

Chancel repairs

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1. The Law relating to chancel repairs

This leaflet aims to provide guidance on how to establish possible chancel repair liability in relation to land and property in England and Wales from records held by The National Archives. It is based on explanatory notes issued in 1971 by the former Tithe Redemption Office. **It is not a statement of law.** The subject of chancel repairs is dealt with in general works on tithes and on ecclesiastical law, such as PW Millard, *The Law relating to Tithes* (third edition, 1938). It received particular attention in *The Report of the Chancel Repairs Committee* (House of Commons Sessional Papers 1929-30 VII 373), and articles in *Law Times* (12 and 19 April 1947, and 28 October, 11 November and 25 November 1955).

In November 1985, a Law Commission report on liability for chancel repairs (HC 39 Law Comm 152) included a draft new Chancel Repairs Bill which recommended the abolition of chancel repair liability within ten years. No such Bill has yet become law.

The House of Lords ruling in the case of *Wallbank v Parochial Church Council of Aston Cantlow and Wilmcote with Billesley, Warwickshire*, in June 2003 highlighted the need for the law to be clarified. In response, the government made a Transitional Provisions Order covering chancel repair liability, which took effect when the Land Registration Act 2002 came into force on 13 October 2003.

The Transitional Provisions Order preserves the status of chancel repair liability within the land registration system for a period of ten years. This means that for ten years from 2003, chancel repair liability will remain an interest that binds successive owners of a property even though it is not protected by an entry in a register kept by the Land Registry. After the 10-year period, however, the liability will only bind new owners of registered land if it is protected by an entry in the land register.

The principal statutes on the subject are:

- Welsh Church Act 1914

- Chancel Repairs Act 1932 (confined to the provinces of Canterbury and York)
- Tithe Act 1936.
- Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003
- Ecclesiastical Dilapidations Measure 1923 (repealed by the Church of England (Miscellaneous Provisions) Measure 2000)

Policy questions on matters arising from the Tithe Acts cannot be handled by the National Archives. **Neither the National Archives nor the Board of Inland Revenue can give advice on questions of liability in individual cases.**

It might be advisable to address general enquiries relating to individual chancels in England (excluding Monmouth) to the Diocesan Authority of the diocese in which the church is situated: contact addresses for diocesan authorities are available at <http://cofe.anglican.org/contact/findus/> or in **Crockford's Clerical Directory**, which also shows in which diocese a church is situated.

In the case of a chancel in Wales or Monmouth, such enquiries should be addressed to the Representative Body of the Church in Wales, 39 Cathedral Road, Cardiff.

2. Chancel repairs: an introduction

Chancel repair liability is an ancient interest benefiting some 5,200 pre-Reformation churches in England and Wales. It allows the Parochial Church Council to require owners of former rectorial land to meet the cost of repairing the church chancel. Under the Land Registration Act 1925, chancel repair liability is classified as an overriding interest in registered land. This means it has been protected even without being registered.

Because the chancel of a church was the area where the rector (the parish priest) officiated, the nave being the area where the congregation assembled for worship, the duty of repairing the chancel of an ancient parish church fell on the owner of property attached to the rectory. **Such rectorial land was and is not necessarily situated in close proximity to a church building.** Over time, that duty became more particularly associated with the rectorial tithes.

Such tithes as had not previously been commuted to corn-rents or allotments of land under the Enclosure Acts and other legislation, were either merged in the land or commuted to tithe rentcharge under the Tithe Commutation Act 1836. The Digest of Tithes Commuted 1757-1835, a copy of which is on the open shelves in the Map and Large Document Reading Room, is a useful means of establishing whether tithes had been commuted before the passing of the Tithe Commutation Act 1836. It gives an indication of the overall effect of any relevant enclosure award and refers to corn rents as well as tithes.

In cases where rectorial tithes and tithe rentcharge were merged, liability continued to attach to the ownership of the land: deeds of merger are in **TITH 3**. Some records relating to the apportionment of liability for chancel repairs from 1847 until 1920 are in **IR 97**.

Where rectorial tithes were commuted to tithe rentcharge, liability for chancel repairs attached to the tithe rentcharge. As far as spiritual rectors were concerned, their liability was for the most part transferred to parochial church councils by the Ecclesiastical Dilapidations Measure 1923. Until the Chancel Repairs Act 1932 transferred jurisdiction to County Courts, legal proceedings to enforce liability for repairs could be brought in ecclesiastical courts.

Following the Tithe Act 1936, which extinguished all tithe rentcharge, it was necessary to establish liability for chancel repairs that had previously attached to the ownership of rectorial tithe rentcharge and to any vicarial tithe rentcharge that exceptionally fell into the same category. There still existed in 1936 a substantial amount of rectorial tithe rentcharge in the ownership of ecclesiastical corporations, universities and colleges and other corporate bodies as well as private persons (commonly known as lay rectors). The liability continues in the case of ecclesiastical corporations, certain universities and colleges, the owners of merged land and the owners of land in which tithe rentcharge was constructively merged by the operation of the Tithe Act 1936, section 21. In all other cases where there was liability in respect of the ownership of tithe

rentcharge, the liability was extinguished and compensation was paid by the tithe-owner to the appropriate ecclesiastical authorities. This compensation took the form of an issue of stock, which was deducted from the amount which otherwise would have been issued to the tithe-owner.

3. Determining chancel repair liability

There is no single central register which can be used to identify all chancel repair or other liabilities or restrictions attached to land and property in England and Wales. Enquirers are strongly recommended to check the deeds, the Land Registry and current landowners for relevant information.

The formal record which sets out the proportionate liability of all the tithe-owners in a parish to contribute to the repair of the chancel of the church of an ancient parish is called the Record of Ascertainments. A search in the records of ascertainment will help to identify the likelihood of liability in respect of a given property as well as the proportion of the total cost to be paid in respect of each liable property. The actual amount to be paid cannot be known until repairs are carried out and their cost established.

Records of ascertainment are so-called because, by the Tithe Act 1936, Seventh Schedule, Part I, the Tithe Redemption Commission was directed to ascertain:

- (a) the rentcharges agreed or awarded on the original commutation of tithes to which chancel repair liability attached
- (b) which of those rentcharges ceased, before 2 October 1936, to be subject to chancel repair liability
- (c) the identity and aggregate amount of the residue of such rentcharges. This residue is called 'the apportionable amount of rentcharge liability'

The Tithe Redemption Commission was then required to ascertain the proportion which each separate rentcharge in the residue bore in relation to the 'apportionable amount'.

The records of ascertainments are in The National Archives record series **IR 104**

The Record of Ascertainments may state:

either that no liability attached to the ownership of tithe rentcharge

or that such liability did exist and that it was borne solely or in certain proportions by named persons or corporate bodies or by the owners of specified lands

4. Making a chancel repairs search

It is first necessary to know the name of the Church of England (or Church of Wales) parish in which the property concerned was situated at the time of the Tithe Commutation Act 1836. The term civil parish was legally defined only in 1889. Ecclesiastical parish boundaries are marked (though not particularly easy to trace) on the one-inch Ordnance Survey maps from the 1840s onward; they are much more clearly marked on the tithe index maps in **IR 105**. If you are still uncertain, it may be necessary to make enquiries of the church authorities or the local council.

Once you know the name of the parish, check the index to the records of ascertainments (**IR 104/107-108**). Some of the records of ascertainments, for certain counties, are available to be seen on **DocumentsOnline**. In the Quick Search box on the left of the page, type the parish name followed by 'and' and 'chancel'; then click 'Go'. You can also substitute the name of a county for the parish name to find out whether the records of ascertainments for a particular county has been digitised and made available on DocumentsOnline. This should show whether a Record of Ascertainments for the parish exists, and give some preliminary information about the existence of liability. If there is no entry in the index, there is no Record of Ascertainments. All the abbreviations entered in the index (see below) are explained in the front of the volumes **IR 104/107-108**:

- D/N Declaration of no rentcharge liability at commutation
- R/A Record of Ascertainments showing liability as at 1 October 1936
- R/AN Record of Ascertainments showing cessation of liability
- R/AN (Cty) in Composite County Record, showing cessation of liability
- S.A. Special Award (for which see **IR 106**)
- L Liability on land

If the name of the parish is annotated D/N, R/AN or R/AN (Cty) in the index, there is no Record of Ascertainments in **IR 104**. This does not necessarily mean that there is no chancel repair liability, merely that none is recorded in documents held by The National Archives. You may wish to obtain a copy of the index entry for your records.

If the name of the parish is annotated R/A, R/A (L) or R/A (SA) in the index, there *is* a Record of Ascertainments. You should identify the relevant volume from the **IR 104** series list and examine it. **IR 104** is arranged in county volumes, in alphabetical order of county and then alphabetically by parish. Note that Hampshire was formerly known as Southampton and appears in the list between Somerset and Staffordshire. Parishes subject to extraordinary tithe rentcharge are indexed separately at the end of **IR 104/108**.

5. What does a Record of Ascertainments show?

A typical first page of a Record of Ascertainments gives the following information (this example is taken from **IR 104/28**).

County: HERTFORD

Chancel: ST MARY, WATFORD

1. The apportionable amount of rentcharge liability (ie the residue of £856s. d
the rentcharges to which the liability originally attached) is 4 11
 2. That residue consists of:
 - (a) Rentcharges in respect of which stock was to be issued under 671 1510
the Tithe Act 1936 and which were not vested in any of the
corporations or bodies mentioned in (b) below
 - (b) Rentcharges in respect of which stock was to be issued issued NIL
under the Tithe Act 1936 but which were vested in certain
corporations or bodies (specified in the proviso to section 31(2) of
the Tithe Act 1936)
 - (c) Rentcharges specified in the First Schedule to the Record of NIL
Ascertainments (these were rentcharges owned by the landowner,
as described in section 21 of the Tithe Act 1936)
 - (d) Rentcharges specified in the Second Schedule to the Record of 184 9 1
Ascertainments (these were rentcharges merged or extinguished
under the Tithe Acts 1836-1925 in the land to which section 1 of
the Tithe Act 1839 applied)
- £8564 11

If there is an entry against paragraph 2(a) only, any liability in respect of the ownership of tithe rentcharge will have been discharged for all time by an issue of stock paid to the Diocesan Authority or, in Wales or Monmouth, to the Representative Body of the Church of Wales.

Liability under 2(b) continues to be borne by a corporate body: this may be the Church Commissioners (as successors of either the Ecclesiastical Commissioners or Queen Anne's Bounty) or a university or college. If the Record of Ascertainments contains only an entry under paragraph 2(b) and one body only is named, then that body is responsible for the whole of the liability covered by the Record; if more than one body is named, then the liability devolves upon the bodies in proportions which are determined as explained below (paragraph 9).

Cases occur in which entries are made not only under paragraph 2(b) but also under paragraph 2 (c) or 2(d) or both 2(c) and 2(d). A more elaborate calculation of the proportionate sum will then be necessary.

If on the first page of the Record of Ascertainments there is an entry against paragraph 2(c) or 2(d) or both 2(c) and 2(d), then the ownership of certain land (usually, but not necessarily, within the ancient parish) carries with it liability for the repair of the chancel of the church to which the Record relates. To discover which lands are subject to this liability and to what extent, the lands need to be identified (either on a map or from the description in the Record of Ascertainments) and the relative liability computed from the relative extent of the lands.

6. Identification of liability on a map

Wherever there are entries under paragraph 2(c) or 2(d), the Record of Ascertainments includes schedules giving particulars of the land concerned. The First Schedule relates to paragraph 2(c) and the Second Schedule to paragraph 2(d).

Typical straightforward entries in the First and Second Schedules are set out as follows (again from IR 104/28):

1. Name of Tithe District	2. Number in Instrument of Apportionment referring to plan or (if no apportionment was made) description of lands	3. Amount of Rentcharge		
		£	s.	d
Watford	1898	2	11	0
	1934	2	5	0
	1941	1	5	0
	... [followed by many other numbers] ...			
	From Altered Apportionment dated 30 th September 1844 W915 ^a			
		1	15	0

There may be only one or two entries of this kind or there may be several pages of them.

The numbers in the second column normally refer to tithe plot numbers on the original tithe map. To identify the location of such plots, you should consult the tithe map in IR 30. It is important to remember that most of the tithe maps are in manuscript and may look very unlike modern Ordnance Survey maps, so the identification of lands by reference to a tithe map is not always simple. Furthermore, river courses, roads, field boundaries and other landmarks may well have changed since the tithe map was made. It is often helpful to have a large-scale Ordnance Survey map to compare with the tithe map.

Once you have identified the relevant tithe plot number(s), check the Record of Ascertainment to see if the plot(s) are listed there.

If tithe rentcharges were apportioned before 1936 then not only the original tithe map but at least one or more other maps may need to be consulted in order to obtain a precise representation of the lands listed in the Schedules to the Record of Ascertainments. The District Record Maps (**IR 90**), although made for other purposes, show the boundaries of many tithe areas on twentieth-century Ordnance Survey maps and these maps will often be found of assistance, although they do not depict all areas covered by mergers.

In cases where tithe plots were divided as a result of a later altered apportionment, a separate charge will have been placed upon each of these divisions. The divisions are usually distinguished in the altered apportionment and on the altered apportionment map by the use of prefixes or suffices to the root or parent plot number eg A18, B18; 321a, 321b, 321c; W915^a in the Watford example above. The Record of Ascertainments records the altered plot number and the divided charge, with the date of the instrument of altered apportionment by which the altered plot was created (30 September 1844 in the Watford example). Altered apportionments are bound up with the original apportionments in **IR 29**; maps showing the lands affected by altered apportionments are sometimes laced up with the altered apportionment in **IR 29** and sometimes attached to the

original tithe map in **IR 30**.

The First Schedule sets out those lands which were not subject to a formal merger, but which were in the same ownership as the tithe rentcharges issuing out of them between 26 February 1936 and 2 October 1936. Such lands were treated in the same way as lands in which there had been a formal merger. All the lands set out in the First Schedule may be identified by reference to the original tithe map (IR 30) or a later altered apportionment map (in **IR 29** or **IR 30**).

Lands set out in the First Schedule may, however, have become further divided in ownership since 1 October 1936, when tithe rentcharge was extinguished. Some information about divisions made after 1 October 1936 may be obtainable from the Orders for Apportionment (**IR 94**) and the District Record Maps (**IR 90**). The District Record Maps, although made for other purposes, show the boundaries of many tithe areas on twentieth-century Ordnance Survey maps. It is important to note that no divisions which were made after 1 October 1936 are included in the Record of Ascertainments and only those divisions are included that were the consequence of a formal altered apportionment under the Tithe Acts 1836-1925.

References to 'Farm' apportionments are to cases where two or more tithe fields were jointly charged with one rentcharge, whether by the original apportionment or by reason of a re-apportioned rentcharge (Tithe Act 1936, section 47(1)). Where there is a large number of such fields, the number of one tithe field only is given in the schedules to the Record of Ascertainments, with a reference to 'other tithe fields jointly charged with this rentcharge'. These 'other tithe fields' can be identified in the original tithe apportionment (IR 29). The important point here is that where there is a 'farm' charge, however it arose, there is no separate liability in respect of each tithe field, but a single liability for the whole group of tithe fields. Consequently the owner of any one 'field' or part of a 'field' is liable for the whole, though if there are other owners in the area subject to the rentcharge he will have the right of contribution from them.

7. Identification of liability by description

The preceding paragraphs have dealt with the relatively simple cases, which are by far the most numerous, where the lands can be identified on a tithe map. But many records of ascertainments contain in the Second Schedule other cases where the only means of identification is afforded by a description. This happens because the tithe rentcharge was merged before tithe apportionment. Typical entries of this more complicated character are as follows:

2.

Gross amount of tithe rentcharge awarded by Instrument confirmed to each of the following persons or bodies in lieu of the tithes issuing out of land in their ownership the area of which is set out under their respective names:

	£	s.	d.
John Bell			
2a. 2r.2p.	0	6	6
Alwyn Gibbs			
970a. 1r. 24p.	86	12	0
Rachel James			
3a. 1r. 1p.	0	14	0

Liability attaches to the ownership of any part of the land in which a tithe rentcharge has been merged. In such cases the formal tithe records (apart, possibly, from the deed of merger itself in **TITH 3**) will not help to identify the land, though it is possible that the relevant tithe file (containing the correspondence of the Tithe Commissioners in **IR 18**) may in some cases be of assistance. For the most part, however, identification is a matter of local knowledge and/or local enquiry.

8. Calculation of individual liability

When the tithe area or areas burdened with a liability for chancel repairs have been identified and it is desired to answer the question 'What is A's liability?', all that is involved is a simple arithmetical calculation. Paragraph 3 of the Record of Ascertainments gives the proportionate liability for each penny of the tithe rentcharge shown in the Schedules in respect of each tithe area involved - in the

Watford example, the proportionate liability is given as $1/205499$. An area with a rentcharge of £1 5s 6d will therefore carry with it a proportionate liability of 306/205499: 306 is arrived at by adding 240 (the number of old pence in £1), 60 (the number of old pence in five shillings) and 6 pence. The appropriate fraction in respect of any area will be used to compute the proportion of the total expenditure required to carry out repairs to the chancel. The resulting amount will be that to be demanded of the owner of the area. Assuming repairs to cost £5,000, therefore, the amount to be demanded in this example would be £7.44. The Record of Ascertainments makes it possible to determine the proportions in which liability is to be borne, but not the amount to be demanded at any particular time. There is no means of foretelling what the actual amount to be demanded will be on any occasion when repairs are required.

9. Chancels in Wales and Monmouth

The position in regard to chancels of churches in Wales and Monmouth in the matter of records of ascertainments, though not identical, is similar to that in the case of the provinces of Canterbury and York. Section 28 of the Welsh Church Act 1914 preserved the liability of any lay impropiator to repair an ecclesiastical building, but since the churches in Wales were transferred to the Representative Body of the Church in Wales (section 8), the responsibility for enforcing any liability, whether under a Record of Ascertainments or otherwise, will be the concern of that Body and not of a Parochial Church Council as in England. The Chancel Repairs Act 1932, which provided for proceedings in the County Courts, is not applicable to Wales and Monmouth.

10. Where liability has ceased

In all counties in England, and some in Wales, there are numerous cases where the Record of Ascertainments is to the effect that all liability has ceased to exist. Most of these relate to parishes of which the spiritual rector was relieved of his obligations by the Ecclesiastical Dilapidations Measure 1923. The effect of the Record in most of these cases is to place the entire liability for chancel repairs upon the Parochial Church Council, who are responsible for the repair of the rest of the church. Similar Records have been made in other types of case, for example where the fabric has been destroyed and the church has not been rebuilt or where the whole of the rentcharges to which liability attached had been redeemed before 2 October 1936, or where the parties liable had compounded for their liability before then.

Most Records of the kind arising from the operation of the Ecclesiastical Dilapidations Measure 1923 are to be found in composite Records relating to more than one parish in a county. The other cases where liability has ceased will, however, usually be the subject of Records relating to individual parishes.

11. Other sources of liability

The records of ascertainments deal solely with the liability, if any, which attached to the ownership of the tithe rentcharge. They do not deal with parishes where tithe rentcharge was never created, nor do they necessarily cover the whole liability in a parish. Examples of situations where liability may exist but is not documented in the Record of Ascertainments are:

- where all the tithes in a parish were converted into corn rents
- where the tithes in part of a parish were converted into corn rents and the rest were commuted into tithe rentcharges
- where under an Enclosure Act lands were allotted in lieu of tithes
- where the tithes (and not tithe rentcharges) were merged in land under the Tithe Acts
- where rectorial glebe land has passed into lay hands

The question is sometimes asked whether it is possible to compound for liability to repair a chancel. So far as the provinces of Canterbury and York are concerned, the position was governed by the Ecclesiastical Dilapidations Measure 1923, but this did not cover Wales and Monmouth.

12. Further reading

No list of records of ascertainties has been published but, subject to certain qualifications, such a list would correspond to the list of tithe apportionments given in a Return of All Tithes Commuted and Apportioned 1887 (House of Commons Sessional Papers 1887 LXIV 239). This list does not, however, include those parishes where tithe rentcharges were merged before apportionment and for which there are records of ascertainties. (Where all the tithes of the parish were merged, there is neither a tithe apportionment nor a Record of Ascertainties). It should be noted that in this Return townships, hamlets etc are shown under the parish of which they formed part, or in which they were situated, at the time of commutation. In all cases the parish and the county are as they were at that time, and no cognisance is taken of later developments, for example the creation of new civil parishes and boroughs; former detached parishes transferred from one county to another (eg a number of cases formerly in Durham but now in Northumberland); transfers from one local authority to another; or the realignment of county boundaries in 1974. The *Return* must, therefore, be treated with some caution. The Return does not include all cases where corn rents were converted into tithe rentcharge and have therefore been taken into consideration in preparing records of ascertainties.

There is no comparable guide to parishes where liability may exist in respect of corn rents or lands allotted in lieu of tithe. A Parliamentary Return of Enclosure Awards deposited or enrolled with Clerks of the Peace, was made in 1904 (House of Commons Sessional Papers, 1904 (50) LXXVIII 545).

Guide reference: *Legal Records Information Leaflet 33*

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Downloaded from:

<http://www.national-archives.gov.uk/records/research-guides/chancel-repairs.htm>