

CHURCHWARDENS AND THEIR LOCAL SCHOOL

I suspect that there are many surprises in store for those individuals who take on the role of churchwarden. The workload can be much higher than expected and so can the range of responsibilities. These include major legal responsibilities (especially trustee or governance responsibilities) for other church-related institutions locally.

It was suggested to a colleague of mine some years ago by an official in the Charity Commission that the time was long past when it was appropriate for churchwardens to be ex-officio members of this or trustees of that. After all, he commented, in the old days churchwardens were major figures in their local community. Was this really true any more? My colleague put him right on that one and the churchwardens were retained as trustees of a substantial almshouse charity.

Few people (even in the Charity Commission) however know that it is quite common for churchwardens to be ex-officio trustees of their local school. This is most frequent in rural areas but can be the case anywhere and stems from the provision of sites for schools (often donated by local landowners) using the vicar and churchwardens (who are automatically a corporate body) as a convenient trustee. After all, what other group of persons are there who (a) exist to cover every last square yard of England and Wales (b) are automatically a corporation (c) can be relied upon to have successors in office (even when parishes are combined) and (d) do indeed have the respect of their local community and profile within it.

Hence under the School Sites Acts of Queen Victoria and under legislation following on from them, the Vicar and Churchwardens are frequently the trustees of the site of their local school, which (since 1998) will have been formally designated as a Church of England School. Few people realise that until 1998 there was no formal list of such schools, though locally it would have normally been very clear that this was indeed a church school. Now there is a list!

There are upwards of 5,000 Church of England schools (and another hundred and odd in Wales). Of these probably more than half have the Incumbent and Churchwardens as the trustees. No-one has actually counted! The rest mainly have the Diocesan Board of Education or (if the DBE is an unincorporated board) the Diocesan Board of Finance as their trustees. A few have specially created trusts of various kinds.

What does it mean to be the trustee? Well, it means that you own the site but not as your private property of course. You own it in trust to pass on to your successors in office and in order to carry out the purpose of the trust – to provide a school. Normally the trust deed will say that the school is for the poor and labouring classes of your parish (or some such phrase) though that does not mean that the school cannot educate children from a wider area or indeed from more wealthy families. Indeed this wide range is of course very common.

Also the school is intended to be a church school. Indeed your incumbent is probably an

ex-officio governor of the school and your PCC may well appoint other governors. This makes a strong link (as was intended) between the local school and the local church. Note however, that in general it was anticipated that the school would take in all local children regardless of their parents' religious background. The trend towards parental "preference" in attempting to choose a school is modern and complicates church school admissions a great deal. But the basic principle was and is that a Church of England school is open to all local children. Almost all Voluntary Controlled schools operate like this and most Voluntary Aided schools mix "faith based" admissions with "neighbourhood" admissions in some way determined by the governing body.

So you own the school site – both land and buildings. Normally this will not include the playing fields (which will be owned by the Local Authority) but sometimes you will find that you own the playing fields too. Your school, your diocese and your Local Authority will all (hopefully) know what is owned by whom and should even have plans.

But what duties do you have as the owner? Very few. The school should consult you on capital works (but often consults the DBE which acts as a kind of proxy for you over this matter). However, your agreement is needed for leases, including temporary access arrangements such as are required for major repairs or rebuilds. You also need to be involved (though the DBE will do the work) if the school is to move to a new site or (sadly) is to close.

If the former happens you will normally become the trustee of the new site (perhaps jointly with others if there has been some kind of amalgamation). In these cases the sale proceeds of your old site will normally have gone into the costs of the new school, but sometimes there can be a surplus.

If the school actually closes, then the site of course must be sold. You cannot simply agree that the school will now be used as the church hall or village hall, though there are a number of examples where this has happened in the past. Sometimes the value of the redundant site has to go back to the heirs of the original donor (this is called "reverter") and the DBE will have to advertise to find such people if they are not evident. But mostly there will be a sum of money that then has to be dealt with as is proper for a school trust.

This normally involves the DBE requesting something called a Section 554 Order from the Secretary of State. This allows the proceeds of sale to be transferred into the DBE's Uniform Statutory Trusts and thus be used for other church schools in the diocese. Sometimes the original trusts had a Sunday school as well as a "Day School" element which normally means that the parish will get (normally) 3/14 of the sale proceeds for its educational work (such as the Sunday school).

The trustees have no power over the governors of the school and (oddly in a way) do not normally in the Church of England appoint any of the governors. The PCC, the Deanery Synod (especially for a secondary school) and the DBE act as a kind of proxy for the trustees in that regard. However, the trustees do have the duty to ensure that their trust is being carried out – ie that the school is a good school and a good church school. So (in extremis – so extreme that no Church of England trustees have ever done this!) you can throw the school off your site if you think you have good reasons.

We repeat: this has never been done in the Church of England and you would have to take the most careful legal advice if ever you thought of such a thing, but the power is undoubtedly there.

It perhaps will become a more vital power if large numbers of church schools become academies, as seems quite possibly to be going to be the case. Academies are run by academy companies and (if the academy has been formed from a church school) the conversion (as it is called) cannot take place without the agreement of the trustees. After all, it is your site! Therefore you may well find yourselves being approached about academy conversions in the years ahead and, if that happens, had better talk closely with your DBE about the matter.

Do not simply give your site to the new academy company. If you do that you will be breaking your trust. You simply remain in place as the owners and either continue to let the school use the site just as you do now or (if required to do so by the Department for Education) lease the site to the academy company for a peppercorn. You cannot charge for the lease of the site! Nor should you give it away: your job is to hand the property on to your successors.

Also the trustees can become corporate members of the academy company and could even seek to take on responsibility for the maintenance of the academy site and buildings with funding provided by the academy. In general we are advising that Vicar and Churchwarden trustees should not become corporate members of academy companies (though there will no doubt be exceptions) but should allow the DBE and the incumbent (in his/her corporate capacity) so to be. This replicates the present position in respect of ex-officio governors. Even more, we suggest that it would be onerous for Vicar and Churchwardens to take on the site responsibilities and that they should continue to allow the academy to maintain the site, just as the school does now. It would be good though for the school to be somewhat more aware of the trustees and keep them more in the loop over buildings matters than is sometimes the case at the moment. I repeat, it is your site.

You might wonder to whom you are answerable for your conduct as trustees of school sites. In part you are answerable to the Charity Commission. However, you are what is called an "exempt charity" which means that you do not have to register with the Commission, do not have a charity number and do not have to make annual returns. This category was changed by the Charities Act 2005 and you should in due course have what is called a Principal Regulator (to whom you would be answerable) but the government has not yet decided how that is going to work for you. In the meantime there is nothing for you to do about returns or reporting. Be aware, though that if you were really naughty the Charity Commission itself could step in.

Also your DBE has power under the Diocesan Boards of Education Measure 1991 to advise and (in some cases) direct you. We are not aware that this power of direction has ever been used, but it most certainly does exist and means that it is important that you keep in touch with your DBE over your local school. In particular, if your school is planning to convert to an academy then you trustees must consult your DBE over making the site available to the academy. This is separate from the consultations that the school itself has to undertake and it is your responsibility and that of the DBE to ensure that it is carried out. There should be a written record preserved of your decision on the matter and copies kept of letters to the DfE and DBE about it.

Lastly, there is consultation going on at the moment about how the substantial asset represented by a school site should be recorded. It is not necessarily recorded anywhere at the moment. I and colleagues at LBMW have advised that it would be onerous for the trustees to be required to make an annual report simply recording the value of your school site. Nor would anyone read such a report if you made it! Nor do we think that the DBE should be required to get this information from you, update

it annually and report it. Instead we have suggested that this should be a requirement laid on the school governing body. The GBs of all voluntary schools are themselves charities (exempt like you) and most of them (especially the Voluntary Aided GBs) should already be producing annual accounts for audit or inspection. For them to report the site value would be logical and easy. However, we do not yet know what the decision of the Charity Commission and DfE will be about this so you may find in due course that you are written to as the trustees of your local school with a request that you provide this information. If so, having read this paper you will not be surprised to find

yourselves the school trustees and (with the help of your DBE) will be able to respond to what is asked of you.

Being the trustee of your local church school is not the most onerous of the tasks of a churchwarden, but it is more common than is realised. You and your incumbent should check on your own position in this regard, if you are not already aware of it and (as you have read above) the range of tasks is not great. Your DBE will be your ally in undertaking the role.

**HOWARD DELLAR
LEE BOLTON MONIER-WILLIAMS**

Lee Bolton Monier-Williams
1 The Sanctuary, London SW1P 3JT

Tel: +44 (0)20 7222 5381 Fax : +44 (0)20 7799 2781
academies@lbmw.com
www.lbmw.com

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