Victorian schools, 21st century issues

If your charity manages a school (and particularly if it's a faith-based school) with origins in the nineteenth century you need to know about the School Sites Act.

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Sophie Cass explains how a Victorian initiative to build new schools can trip you up in the twenty-first century

Cast your mind back around 170 years. It's 1841; Queen Victoria has been on the throne for only four years. The last decade has seen the government start to get involved in the education of children for the first time, but the formal establishment of state school education is still some 30 years away. Almost all non-fee-paying schools are run by church authorities on a religious basis and are largely dependent on the generosity of philanthropic individuals.

Into this scene enters the School Sites Act 1841, designed to encourage people to allow land to be used as a school for poor children – think of the local landed gentry granting a parcel of the estate to allow a village school to be built. The 1841 Act assumed that such philanthropic grantors would only want to give away their land so long as it was used as a school, and if the situation changed then the grantor would want the land back. Land would be granted to trustees to use for the purposes of a school, and perhaps a school teacher's residence. While a grantor could appoint anyone as trustees, a useful mechanism for the succession of trusteeship in the statute meant that the popular choices were the minister, churchwardens and 'overseers of the poor' of a parish. So, the 1841 Act has a particular relevance to faith-based schools and any charities running them.

Under section 2 of the 1841 Act, if the land ceased to be used for its given purposes then it would revert back to the grantor. This prevented the trustees closing the school, selling off the land and keeping the proceeds.

Trusts for sale

A much later piece of legislation, the Reverter of Sites Act 1987, modified the operation of this reversion to the grantor so that now if that land is not used for the purposes for which it was given, this will trigger an obligation for the land (including any sale proceeds) to be held for the benefit of the grantor, known as a 'trust for sale'.

You have no doubt already spotted an obvious wrinkle – no one who granted land in 1841 will still be alive today. So, if a trust for sale has been triggered, who benefits? The answer is that the benefit of the trust for sale is treated as an asset of the original grantor and so passes to their heirs (and if they have also died, their heirs' heirs, and then their heirs' heirs' heirs and so on).

This is not simply the descendants of the grantor, but the person(s) who would have received their residuary estate under their will or the intestacy rules. Tracing who is now entitled to the land can be a tricky exercise involving family trees and scouring probate records to trace through from one residuary estate to the next.

Section 14 power

Despite the apparent intentions of the 1841 Act to require the specific plot of land to be used in perpetuity as a school, the trustees of such land have an important power available to them. Section 14 of the 1841 Act allows the trustees to sell or exchange the land for a more '*convenient or eligible*' site and

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to apply the proceeds of such sale or exchange to purchase another site or to improve other premises. This power can only be exercised by the trustees with the consent of the managers and directors of the school in question.

Trustees need to tread a careful line to keep the balance between section 2 and section 14. They must ensure that the school under their care continues to operate in line with the purposes set out in the original grant, because once the proper use ceases (even inadvertently) there is no going back – the land has already immediately switched to be held for the benefit of the grantor. If there are plans to move the school, then they must follow the section 14 requirements exactly to avoid triggering a trust for sale.

The most recent case is *Rittson-Thomas*, where an appeal heard in February 2019 overturned a decision the previous year which had attempted to take a more practical approach. Prior to 2018, it had been understood that if during the exercise of the section 14 power the land ceased to be used as a school (for example, if the school children moved to the new building while the trustees still held the title to the old land) then this would trigger a trust for sale. This resulted in somewhat artificial arrangements, such as leaving a single class of pupils behind at the old school site right up until the literal moment of sale. The 2018 *Rittson-Thomas* first instance judgement recognised this absurdity and found that the wording of section 14 did not require that the power of sale was exercised before or at the same time as the school was moved, but that the transaction could be looked at as a whole.

However, this more practical approach was overturned at the Court of Appeal in February 2019. The position is now that while it is possible to exercise the section 14 power by purchasing a new school site in advance (using a loan, perhaps) and then repaying that loan from the sale proceeds of the old school site; the sale of the old school site must take place prior to the site ceasing to be used as a school in order to prevent the trigger of a trust for sale. Some flexibility is available in that using the old school site for an ancillary purpose – such as for a playground or for school meals – may possibly be sufficient to prevent the trigger.

Potential for a Charity Commission scheme

Another change brought in by the 1987 Act is that trustees can seek a scheme from the Charity Commission to extinguish the rights of beneficiaries under a trust for sale and provide a new charitable trust. The commission has the power to make such a scheme in situations where either the beneficiary consents; where the beneficiary cannot be traced; or where the beneficiary’s claim is now statute-barred (if the beneficiary’s rights were triggered before August 1975 but not claimed by 1987).

Practical tips

If the School Sites Act applies to your school (or one connected to your church), take note:

- Moving locations requires careful exercise of the section 14 power (and it remains to be seen whether the 2019 Court of Appeal decision in *Rittson-Thomas* will be appealed once again).
- Check the exact wording of the purposes for the land – for example, is there a restriction on which parish the pupils should come from?
- Once a trust for sale has been triggered, there is no going back. If there is any doubt about whether your plans will trigger a trust for sale, take advice before taking any action.
- If just part of the site ceases to be used for the original purposes, this will also be a trigger in relation to (at least) that part – so watch out for old school teacher houses that aren’t used for teachers any longer.
- Consider seeking a Charity Commission scheme to take the land out of the School Sites Act altogether. The application for a scheme can be a complex process (and will usually involve a public consultation), so we recommend that legal advice is taken. Please do get in touch if you would like our help with this.