technical expression, referring to the legal action of allocating common land (and other land), rather than the physical act of "enclosure". See, for example, C. Jessel, A Legal History of the English Landscape (London, 2011) p.129 (and cf. "*impropriation*" and "*appropriation*" at para. 3.12).

3. Could this reform proposal now be wrapped up with giving effect to the previous proposals in "*Updating the Land Registration Act 2002*" (2018) Law Com No 380 (para.7.44 n.38)? After all, the LC is not actively promoting reform to unregistered conveyancing (see Chapter 7). Further, in respect of the interface between first registration of a CRL and the earlier report, the two could usefully be harmonised at this stage (see para.7.43).

4. The CP may prompt calls for abolition of CRL (which is outside the LC's remit, Paras. 1.47, 1.49 and 1.50), but it is not clear that there is much appetite to dispossess the Church of England in this way. It is even more unlikely that reform, outside the proposed (or other) changes to the LRA 2002, would command parliamentary attention (notwithstanding real issues arising at the coal-face, like at Para. 1.48[2]).

5. It is not clear that the LC will entirely succeed in its objective to remove all uncertainty, but it probably gets as close as it can do practicably (see Appendix 3 para. 3.10-3.12). The proposed changes to the LRA 2002 appear beneficial and broadly in keeping with its purpose (para.6.24f).

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[1] https://api.parliament.uk/historic-hansard/written-answers/1915/mar/02/welsh-church-bill-balloting#S5CV0070P0_19150302_CWA_36

[2] Of those issues (1) – whether CRL applies to certain land in fact - would be a matter that could be resolved in the First-tier Tribunal, Land Registration division, albeit at considerable cost