

HEWITSONS

CHANCEL REPAIR LIABILITY



This Guide updates our previous Guides to CRL and reflects the position after 13 October 2013. This is the date by which CRL was to be registered against properties if future buyers of those properties were to be bound by it. It also sets out the policy that we have adopted to CRL as a consequence.

What is CRL?

It is an obligation on certain land owners in England and Wales to pay for repairs to the chancel of the local Parish Church. Such obligations date from medieval times where land, previously owned by the rector, had been sold and the new owner took on the repairing obligation attached to that land. In principle, any property in the boundaries of a Parish where such a liability exists could be “caught”.

The owner of a liable property (and possibly their tenants) could have to pay the entire cost of repairing the chancel of the local mediaeval church, even though the property may have been acquired in ignorance of any potential liability. This is so even though the property may have been split in to smaller parts or there are other land owners who could be liable for the cost.

Why did CRL become an issue?

Although the liability has existed since medieval times, few conveyancers (and scarcely anyone else) even knew of its existence until relatively recently. Even those conveyancers who did were seldom concerned about it, largely because the number of properties subject to this liability was so small.

But a number of years ago a case hit the headlines (Aston Cantlow v Wallbank) in which a church sought payment from the owners of a property called Glebe Farm. After initially arguing successfully that this was a breach of their Human Rights, the owners lost in the Court of Appeal by which time

the original bill of £6,000 had risen to £96,000 as the structure had deteriorated. In this case the CRL was clearly referred to in the deeds of the property but it would have been bound by the CRL whether or not that was the case.

The Charity Commission announcement

Until recent years, few parochial church councils had taken steps to register CRL against properties in their parish. However, recently the Charity Commission announced they must do so and, if they fail to (and as a consequence the council is unable to recover the costs of repairs to the chancel which it might otherwise have done), the parish councillors themselves could be personally liable for the cost of those repairs.

This resulted in more CRL being registered against properties and there have been some well publicised instances of this, including in the Cambridge area.



Searching for CRL

1. Full chancel repair search

It had always been possible to carry out a full search to establish whether a property is subject to CRL. However, it involves instructing an agent to pore over National Archive records stored centrally in London and therefore takes a relatively long time (at least two weeks and often longer) and is not cheap (at least £150 at present rates). Even these searches are not full proof and, clearly, a quicker and cheaper means of establishing potential liability was required.

2. Chancel Check searches

These, electronic, desktop searches are cheap (£15 plus VAT at the date of this Guide) and quick (same day result). The problem is that they do no more than confirm whether properties lie within the parish of a mediaeval church. Of all the properties within that parish only a tiny proportion might actually be liable.

The significance of 13 October 2013

Until this date properties were bound by CRL whether or not it had been registered against their title. However, after this date a buyer of that property will only be bound by CRL if it had been registered against the title (or a notice of intention to register has been registered) BEFORE they completed their purchase.

In general terms this means that, if one is checking titles of properties and no CRL is revealed, buyers will not be bound by CRL if an attempt to register it is made after they have completed their purchase.

Why is CRL still an issue then?

CRL is still a concern to buyers because of the possibility that an application to register it is made between exchange of contracts and completion. Having exchanged contracts they would be contractually committed to buy the property subject to any CRL and, because they will not yet have completed their purchase, they will not take free of it.

How can this risk be covered?

A high percentage of residential properties in the UK now have their own registered titles and it is standard practice, before completing the purchase of such a property, to carry out a search at Land Registry. This search discloses any application to register an interest in the property that has recently been made and gives to the buyer (and any mortgage lender) a period (of about 30 days) in which an application to register the transfer of the property (and any mortgage) will have priority over any other application.

Therefore, by carrying out such a search just before EXCHANGE, one can discover if a recent application to register CRL has been made AND ensure the property is bought free of CRL. However, this does assume completion takes place within the next 30 days, so that an application for registration can be made within the priority period given by the search.

What if title to the property is unregistered?

If the property's title is unregistered, there is no search that can be done which will offer the protection that a land registry search does. Consequently these are the options available to cover off the risk completely:-

1. Ask the seller to voluntarily apply to register the title to the property now (to enable a land registry search to be made prior to exchange in due course). Given this is quite expensive (and potentially time consuming) and the risk involved is small, one can expect sellers to resist any such request
2. Exchange and complete the purchase simultaneously
3. Ask the seller to pay for an insurance policy which will indemnify the owners of the property against the cost of any chancel repairs to which they must contribute in the future.

In the past many of our clients have been happy for us to ask the seller to pay for a policy and, if they refuse, to leave it at that. Bearing in mind the risk is

now only being covered for the period between exchange and completion that would be an understandable approach to take. However, if you do want us to arrange a policy we can confirm the premium and arrange the policy on the same day.

Hewitsons' current policy in relation to CRL

Our current policy in relation to CRL is as follows:

1. We have returned to carrying out a Chancel check search in all purchase transactions to establish if there is any potential liability to CRL or not.
2. If the search indicates potential liability and the property's title is registered, we will ensure we carry out a Land Registry search before exchange.

If the search indicates potential liability and the property's title is unregistered, we will ask the seller to consider voluntarily registering the title or to pay for an indemnity policy.

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This document is written as an outline guide only and any action should not be based solely on the information given here. Appropriate professional advice should always be taken in specific instances.

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