

CHANCEL REPAIRS



Some properties are burdened with an obligation to contribute to the cost of repair of the chancel of a local church. Sometimes this liability is clear from the Deeds; more often it is not. It is a very ancient obligation. For a long time the church took no steps to enforce this obligation and until quite recently reliance was placed on a Court of Appeal decision that such an obligation was contrary to the Human Rights Act 1998. This decision has now been overturned by the House of Lords and it is, therefore, quite clear that the church is entitled to enforce this obligation against owners whose land is subject to it.

Unfortunately the means of establishing whether a particular area of land is subject to such an obligation are uncertain. It is first necessary to identify the tithe area (under the Tithe Commutation Act 1836!) in which the property is located. Some of these tithe areas are entirely free from obligation but others are areas where some or all of the properties in the area will be subject to a potential liability. The problem is that these obligations were often imposed upon large tracts of undeveloped land which have since become the sites of towns and villages.

To protect buyers from having to make payments in these instances, solicitors can obtain an insurance policy against this liability. Your conveyancer will be able to advise you on this option.

The question arises as to who should pay the cost of the insurance. This is a matter of bargain between seller and buyer. Since the potential for chancel liability has only recently become generally known, sellers can fairly argue that this is not their fault. Buyers on the other hand can reasonably say that they expect to buy a "clean" property and if chancel insurance is required then the seller should pay for it.

Is this all anachronistic nonsense? The Law Society certainly thinks so since it is lobbying for the statutory abolition of this liability. In the meantime buyers should be aware that this is a problem which will not go away and could potentially cost a great deal of money – in the case of the man who challenged the liability in the House of Lords he ended up paying something like £300,000.