

Parochial Church Councils and chancel repair liability

Guidance from the Charity Commission

Chancel repair liability is a liability on some property owners in England and Wales to fund repairs to the chancel of their local Anglican parish church. The liability can be shared between agricultural landowners, individual homeowners, institutions and the Church.

Trustees of Parochial Church Councils (PCCs) need to check if there is liability in the parish and consider whether to register that interest in chancel repair liability relating to land with the Land Registry by 12 October 2013. Registration will allow them to enforce the liability against future owners of the land concerned. [National Archives guidance](#) may assist PCCs in identifying whether there is a liability.

We are not experts in this area of the law and PCCs should read the [opinion of the Legal Advisory Commission of the General Synod](#) for further information. [Key questions and answers](#) are also available on the Church of England's website. A PCC may wish to consult its diocesan registrar and/or take its own professional advice. Diocesan websites can also offer valuable guidance.

General principles

A PCC is a charity (even if it is not registered with the Charity Commission) so its members are subject to the same general duties as charity trustees, including the duty to exercise their powers in the charity's best interests. Where a chancel repair liability exists, the right to enforce that liability is an asset of the PCC which must be appropriately managed. This does not mean that it has to be enforced in every case. However, the PCC members must actively consider whether it should be registered and enforced, taking account of their PCC's particular circumstances to reach a decision.

Decision making

By looking at judgments made by the courts, we have identified the framework for trustee decision making which, if followed, will help PCC members to fulfill their legal duties.

In short, the framework for decision making by charity trustees means they must:

- **act within their powers** - this means:
 - only making decisions which **advance**, or support activities that advance, **their charity's purpose** for the public benefit
 - **using the correct procedures** - these may be those set out:
 - under the general law
 - specifically in the charity's governing document
 - under the established rules and procedures for dealing with issues of the kind under consideration
- **act in good faith and only in the interests of the charity**
- **adequately inform themselves**
- **take into account all relevant factors (their 'duty of consideration')**
- **disregard any irrelevant factors**
- **make decisions that are within the range of decisions that a reasonable trustee body would make**
- **avoid conflicts of interest.**

By following these principles when making decisions about whether to register or enforce chancel repair liability, PCC members can protect themselves and the charity. They can also reduce the likelihood of their decisions being successfully criticised or challenged.

Relevant factors

The relevant factors when making the decision will vary according to the particular circumstances of the PCC. However, the following are likely to be relevant in all cases:

- the financial costs of surveying, identifying, registering and enforcing the liabilities compared to the value of the potential asset;
- the likelihood of the need for chancel repairs;
- the impact on the ability of the PCC to carry out its objects (mission) and to raise funds in the parish;
- the impact on the ability of the PCC to raise funds from other sources (some funders may refuse a grant for the repair of the chancel if they found the charity had not maximised a potential asset available to it).

PCCs need to demonstrate they have considered and balanced all relevant factors when making their decision, in the best interests of their charity.

Conflicts of interest

In some situations, members of a PCC may live in properties which are subject to chancel repair liability. In such cases, the PCC must ensure the conflicts of interest are properly managed. [A guide to conflicts of interest for charity trustees](#) is available on the Commission's website.

Liability of PCC members

In general terms, if charity trustees act in breach of their duties, they may be held personally liable. However, in practice they will be protected from liability if they can show that they acted honestly and reasonably and ought fairly to be excused. PCC members must therefore be satisfied that any decision not to register chancel repair liability is consistent with their duties, taking account of their PCC's particular circumstances.

The Commission's role

Decisions about whether to register and enforce chancel repair liability are a matter for the trustees of the relevant PCC charity, acting with the benefit of professional advice where appropriate. PCCs are able to take a decision about whether to register and/or enforce the liability without the involvement of the Charity Commission.

Some PCCs do come to us to request confirmation that their decision not to register or enforce chancel repair liability is reasonable. Such advice would be provided under section 110 of the Charities Act 2011. Section 110 advice can provide additional reassurance for PCC members that they have acted correctly and in accordance with their duties by protecting them against the possibility of any subsequent legal challenge to their decision. We are willing to consider providing such advice where PCCs consider there is a real likelihood of their decision being challenged and they are able to present us with a substantive case explaining how they have reached their decision.