



HOUSES OF PARLIAMENT

UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE

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TAKEN BEFORE
THE ECCLESIASTICAL COMMITTEE

UNCORRECTED ORAL EVIDENCE: CHANCEL REPAIR (CHURCH
COMMISSIONERS' LIABILITY) MEASURE
CHURCH FUNDS INVESTMENT MEASURE

MONDAY 3 FEBRUARY 2025

12.15 pm

Virtual Proceeding

Questions 1 - 11

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Oral Evidence

Taken before the Ecclesiastical Committee

on Monday 3 February 2025

Members present:

Baroness Butler-Sloss (Chair)
Catherine Atkinson
Juliet Campbell
Tom Collins
The Earl of Cork and Orrery
Lord Dannatt
Jonathan Davies
Marsha De Cordova
Lord Faulkner of Worcester
Zöe Franklin
Patricia Ferguson
Lord Griffiths of Burry Port
Baroness Harris of Richmond
Lord Jones
Danny Kruger
Baroness McIntosh of Hudnall
Luke Myer
Dr Al Pinkerton
Rebecca Smith
Sarah Smith
Lord Taylor of Holbeach
Dan Tomlinson
Martin Vickers

Examination of Witnesses

The Lord Bishop of Chichester, Chair of the General Synod Legislative Committee; Adrian Broomfield, Senior Solicitor, Ecclesiastical Property; Carl Hughes, Chair of the Archbishops' Council Finance Committee; Revd Alexander McGregor, Head of the Legal Office, National Church Institutions; William Nye, Secretary General of the Archbishops' Council; David White, Deputy Director of Finance, National Church Institutions.

Examination of witnesses

The Lord Bishop of Chichester, Adrian Broomfield, Carl Hughes, Revd Alexander McGregor, William Nye and David White.

Q1 **The Chair:** Let us begin.

The Lord Bishop of Chichester: Lord Chairman, thank you. We have two Measures to present: the Chancel Repair (Church Commissioners' Liability) Measure and the Church Funds Investment Measure. I suggest that we take them separately because people will want to speak to each one.

The Chair: Absolutely.

The Lord Bishop of Chichester: Thank you. The Chancel Repair (Church Commissioners' Liability) Measure provides for any liability of the Church Commissioners to repair the chancel of a church which currently takes the form of an interest in land or a contractual obligation to take the form of a statutory duty laid upon the commissioners instead. Land owned by the commissioners will therefore be relieved of the burden of the liability and can be dealt with free from it and its blighting effect.

The Chair: Yes. Basically what you are doing is detaching it from one system and making it a statutory liability.

The Lord Bishop of Chichester: Indeed, so land the commissioners are looking after does not carry it for those who might wish to purchase it, build it or develop it. The chancel liability is then held statutorily by the commissioners.

The Chair: Including you. But it applies to cathedrals?

The Lord Bishop of Chichester: Indeed, yes.

The Chair: Can you explain that? I had the impression that was slightly different.

The Lord Bishop of Chichester: I will defer to a colleague, if I may, for the explanation of that.

Adrian Broomfield: It is because of the historical make-up of the liability. The first part of the Measure, Section 1, effectively deals with liabilities that are either contractual in a contract, in the transfer or other property document or an entry that exists on the Land Registry by way of a registered notice. The first section deals with existing contractual liabilities and entries at the Land Registry; the second section deals with the liability, where that has already been dealt with by a series of rectories Acts, which is what we call them collectively, where there is already a regime for statutory liabilities so we do not need to repeat it in this Measure. The third section goes on to deal with the future liabilities—which my colleague the Bishop, referred to—where we possibly buy in land and retain the existing liability of that land, so if we parcel it up with

other land of our own to sell on for development, that liability does not then transfer to the end purchaser or the developer of that composite site.

The Chair: This all applies to subsidiaries, whatever subsidiaries may be?

Adrian Broomfield: Yes, there is a specific provision. It picks up subsidiaries of the Church Commissioners, as defined in the Companies Act. I think subsidiary is defined in the miscellaneous—

The Chair: Yes, it is all right. I know I can find it.

Adrian Broomfield: Section 5(4), Madam Chair.

Revd Alexander McGregor: Can you briefly say something about cathedrals, because that is what the Chair asked about?

Adrian Broomfield: With regard to cathedrals, since around 2018 the commissioners have always picked up the liabilities by way of paying a 100% grant for that liability. That is the one new possibly slight shift, in that it makes that liability a statutory liability as well, rather than it being—

The Chair: Am I right that means that the responsibility and liability of chapters is now transferred to the statutory duty and that relieves the chapters of that obligation?

Adrian Broomfield: It will. That is correct, Madam Chair.

The Chair: Does anybody want to ask a question? Yes, Lady Harris.

Q2 **Baroness Harris of Richmond:** I am sorry that I came in a little bit late. I could not get into the Zoom link; I had to put loads of numbers in. Are we still on the chancel repair section? Thank you. It is Section 4 on page 4. I just had a question: how many cathedrals have had to have their chancels repaired and are there any awaiting repair? I think that is the real question: are there any awaiting repair?

The Lord Bishop of Chichester: I will ask Alex McGregor to respond to that.

Revd Alexander McGregor: In fact, Section 4 is not concerned with the repair of a cathedral's chancel. It is slightly more complicated than that, I am afraid. It is always lost in the mists of history—well, not entirely, but there is a lot of history to it. A number of cathedrals have the liability to keep in repair the chancels of parish churches, which is the liability that is in view here. As Mr Broomfield said, the way that has been dealt with is by the Church Commissioners effectively subsidising the cathedrals to meet the cathedrals' liability to uphold the chancels of the parish churches for which they are responsible. The cathedrals' own chancels are repaired by the funds held by the dean and chapter and are unaffected by this.

Baroness Harris of Richmond: Thank you very much, that is very

helpful. Maybe I ought to declare that I am high steward of Ripon Cathedral.

The Chair: Yes, I am afraid I have failed: because we have not had a meeting for some time, I completely forgot to ask for interests. What I will do is ask that at the end of our public hearing. Are you happy with that, Lady Harris?

Baroness Harris of Richmond: I am. Yes, thank you very much.

Q3 **Danny Kruger:** I have a couple of questions. I am not sure who they are to, so whoever wants to answer, please do so. First, can I ask what consultation has been held with PCCs of the affected churches? Are they all aware of what is coming?

Adrian Broomfield: The department downstairs, the pastoral and closed churches department, carried out a consultation from about 2012 onwards about chancel repair and what liabilities there were. This is the end of that process. Instead of documenting the liabilities by individual contractual deeds of indemnity, we decided to try to pick it up all in one place for ease of future administration, not only to reduce that administrative burden for the Church Commissioners, but also for PCCs, so that they can just literally look and say, "My liability for this parish church is covered off by this statutory duty". Obviously the Measure has been through Synod. There were only a handful of Synod questions raised at first consultation, and they were primarily to do with the percentage liability that the commissioners were picking up. The second question at revision stage—which was actually out of scope but we answered it anyway—was to do with the ability to compound small amounts of liability into a one-off lump sum and remove it that way, which is still a possibility for liability for chancel repair other than the Church Commissioners.

Danny Kruger: I am just keen to ensure that the PCCs whose property rights are being affected by this will be aware of what is coming. Let me just put this to you: it has been suggested that this does reflect or represent a diminution of the property rights of PCCs, in so far as we are transferring what is called an in rem right to an in personam right, which I understand is not perpetual. The rights of the PCCs could be said to be diminished by this change. Do you recognise that?

Adrian Broomfield: No. The amount that the PCCs will be entitled to is set out in a table that is scheduled to the Measure. Table 1 deals with parish churches and table 2 deals with all the relevant cathedral chapters. If there are any disputes with regard to the amount of liability, that is open still to the mechanism for arbitration.

Revd Alexander McGregor: Perhaps if I could follow up a bit further on Mr Kruger's question. Mr Kruger is of course correct that the underlying legal basis is being changed from one of land and contract to a statutory obligation. However, in practice, changing the underlying obligation to one of a statutory duty makes it easier for parochial church councils to

secure what is due to them, because at the present time if the commissioners were to, for example, transfer away from themselves and sell land that is subject to this duty, the PCC would not necessarily know that. It would have to follow the land. The land may be broken up into parcels and it may have to pursue lots of different landowners—including potentially hundreds of householders, if the land has been developed in that way—whereas here, whatever happens to the land to which the liability is currently attached, in future it will always be able to come to just the commissioners and the commissioners' general fund. That is a much more reliable source of funding, I would submit, than pursuing individual landowners, whether the commissioners or otherwise.

The Chair: Am I not right that there is a provision for the PCCs to go to the county court and also a provision for arbitration?

Danny Kruger: In parallel.

The Chair: Yes. Are you content?

Danny Kruger: If I may just pursue one final question. I think you are right, Chair: I understand there could be a parallel process, which would be quite complicated and potentially burdensome for PCCs to be pursuing, both through the arbitration mechanism and through the county court.

My last question is simply to follow up points that were made earlier. As you have explained, the liability is extinguished once the Church Commissioners acquire the land. Does that not give them an advantage over other potential purchasers of land? We might be happy with that because it gives an advantage to the Church Commissioners as purchasers, but because the obligation to repair will be extinguished when they assume the land and can then sell it on with the effect of uplift in value that comes from the abolition of the liability, it gives the Church Commissioners an advantage over other potential purchasers of land. Is that fair and right?

Revd Alexander McGregor: It gives them an advantage, but also a burden. Yes, it means that the land becomes free of the chancel repair liability in the commissioners' hands, but the commissioners retain the burden of maintaining the chancel for which they were previously responsible, or would have been responsible for if it had remained with land and that land had remained in the commissioners' hands. In a way, the advantage is balanced out by the additional burden, which remains with the commissioners after they have disposed of the land, which would not usually be the case. Usually if the commissioners dispose of the land, they lose the responsibility. There are pros and cons; there are pluses and minuses in the account.

Q4 **The Chair:** Lord Glenarthur is not here, but he has sent a question, which I will read out. He says, "My question would be to ask to what extent the commissioners anticipate further land to be sold, which will give rise to the liability which the Measure introduces".

Revd Alexander McGregor: Good question. The commissioners have a wide range of different types of property that form part of the property element of their investment portfolio. Some of that land is designated for internal purposes as what the commissioners call “strategic land”, which is land that is suitable for release in the short to medium term for development, including in particular development for housing, and the commissioners are always looking to see what can be released in that regard. What I think the commissioners do not have is specific targets for what is to be sold by any particular given time because the commissioners are under a duty, as the trustees of any charity would be, to maximise the income for the charity. That involves taking decisions as opportunities arise, as well as having an overall strategy, so we could not put a figure on the amount of land that the commissioners intend to sell within a particular given period.

The Chair: I hope Lord Glenarthur will be satisfied. I do not propose to ask any further questions on that. Who else would like to ask a question?

Q5 **The Earl of Cork and Orrery:** There is a long list of parishes on the attachment, but what proportion of the total number of parishes in the country does this list represent? Does one assume that those who are not on this list are in effect not able to make any claims at all for chancel repair?

Revd Alexander McGregor: There are about 12,000 parishes in the country, most of which have a parish church. Each parish will normally have a parish church. I do not know how many are on this list, but you can see it is nowhere approaching 12,000. The first thing to say is the list here is just those parishes—350, my colleague tells me, out of approximately 12,000. That is a small proportion, but these are just the parish churches for which the Church Commissioners have chancel repair liabilities. There are parish churches for which other bodies or individuals have chancel repair liability—for example, Oxford and Cambridge colleges, and other institutions that received compensation in lieu of tithes back in the 1930s and subsequently may own land to which the liability attaches. But we are just looking here at those particular parishes where the liability belongs the Church Commissioners.

The Earl of Cork and Orrery: So it does not change anything to do with parishes that may be surrounded by land owned by one landowner?

Revd Alexander McGregor: No.

Q6 **Tom Collins:** Pulling out the detail a little bit, my question is fairly simple: what was the initiating need for this particular change? Why was this set out upon by the Church Commissioners, what is the wider context and is it part of a longer-term strategy?

Adrian Broomfield: This is hopefully a piece of legislation that is at the end of a process within the Church Commissioners. I am not saying it will be the end because I am conscious that there are other bodies, such as the Law Commissioners, looking at a consultation on some technical aspects of chancel repair liability as well. This Measure is a culmination of

a project that started in around 2010 or 2011 and was partially driven by the Land Registration Act 2002, which obliged parties either to register what were so-called overriding interests that did not, until that Act came into force, appear on the register but affected land. So the Land Registration Act 2002 effectively tried to say, "Register or lose it".

There was a move there by the Church Commissioners to assist parochial church councils in registering the liability to address that requirement of the Land Registration Act. What the Church Commissioners and others found was that, by so doing, it had the impact of blighting the land by having an entry added on it that was potentially adverse and impacted on the PCCs or their own land value. It was a very large research project, trying to work out whether liability was still valid because of its historic development and whether it had merged and become extinguished because two parcels of land, one with the benefit, one with the burden, had subsequently come into the same hands or because of earlier legislation—such as various tithe commutation Acts and the Tithe Act 1936, which was mentioned earlier, or Enclosure Acts—had made the liability become scattered in different places from where it may be obvious.

We had a long-running project, which when I joined the Church Legal Office in 2014 had already been running a number of years. It had taken an enormous amount of resource to research what liabilities there were and it was unduly slow and expensive. We got probably less than 20 deeds concluded and registered at the Land Register over the period from 2014 to about 2020. The view was taken on how to deal with this to give people clarity and administrative ease, so the PCC knows, looking at the schedule to this Measure, what percentage it will get from the Church Commissioners—it does not have to prove it, they just look at that. There is not an obligation to prove it because we will have a statutory right to it, and equally, certainty for the Church Commissioners as well. They will know, looking at that schedule, how much they owe the PCC of whatever parish in whatever diocese.

Luke Myer: Just a very brief point, I recognise we are going to declare interests later on in the agenda, but I had noted that one of the 350 parishes affected sits within my constituency, so I wanted to declare that. It is the parish of Stainton and Thornton.

Q7 **Lord Dannatt:** This might be a question motivated more by curiosity than anything else, but I just wonder how the percentage being affected was worked out. For example, my eye was caught at page 9 by St Mary's in Maldon at 100% interest. Further down the page we see St Mary's in Chigwell at 2.3%. Picking up Mr Kruger's point, if I were on a PCC that were 100% affected in this Measure, I would really have wanted to have been engaged in this conversation.

Adrian Broomfield: The figures are not actually in the Measure. They are the figures that came from our research, from looking at material, including the records of ascertainment that were prepared by Inland Revenue when it passed the Tithe Act 1936, and further research from

our pastoral department in-house that was doing that research I talked about before. We decided to try to move to a statutory approach. These figures are an initial list of figures as well, so it is open to the individual PCCs to come back to us if they disagree with them. If there are parishes that are inadvertently missing or ones that should not be there but are there, that list can be amended and the percentage duly amended as well. The Measure provides for that to be dealt with, and dealt with if not by agreement then by a single arbitration. We saw, as per the records of ascertainment, that that was probably the most equitable means of resolving any dispute about such liabilities independently.

Lord Dannatt: Thank you. That explains the process. It does not satisfy my curiosity as to why one would be at 100% and another 2.6%, but I guess it is probably lost in the mists of time. I do not know. Maybe it goes back to the 16th century. Perhaps we should pass on.

Q8 **Zöe Franklin:** Does this legislation have any impact upon members of the public in relation to that risk that they have for chancel repair? Are there any changes that come through the legislation here today?

Adrian Broomfield: The Measure is essentially meant to be a neutral Measure, in that the commissioners will pick up the percentage. If there is a liability attaching to, say, a tithe field where it is not 100% owned by the commissioners, the liability will be split pro rata, as it currently is calculated and has been to date. It should not mean that your home owners and other third parties pay any more than they would do if we did not pass this Measure.

Q9 **The Chair:** Anybody else want to ask a question? I think we have probably concluded this. We now move to the Church Funds Investment Measure. Could I just ask you, Bishop, to explain to us what the point of this is?

The Lord Bishop of Chichester: I think it is probably a tidying-up exercise. I guess those who are trustees of charities often find that there are small pockets of money that hang around. Sometimes the origin and purposes of them can be lost. It seems to me that this is a way of trying to tidy up the presentation of those amounts.

The Chair: Does anybody else on the team want to add to that?

Carl Hughes: Yes, I have a few words of explanation. There is no requirement upon the Church to change the CBFs into this style of CAIF. However, it is best practice within the charitable sector and we are trying to be proactive in doing this, including upon the advice of the investment managers who manage these funds, CCLA.

The Chair: Any questions on this? I have to say, it seems eminently sensible, particularly because I notice it is "you may make a scheme"; you are not obliged to. Consequently, that leaves it in the hands—oh, Lord Dannatt.

Q10 **Lord Dannatt:** Chair, I am sorry to ask another question. I saw

somewhere in the paperwork, and I just could not quite find it, reference to £3 billion. You made reference in your introduction to small amounts and tidying up. What went through my mind—I am only asking it because I think it is reasonable to ask in this public forum—what is the total holding that the Church Commissioners have or the Church of England has under its hand at the present moment?

Carl Hughes: Let me address that. The total amount invested with CCLA in the CBFs today is approximately £3 billion. This is nothing at all to do with the funds of the Church Commissioners, so these are funds that are largely from dioceses and individual parishes that have funds they want to invest in an ethical and responsible manner. I appreciate that £3 billion does sound quite a lot, but that of course is across 42 dioceses and 12,000 parishes.

Lord Dannatt: Thank you, I understand that. I think my wider question still stands out there as a matter of public interest.

Q11 **The Chair:** Other questions? It looks as though that can go through very quickly. Can I ask each member of the committee who has any interest to declare to do two things? First is to give your name so that it can be recorded, and secondly to declare your interest. Catherine Anderson? Atkinson. I am so sorry; we have not met. Would you like to start?

Catherine Atkinson: I am not aware of any relevant declarations that I need to advise the committee of.

Jonathan Davies: I do not think I have any relevant interests.

Dan Tomlinson: I have no interests to declare.

Danny Kruger: Unless we are declaring that we represent parishes affected by the first Measure—are we doing so? I have a handful—I have no interests to declare.

Tom Collins: No interests to declare.

Sarah Smith: No interests to declare.

Patricia Ferguson: No interests to declare.

Luke Myer: No further interests to what I have said already.

Zöe Franklin: I am not aware of any interests.

Juliet Campbell: No interests to declare.

Marsha De Cordova: No interests.

The Chair: I have no current interests.

Lord Griffiths of Burry Port: As uninterested as everybody.

Rebecca Smith: I do not have any interests either.

The Earl of Cork and Orrery: I am afraid I am going to have to come up with an interest: the governor of Chichester Cathedral Restoration and Development Trust, chairman of the Society for the Advancement of the Christian Faith, and a trustee of my parish steeple fund; that is a good way of putting it.

Lord Dannatt: Previous interests declared: a trustee of Norwich Cathedral Trust; churchwarden of Intwood and Keswick; and I have an ongoing interest, as my previous question has not yet been answered, but there we are.

Lord Jones: I have been the diocesan chair of an education and lifelong learning committee.

Lord Faulkner of Worcester: No interests to declare.

Lord Taylor of Holbeach: No interests.

Baroness McIntosh of Hudnall: No current interests to declare.

Martin Vickers: No current interests to declare.

Baroness Harris of Richmond: Yes. I am high steward of Ripon Cathedral, and I also have a nephew who is a priest on the Isle of Man.

Dr Al Pinkerton: I have nothing to declare.

The Chair: Thank you very much. Thank you very much, Bishop. We will now deliberate on the two Measures.

The Lord Bishop of Chichester: Thank you. Before we go, just reverting to a small detail on the chancel liability discussion, for anybody who is interested in the arcane history of this, I do recommend Nicholas Orme's excellent book *Going to Church in Medieval England*. It will explain so much. Largely we are grateful to the laity for what was done in those far-off centuries. It is very good that there are many laity inquiring into what has happened to their original investments of time and money.

The Chair: Thank you very much.