



 THE CHURCH
OF ENGLAND

CHURCH
COMMISSIONERS

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To All Diocesan Registrars (by email only)

Pastoral and Closed Churches
Department

Your ref:

Our ref: P/EXT/21

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Dear Registrars

Chancel Repair Liability and the Land Registration Act 2002

As most, if not all, of you will know, for the last few years we have been undertaking a project to research our chancel repair liabilities with a view to registering CRL where it is attached to land that we currently own.

The 2002 Act was timely in that many of our liability acceptances were long overdue a thorough review, with many not having been properly reviewed for over a century.

Our research is ongoing and all of you who asked for one have received a CD showing our CRL acceptances at the date of the production of the disk together with a series of background/advice notes aimed at helping PCCs in particular grapple with this extremely esoteric subject. We have also put a good deal of advisory material on our website at www.ccpastoral.org

In the baldest of summaries, our position from the Commissioners' perspective has hitherto been that we would seek to register any CRL arising from land that was still in our ownership (thereby sparing PCCs this often complex chore): We have probably registered about half of our existing owned land liabilities with research on the other half being in hand.

In many other cases, our researches have shown that the Commissioners retained much CRL on sales because the land in question was sold "free from incumbrances" or otherwise with an explicit indemnity to the purchasers in respect of CRL. In those cases, our position has been that we will continue to honour those liabilities unless and until it were brought to our attention after 13 October 2013 that the subject land had been sold after that date without CRL

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being registered against it.

As many of you will be only too painfully aware, PCCs seeking to fulfil their charitable duties by registering CRL (be it against the Commissioners' former land or otherwise) has in many cases had the most unfortunate consequences which were probably not foreseen by the then Government when the law changed in 2003. We are aware of legal actions being threatened against individual members of PCCs (and indeed the Commissioners) and of cases of pastoral breakdown that might take years to resolve. It is clear that huge amounts of Church volunteer time has been devoted to this exercise, the outworking of which has caused rifts among communities.

There is the added factor that Land Registry offices adopt different approaches to different aspects of this whole subject which has not helped our registration project.

Accordingly, I wanted you all to know that we are changing our policy with immediate effect whereby we are no longer going to seek to register CRL against land in our ownership. Instead, and if and when we are planning to sell some of our land, we will for the most part be prepared to offer binding Deeds of Indemnity to PCCs so that our acceptance of CRL will remain unchanged in their cases.

In order to maximise the benefit of this for PCCs, we have decided that any relevant indemnities will include not only land that we own at present but also land in our former ownership in respect of which we accept CRL because of earlier sales on a "free from incumbrances" basis.

As a result, we expect that in time we will have been able to issue Deeds of Indemnity to around 250 PCCs where we have a current or a former land liability and that PCCs will be heartened to know that this decision will mean that, as far as the Commissioners' liabilities are concerned, they will no longer have to seek to register that liability against our former land holdings.

We have had limited experience of issuing these Deeds of Indemnity and they have taken some time to conclude. I hope that you will understand when I say that we will have to prioritise this exercise in accordance with our asset management interests and will initially only be offering indemnities where we have sales of some of our rural estate actively in mind. Once we have dealt with these, then we will widen the scope to cover our CRL interests up and down the country.

Our draft indemnities have been prepared in conjunction with our Legal Office and worked through in liaison with two PCCs who had legal advice. I would like to assure you all that they work in the equal interests of the Commissioners and the PCCs. The primary benefit for us is that we can go about our rural asset sales with cleaned-up titles in terms of CRL and the primary benefit for PCCs is that we are in effect putting up an alternative to the Land Registration Act that will remove the pastoral and missional difficulties that have arisen in so many parts of the country.

An absolutely key point is that, once all the obligations in the Deeds have been completed, we could not pass on our CRL to a third party on sale. Nor could we lower our liability by way of CRL falling away due to non-registration. Thus a PCC would be secure in the knowledge that they would never have to look past the Commissioners to fulfil our chancel responsibilities in these cases.

I hope that this is reasonably self-explanatory but a couple of observations may be helpful:

1. In our Deeds we will have to reserve the right to vary our percentage acceptance to cater for the cases where we have yet to conclude our forensic reviews (some of which can take months to conclude, especially where hundreds of tithe fields are involved).
2. A condition of the Deed will be that PCCs need to apply to the Land Registry to remove registrations (or cautions against first registration) in respect of our current and former land (even where we ourselves registered the liability) as it is the PCC, and not the Commissioners, who have the benefit of the CRL. We are asking PCCs to put this in hand within 28 days of completing the Deed of Indemnity.

I hope that you will all agree that these new arrangements will make life much easier for PCCs in terms of ensuring the continuation of the Commissioners' CRL liabilities. Most importantly of all, our indemnities will cover our former land-based liabilities where we still have some liable land (surface or sub-surface) in the parish in question and in those cases the pastoral problems of registering CRL against third party landowners/householders will disappear.

Additional points are (1) that PCCs will not have to bear the costs of registering CRL that are now charged by the Land Registry; and (2) that the Deeds of Indemnity will of course be prepared at our expense.

As I outline above, we will be in touch with relevant priests/PCCs in the months and years ahead in writing and by telephone and will be offering to visit them to explain our thinking if circumstances so dictate. We are not however contacting all of our CRL PCCs at this stage as we simply do not have the resources to deal with a flood of indemnities whilst continuing with our ongoing case research. Please do not encourage PCCs to contact us direct on this matter for the same reasons.

I would be very happy to have a word on the telephone if any of you have queries or if you would like to see our skeleton Deed.

Finally, I attach a note of some Frequently Asked Questions on this matter.

Yours sincerely

Alan Guthrie-Jones



Church Commissioners' Chancel Repair Liability Deeds of Indemnity Frequently Asked Questions

What is a Deed of Indemnity (DOI)?

1. It is a legal document by which the Commissioners guarantee the continuance of their proper land-based chancel repair liability (CRL) even though that liability is not recorded at the Land Registry.
2. Such Deeds are between the Commissioners and the PCC and contain safeguards for both parties.

How does the PCC benefit?

1. There's no need for the PCC to register CRL against the Commissioners' liable land. The indemnity will cover this.
2. There's also no need for the PCC to register CRL against the Commissioners' former land where we have retained CRL on sale. The indemnity will cover this too.
3. It minimises the pastoral difficulties and misunderstandings which may arise when PCCs register CRL against the Commissioners' liable former land.
4. Main Advantage (1): In the past, where it has been commercially viable, CRL has often been passed to purchasers on sales. After the completion of the DOI, we will retain our CRL on any future sales of the affected land. PCCs will not have to seek repair contributions from people who buy our affected land.
5. Main Advantage (2): After the completion of the DOI, we would not be obliged to reduce our acceptance of liability if we sold some of our affected land that had not had CRL registered against it. (which would be the case if a DOI were not in place).

How do the Commissioners benefit?

1. By removing CRL from our registered titles our land values are not affected by the existence of CRL or perceptions about its effect.

2. We are therefore free to deal with our assets in a way which best enables us to maximise our support for the ministry and mission of the Church in all parts of the country.

Is it legally binding?

1. It is indeed. We have taken advice from our Legal Office and have reassured ourselves on every aspect of this. We've also taken on board suggestions from a PCC Solicitor in trialling this exercise.

What does the PCC have to do?

1. The PCC needs to apply to the Land Registry to remove any registered CRL from the titles to the Commissioners' affected land (whether it be our current or former land). We can help with the paperwork. We can't make the application as the PCC is the beneficiary of the registration (in other words it is a PCC asset).

How much will it cost the PCC?

1. Nothing. We will meet PCCs' reasonable legal fees (with prior agreement) if a PCC feels it needs to take independent advice and Land Registry fees (if any). Our deeds have however been drafted to protect both the interests of the PCC and the Commissioners.

Why have the Commissioners changed their approach to this?

1. Mainly because prospective purchasers of our land have been very reluctant to complete their purchases even where we offer to retain any CRL on sale. In essence, people are being "scared off" by the spectre of CRL.
2. We are also aware of the adverse publicity and the related pastoral consequences of PCCs registering CRL against properties of all descriptions.

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