

Chancel Repair Liability

5.28 pm

Peter Luff (Mid Worcestershire) (Con): Should the vote due at 6 o'clock come towards the end of the Minister's concluding remarks, I am content for her to write to me with her final remarks, rather than bring Members back at quarter past 6.

I am also sorry that the late start means my hon. Friends the Members for Truro and Falmouth (Sarah Newton) and for Stafford (Jeremy Lefroy) are not in their places, as they had hoped; sadly, they have other duties.

This debate is on the consequences of events that happened centuries ago, between 1536 and 1540 to be precise, so I will give a little context. Parliament and English democracy will be 750 years old in the year of the next election: it was in 1265 that Simon de Montfort first called the shires to assemble in what is generally recognised as the first true English Parliament. We honour him in the vale of Evesham with particular enthusiasm; he was killed later in the same year at the battle of Evesham. Our modern freedoms can be dated from exactly 50 years earlier: it was in 1215 that King John reluctantly signed the Magna Carta. He now lies buried in Worcester cathedral. The inheritances of democracy and freedom, therefore, perhaps ring a little louder in the ears of an MP from Worcestershire.

The freedoms that Parliament defends often affect many thousands, even millions, of people, but the freedom of small groups is just as precious. So it is with the archaic workings of the law on chancel repair liability. "Archaic" is the word to describe those workings: we do not have to go back as far as King John or Simon de Montfort to establish its origins, but we do have to go back to Henry VIII and the dissolution of the monasteries, which concluded in January 1540.

I am no lawyer, let alone an ecclesiastical lawyer, but I hope that the essence of what I am about to say will be accurate. At the time of the dissolution of the monasteries, their land was sold off by the King. Often, there was a church used by the local community, associated with the land sold off, that had been sustained by the local monastery. The King wished the churches to continue to function, so he decided that those who purchased the land associated with them would be nominated lay rectors and have continuing responsibility for the upkeep of that part of the church used by the rector himself, the chancel. Thus the principle of chancel repair liability was established.

Often, the purchasers were major institutions, such as the schools of Eton and Winchester and the colleges of Oxford and Cambridge. They own to this day the land that they purchased from the King, and the liability to repair the chancels of the relevant churches has continued, providing many fortunate parochial church councils of the 21st century with a useful source of income for the maintenance of their mediaeval churches.

Other purchasers were less long-lived, or the land was sold and sold again and the liability forgotten. It still existed in law but had lapsed in practice, perhaps for centuries. Although lapsed, it was still enforceable, and so we come to 1994 and Aston Cantlow. Just across the border from my constituency, in Warwickshire, events unfolded that put an unwelcome spotlight back on

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chancel repair liability. A family purchased a property knowing the liability attached to it but expecting it to be unenforceable in modern law. The case went throughout the courts and eventually the family lost, which cost them a total of about £500,000. The courts asserted afresh, to much amazement, that the liability remained a valid claim on modern householders.

The then Government reflected on the advice that they had received from the General Synod of the Church of England, the Law Society and the Law Commission that the liability was an archaic law that should be scrapped, and ignored that advice. Actually, I think that they were right to do so. The major institutions that own land to which the liability attaches can afford the burden and budget for it. To remove that useful source of income from the cash-strapped Church would provide a windfall for some very rich and privileged institutions—including, by the way, and with some irony, the Church Commissioners themselves, who own considerable amounts of land to which the liability attaches.

Although the then Government may have been right not to abolish the law, they should still have chosen a different route. They decreed in 2003, in the light of the Aston Cantlow verdict, that the liability would lapse on any property to which it attached if it was not registered by October 2013, but only when the property first changed hands after that date. Registration meant that the existence of the liability would appear on the title deeds and be registered as such by the Land Registry. The liability would continue indefinitely on registered properties and, importantly, on unregistered ones until the first sale after the deadline. It was the ultimate long-grass manoeuvre, simply delaying the problem until the end of the 10-year period—now—but doing little to solve it. In the meantime, an unknown number of householders and landowners in an unknown number of parishes faced the threat that chancel repair liability might be registered on their property, even though its existence had been entirely forgotten.

As the deadline looms, the reality is becoming clearer for many small and unfortunate landowners. Evidence that I have seen from the Land Registry suggests that there has been a rush of registrations. It is believed that about 5,200 churches are entitled to claim the cost of chancel repairs from the lay rector. The majority of those lay rectors will be major institutions, but a significant minority will not. Let us say that just 10% of the parishes have private householders as lay rectors and that the average number of householders and small landowners affected in a parish is about 30—the number in the parish of Broadway in my constituency, where the situation arose recently. That would give us about 500 parishes and 15,000 private individuals. This debate is about the rights and freedoms of that small group. They may not be numerous, but they face jeopardy. If the Government believe in justice, they must take their plight seriously.

It is a real plight. The chancel of a mediaeval church can constitute about one third of the total church building. A repair bill of £200,000 would not be uncommon. In the case of Broadway, a regular bill every decade or so for about £7,000 can perhaps be expected. Fewer householders in a parish with the liability would mean a correspondingly higher sum. I know of at least one parish where only two properties are liable for repairing the chancel of the church.

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Nia Griffith (Llanelli) (Lab): The hon. Gentleman has explained clearly the problems faced by householders. Given that back in 1982, the General Synod of the Church of England overwhelmingly supported a motion proposing that chancel repair liability be phased out and that the Law Commission's 1985 report recommended that chancel repair liability arising from the ownership of land should be abolished after 10 years, does he agree that the Government should now consider implementing that recommendation or, at the very least, agreeing to set up a parliamentary committee of inquiry shortly after October 2013? It is outrageous that people should be facing the unfairness of chancel repair liability. A few householders are facing enormous bills.

Peter Luff: I agree with the spirit of what the hon. Lady says, but happily, I think I have a rather simpler solution. Let us see.

As I was saying, the sum would be payable pretty much on demand and would be unpredictable in both amount and frequency. A house in such a situation would be either unsaleable or substantially reduced in value. Some wrongly say that insurance is the answer, but it is not. When someone buys a house, the solicitor should do a search to establish whether the liability exists on the property. Such searches are complex and often difficult to conduct, so after a brief search, many solicitors instead offer purchasers chancel repair liability insurance.

Such insurance is available only where it appears that no liability is registered. Where liability is registered, insurance is not available. Where there is no awareness of the possibility that the liability might be claimed, no insurance is purchased; I doubt whether many of us here today have such insurance. For most property owners, the registration of the liability means that they will have to pay large sums at regular intervals for ever, passing on the liability to anyone foolish enough to buy their property.

Jeremy Lefroy (Stafford) (Con): I congratulate my hon. Friend on securing this debate. Does he agree that, as pointed out by my constituent, the Rev. Greg Yerbury of Penkridge, the matter applies not just to rural parishes but to many urban parishes as well? People might think that it is just a matter of country churches, but it is not.

Peter Luff: My hon. Friend, who I am glad to see has made it to this debate, anticipates the point that I was just about to make. I agree entirely. His constituent has been in touch with me, too, and I welcome the correspondence that I have had with him.

Other people say that householders can commute the sum by paying a lump sum to the Church, but that, too, is an arbitrary and unfair tax. It might extinguish the liability, but at considerable cost to the householder. It is important to realise that there is generally no easy way of telling whether the liability attaches to a property unless it has been registered. Proximity to a church is no measure of the likelihood that the liability attaches to a property. The land could be anywhere, town or country. It just had to be purchased by the right person when Henry VIII sold it in the late 1530s.

What transpired next was legal advice from the Church of England to dioceses that parishes should make efforts to register liability before the October 2013 deadline.

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A parochial church council that did not register the liability could be held in charity law to be in breach of its duty to maximise the income due to the charity. Failure to do so would make individual churchwardens and PCC members personally liable for the cost of chancel repairs.

Of course, had it not been for the Aston Cantlow case, all this might have remained theoretical. Chancel repair liability had been entirely forgotten in many parishes, but PCCs were now obliged to reactivate it. To make matters worse, English Heritage, showing what I can only describe as a regrettable lack of understanding, said that it would not provide funding for the repair of historic churches whose PCC had declined to enforce the liability.

A perfect storm now faced many PCCs, including the Broadway PCC with responsibility for the wonderful mediaeval church of St Eadburgha, which dates back to the 12th century. PCCs generally do not want to enforce the liability against their neighbours and friends. If they enforce the liability for the first time in living memory, they incur the wrath and indignation of the householders and landowners who were living in happy ignorance of their liability. If they do not, they become personally liable for the repairs and lose all grant aid from English Heritage. It is no surprise to me that since I began this campaign, I have heard from parishes and dioceses the length and breadth of England: from Norfolk, York, Cambridgeshire, Devon and Kent to Somerset, Oxfordshire, Cornwall, Staffordshire and Wiltshire. The issue is alive again, and communities around the country are living in fear.

At this point, I must turn the finger of blame on the national structures of the Church of England. Perhaps because it did not appreciate the growing scale of the problem and the increasing number of parishes caught up in it, the Church seems to have made no attempt to understand the implications of the advice that it offered and given no guidance on how dioceses should explain the other option open to PCCs, for there is another option; I would like the hon. Member for Llanelli (Nia Griffith) to listen carefully to this point.

The consequence in Broadway of the sudden arrival of letters from the Land Registry on the doormats of 30 local families, the Broadway Trust and landowners, some of whom live many miles away, was dismay, anger and cries of anguish. I heard that anger for myself at a public meeting in the village. Acting with the best of intentions and pursuing the only route that it believed to be open to it, the PCC had made enemies of a large number of local people. A diligent process of mapping, done entirely by volunteers comparing ancient maps with modern Ordnance Survey ones, had caused chaos. It is not an easy job.

As one vicar from elsewhere in the country wrote to me:

“It is not only a matter of the resentment that some parishioners are expressing when they find their properties are burdened with CRL. I am also concerned about the thousands of volunteer hours being expended on trying to trace, map and register CRL, often fruitlessly.”

In other parishes, there were no volunteers. As a churchwarden a good long way from Worcestershire told me:

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“Members of our Church have managed to obtain limited information but to further pursue the matter we will be forced to obtain, and pay for, professional advice.”

Sadly, the Anglican church in Broadway was seen to be behaving in a profoundly un-Christian way. As a correspondent from another part of the country told me:

“As a former PCC member, I can only say that I would have resigned immediately, rather than be forced to implement what can only be considered as a Draconian law. I also wonder if the Second Commandment of our Lord Jesus—to Love our Neighbour—is being disregarded by any diocese that invokes such an unfair law.”

To decree that a very small and random proportion of Broadway’s 2,000 or so inhabitants should, irrespective of their financial standing or personal faith, suddenly assume liability for the repair of an ancient church, is just plain wrong. The arbitrariness flew in the face of all Christian teaching.

To quote another parish in another diocese:

“The PCC is concerned at the enormous damage that registering liability would cause to the reputation of the church in the local community and the adverse effect this would have on the pastoral mission of the church, the furtherance of which is the first function of the PCC.”

The incoming vicar of Broadway, the Rev. Michelle Massey, realised that that could be the key to resolving the dilemma. If enforcing the liability was an obligation imposed on the PCC as trustees, would it also not be true that, if to enforce the liability was demonstrably un-Christian, that too would put the PCC in breach of its charitable responsibilities? Here was an ingenious paradox worthy of Gilbert and Sullivan, were the consequences not so serious for everyone involved.

It transpired that other PCCs from around the country, also aware of the paradox, had sought the guidance of the Charity Commission under section 110 of the Charities Act 2011 and been informed that, on the basis of the specific circumstances in each case and with no general precedent set, they would be deemed to have behaved responsibly as trustees if they decided not to enforce the liability. The Broadway PCC put together a compelling case outlining the ways in which registration of the liability would work against their fundamental duties and the Charity Commission, with commendable speed, responded saying that it agreed. Broadway PCC was free not to enforce the liability and the PCC members would not be held personally liable.

The Charity Commission has recently put together some excellent advice to PCCs, which is now available on its website. All parishes worried about the issue should read it. The advice concludes:

“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.”

Meanwhile, and very happily, responsibility for the grant funding of repairs to historic churches is being transferred from English Heritage to the Heritage Lottery Fund. In line with that excellent organisation’s reputation for pragmatism, the fund has told me that it will not

require church communities to register the liability to receive grant funding, so all is well—not quite.

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There are at least three remaining problems. First, and perhaps most importantly, many parishes are unaware of the options open to them if they do not wish to set neighbour against neighbour. Secondly, even though the current PCC in Broadway and other similar parishes have decided not to enforce or register the liability, and even though a liability unregistered by October 2013 cannot be enforced subsequently if the property is sold, it could still be enforced by a future PCC on a property that has not changed hands. A decision taken now not to enforce a liability does not mean that a future PCC might not decide differently. In practice, therefore, every landholder aware of his liability, which continues until the time of first sale after October 2013, cannot obtain insurance and, until his property is sold, could still face the possibility of a future PCC coming after him for the costs of chancel repair.

The third problem is time. Will there be time to ensure that all PCCs are aware of the courses of action open to them and, where necessary, for them to secure Charity Commission approval not to enforce the liability? Is there a real risk that a failure to get section 110 guidance from the commission could leave PCCs in a legal limbo, with liabilities unregistered and personal liability a real possibility? I think so.

The solution for my Broadway constituents is easy, I think. A simple piece of legislation is needed to ensure that, where a PCC acts on the advice of the Charity Commission and chooses not to enforce the liability, its decision is binding in perpetuity and cannot be revisited. A PCC can choose to sell land or buildings. It should also be enabled to renounce its right to claim chancel repair liability in perpetuity. In terms of ensuring that other parishes are aware of the options, I hope today's debate will help draw attention to the issue and will focus the national Church authorities on what I see as serious neglect of their responsibilities.

The Church of England, at national and diocesan level, must act urgently to help PCCs to navigate their way round the minefield through which they are required to pass, drawing their attention to the very helpful advice of the Charity Commission. I am sure that the Government—the Minister is a very reasonable lady—will wish to do more than casually assert that chancel repair liability is a legitimate property right, as they have done in the past. If they believe in the freedoms and democratic responsibilities with which I began this speech, they must find a way to ensure that the liability is fairly applied and that the outrageous arbitrariness of this archaic law is ended.

In essence, the solution revolves around giving PCCs the right to renounce their right to the liability in perpetuity and to make their decisions, intended to have permanent effect, watertight. The state should not arbitrarily remove legitimate property rights, but where an organisation or individual wishes to give them up, the state should be willing to help them to do so. Chancel repair liability may be a complex problem, but it has, I believe, a simple solution, which I commend to the Minister.

5.45 pm

The Parliamentary Under-Secretary of State for Justice (Mrs Helen Grant): It is a pleasure to serve under your chairmanship again, Mrs Riordan. I congratulate my hon. Friend

the Member for Mid Worcestershire (Peter Luff) on securing a debate on the subject of the approaching

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deadline for the registration of chancel repair liability. I am replying as the Minister with responsibility for general land law in England and Wales.

The debate has highlighted the issues that people affected by chancel repair have to address in light of the October 2013 deadline. I do not underestimate the seriousness and difficulty of those issues, and the problems that they can cause for communities; I am, however, for reasons that I will explain, not persuaded that any change in the law is necessary. I know this conclusion will be disappointing to my hon. Friend, but I will keep the matter under consideration and will monitor developments carefully.

As we have heard, chancel repair liability is an ancient, but enforceable, part of the land law of England and Wales, whereby property owners can be compelled to pay for the repair of the chancel of a church. The liability is thought to benefit about 5,200 ancient churches, and to burden a large number of properties. Liability as between owners is joint and several. However, the present owners of the properties affected by the liability are not the only people to whom chancel repair liability and the approaching deadline for registration are important. Anyone seeking to buy a property will want to know whether it may be affected by chancel repair liability. Searches will be conducted and insurance may be taken out.

On the other side of the liability, the owners of the benefit of the liability will have issues to address. In England, the benefit is usually owned by the local parochial church council. The members of the council, who are essentially charity trustees in relation to their local church, have potentially difficult decisions to make about registration and, should it be necessary, enforcement of the liability.

Nia Griffith: Given the difficulties the Minister has just referred to, could there not be a simpler solution by doing away with the need to have the liability in the first place? It seems very unfair, and she has just pointed out why it would be very difficult to put a halfway solution in place. Perhaps a final solution needs to be made that actually gets rid of it.

Mrs Grant: The main issue, though, is that it is a valid property right that has been upheld by the House of Lords. I will say a little more about the hon. Lady's point as my speech develops.

In most situations concerning private property rights, only the parties directly involved are engaged, but with chancel repair liability, the surrounding issues may be important for the relationship of the clergy, congregation and wider community in parishes where the liability exists and may be enforced. The approach of the deadline for registration may well have given everyone in those groups pause for thought.

In the midst of all the activity that registration or the consideration of registration may have produced, however, we should not forget the essential fact that the existence of chancel repair liability over a property is long standing. No new liabilities have been created. The registration of a notice of the liability or a caution against first registration on the land register merely preserves the right to make a claim. Properties subject to a notice or a caution are

therefore not subject to a new obligation. In legal terms, in relation to such properties, nothing has really changed.

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Of course, if the owners did not know about the obligation before registration, they will no doubt want to be sure that the registration is correct, but the issues brought out by registration would have arisen had the owner of the liability sought to enforce it. Failure to register may make a liability unenforceable, but registration does not guarantee that the claimed liability is legally enforceable. Whether a claim is sustainable will depend on the facts of the case. Homeowners and other landowners remain as free as they are at present to contest a claim. What registration removes is the uncertainty and unpredictability—the lack of discoverability—that currently surround the possible existence of chancel repair liability.

Peter Luff: What registration achieves is the unsaleability of property. Where a parochial church council wishes to give up the right in perpetuity, the Government have a moral obligation to enable it to do so.

Mrs Grant: My hon. Friend met with officials of the Ministry of Justice yesterday and they had an opportunity to discuss that and other issues, but he might also find it helpful to meet me at some point in the near future. If he could be a little patient and let me finish what I have to say, I might cast some further light on the matter.

People should no longer be surprised to discover that their property is subject—or, rather, claimed to be subject—to chancel repair liability. It is a positive development for property owners in general that chancel repair liability will be brought on to the register or wither for want of registration.

Registration of chancel repair liability is of course distinct from actual enforcement of payment of the liability, which will only arise if the chancel needs to be repaired. The October deadline does not affect that or the type of decisions that parochial church councils and other owners of the liability will have to make when money needs to be raised. I do not deny that deciding whether to register a notice or caution is a new step for members of parochial church councils, but it is a one-off and should not be any more onerous than past decisions to do with enforcing the liability.

Such decisions may not be easy and legal advice may well be necessary, but the Church Commissioners, the diocesan authorities and the Charity Commission are available to help to some degree. For better or for worse, parochial church councils and others who own chancel repair liability have an asset entrusted to them for a specific purpose. I accept that they may not wish to enforce the liability to preserve the harmony of their local communities, but they cannot wish away their responsibilities and, in any event, the providers of public funding for the maintenance of historic buildings will almost certainly take a close look at the reasons behind any decision not to register or enforce the liability.

We need to be clear about the nature of the deadline of 13 October 2013. The date was the 10th anniversary of the coming into force of the Land Registration Act 2002, and it is worth remembering why chancel repair liability became subject to a registration requirement. The need arose with the 2003 reversal by the House of

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Lords of the 2001 Court of Appeal decision in the Wallbank case. The Court of Appeal appeared to have resolved all the issues to do with chancel repair liability when it decided that the liability was not enforceable, and the Land Registration Act 2002 was drafted on that basis. The House of Lords subsequently decided that the liability was enforceable. In 2003, faced with a newly resurrected chancel repair liability, the then Government responded by making a transitional provisions order under the Land Registration Act, putting chancel repair liability on the same footing as other rights that had their status as overriding interests preserved for a period of 10 years.

Overriding interests are interests in land that bind a registered owner whether or not they are on the register. One of the aims of the 2002 Act was to bring more information on to the register, so that it formed a more complete record of legal ownership. Chancel repair liability is a good example of the kind of hidden burden that the policy was designed to expose. The October 2013 deadline for registration is a deadline in the sense that the liability needs to be registered before that date to ensure that it affects those who subsequently buy the land involved. No fee is payable for applications or registrations made before that date. Registration will generally still be possible after that date.

Naturally, the approach of the deadline has brought about a number of registrations and, unsurprisingly, issues around chancel repair liability have been awoken as the owners of the burden consider what to do, and those subject to it are reminded—or perhaps learn for the first time—that their property is claimed to be subject to chancel repair liability.

No doubt property owners subject to chancel repair liability would be delighted if the liability were to cease to exist. The Law Commission recommended abolition or apportionment of the liability as long ago as 1985. Abolition, however, would probably have to be accompanied by some form of compensation for the owners of the liability, and that money would have to come from somewhere.

There is no need to invent ways to release properties from the liability. It can be done by private treaty, although there are pitfalls, or under the formal procedure provided by section 52 of the Ecclesiastical Dilapidations Measure 1923. I am not suggesting that they are easy or inexpensive options, but they are possible.

In conclusion, the requirement for registration will achieve a much better balance in the law between the interests of the owners of chancel repair liability, the interests of those who are subject to the liability and the interests of those who may at some time in the future become subject to the liability. I am grateful to my hon. Friend for bringing the matter before us today. We have had an intelligent and informed discussion. I am not persuaded that the case for a change in the law has been made, but I shall of course keep the matter under careful review.

Question put and agreed to.

5.55 pm

Sitting adjourned.