



**Education Answers briefing No 11 (updated 9/4/18)**  
**Reverter – ADVICE FOR CLIENTS**

Clients may be aware from press reports that [a reverter case](#) has recently come before the High Court and judgment was delivered on March 9<sup>th</sup> 2018 to the effect that reverter had **not** been triggered on the school site in question at the point when it ceased to be occupied by the school and that in consequence the trustees were at liberty to sell the site rather more than a year later and pass the proceeds of sale to the relevant Local Authority.

This particular case did not involve a church school and had several peculiarities that it is not necessary to go into here. However it is clear to us that the judgment affects parallel church school cases and overturns the hitherto accepted understanding that an original School Sites Act site reverts to the heirs of the donors immediately on being vacated by the school if it has not previously been sold or exchanged.

At first sight the judgment appears simply to give more time for the sale or exchange of such a site without triggering reverter. However, as might be imagined, there are wider effects of the judgment and uncertainties about its interaction with existing statute that need to be considered. In addition, we understand that an appeal is likely.

Hence this note is to advise caution on the part of all our clients in relying for the moment on the change of interpretation of the law set out in this judgment. The advice below expands this view with the interests and advantage of clients in mind.

In respect of clients who have schools that are due to move site in the near future we continue to advise that the old site should be sold or exchanged with the LA prior to the school moving. Where no other sale is possible then a sale to the LA (or indeed to some other body such as the DBF) with overage provisions for onward marketing is always possible given goodwill. Provided that a supportive report under the Charities Act can be provided then this will securely defeat reverter and (because it accords with the provisions of the Reverter of Sites Act 1987) clients can also be certain that reverter does not attach either to the old site once sold, or to the proceeds of sale, or to the new site in which the proceeds are invested. This process and this alone will securely protect the private value of the trust. To preserve that value is the first duty of the trustees.

We are not at this stage confident that a sale after the school had moved could be relied on with the same degree of certainty. It is a risk that clients should not take.

The judgement also appears to have the possible effect of providing opportunity for delays on the part of the trustees or of the LA that could lead to a temporary or permanent lack of private value in the new site and also to the effective diversion of the private value away from permanent endowment. We fear that it might also be held to make any s554 intervention on the part of the diocese more difficult and more open to challenge.

In respect of clients with s554 Orders in process (or imminent) where reverter has been believed to have occurred we advise that it will normally be sensible to pause the process until either the appeal has been heard (and any further recourse to the Supreme Court if this happens) or at least until we have been able to take advice from the Charity Commission and HMRC. Approaches to these have already been made. If no advertisements have yet been issued in the search for reversioners then our general advice is to delay these. However, there are specific cases where circumstances may lead us to give different advice and we suggest you consult us as appropriate.

In respect of sites with no reverter, there is of course no effect on either sale or 554 processes and no change of plan is necessary.

In respect of sites with reverter where a school is closing and not moving and not being replaced immediately by another church school on the site then no sale either before or after closure can defeat reverter and no change to existing plans is necessary.

This is only initial advice to guide clients for the moment. We will issue further advice as soon as more information is available.

**NOTE ADDED 9<sup>th</sup> April 2018** - for those with access there is a paper by Matthew Smith, the barrister in the case, on 'LexisNexis' – his views are broadly supportive of those in our paper (above).

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