



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** LAN74

**Applicant:** Lane End Primary School

**Application:** Transfer of land from Leeds City Council to the Governing Body of Lane End Primary School on removal of the trust

**Date of direction:** 25 October 2017

### **Direction**

**Under the powers conferred on me by regulation 6 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, I direct that the freehold land and buildings known as Lane End Primary School registered at H.M. Land Registry under title number WYK127057 to Leeds City Council shall be transferred forthwith to The Learning Trust (South Leeds). I further direct that the said land shall transfer to, and vest in the Governing Body of Lane End Primary School, upon the school's removal of its foundation.**

### **The application**

1. Solicitors representing the governing body of Lane End Primary School (the school) made a referral to the Office of the Schools Adjudicator, (OSA) on 28 April 2017. The referral indicated that the governing body had taken a decision to remove the school's foundation which is the Learning Trust South Leeds (the trust), and was intending to publish statutory proposals in order to achieve this. No agreement had been reached with the trust or with Leeds City Council (the council) on matters relating to the land to be transferred within the 3 month period specified in regulation 6 of the School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007 (the Regulations). The solicitors therefore requested that the adjudicator determine all matters relating to the land to be transferred under regulation 17 of the Regulations.

### **Jurisdiction**

2. Section 25 of The Education and Inspections Act 2006 (the 2006 Act) enables the governing body of a foundation school with a foundation to publish proposals to

remove its foundation. Section 26 of the Act states that regulations may make provision about the publication and determination of proposals under section 25, including the information to be published in relation to the proposals; the consultation process; the making of objections and the procedure for consideration of the proposals by the governing body. Regulations may also provide for referral to the adjudicator for determination before the proposals are published. Regulations made under this section are the Regulations referred to above.

3. In accordance with the procedure set out in regulation 4(a) of the Regulations, the governing body took an initial decision to publish proposals to remove the school's foundation under regulation 4(a) of the Regulations on 22 September 2016, and confirmed this decision on 31 October 2016. The decision of the governing body on 22 September 2016 was a unanimous one, but not all of the governors were present. The decision to leave the trust made on 31 October was taken by a majority of 8 to 2, with 2 trust governors voting for the school to remain as part of the trust.

4. Regulation 6(1) of the Regulations states that before a governing body can publish proposals to remove the school's foundation, the governing body must agree with the trustees and the council "*all matters relating to:*

- a) The land to be transferred under regulation 17, including, where appropriate, the terms of any transfer agreement to be made for the purposes of regulation 17(3), and*
  - b) Any payment to be made under regulation 18(1) or (2),*
- which would arise as a result of the governing body's approval of the proposals (with or without modification)."*

Regulation 6(2) provides that "*where the governing body has not reached agreement with the trustees and the local authority as to any of the matters set out in paragraph (1), within 3 months of*

- (a) the initial decision to publish proposals under regulation 4, or*
  - (b) receipt of notice by the clerk under regulation 5(2),*
- such matters must be referred to the adjudicator for his determination."*

In referring to the word "*land*", I am adopting the meaning set out in section 579 of the Education Act 1996, which states that land "*includes buildings and other structures, land covered with water, and any interest in land.*"

5. This is an unusual case insofar as it is not a dispute about which land should transfer, but who the land should transfer to. It is currently registered to the council. This is because the council owned the land when the school was established, and did not transfer the land to the trust when the school was set up on its present site, as it should have done. Where a local authority provides a site for a foundation school, paragraph 28 of Schedule 2 to the 2006 Act requires that it must transfer its interest in the site and in any land and buildings which are to form part of the school's premises to the trustees of the school to be held for the purposes of the school. If the school has no trustees, the land must be transferred to the governing

body to be held by that body for the purposes of the school. The school claims that it is a foundation school with a foundation and, in consequence, the land must transfer to the governing body upon removal of the trust. The council and the trust claimed that the school had not been properly set up as a foundation school with a foundation; therefore its category was uncertain and that the land should transfer to the trust.

6. I am satisfied that, as no agreement had been reached within the 3 month period set out in regulation 6(2) of the Regulations, the proposed transfer of land has been properly referred to me and that I have jurisdiction to consider this matter under the powers conferred on me under regulation 6(2).

### **Procedure**

7. In considering this matter I have had regard to all relevant legislation and guidance. I have considered all of the documents sent to me including:

- the referral letter of 28 April 2017 from the solicitors representing the school's governing body, subsequent correspondence and supporting documentation;
- a response from the council dated 10 October 2017 and received on 19 May 2017, subsequent correspondence and supporting documentation. The council's representations incorporated the observations and comments of the trust;
- a copy of the Land Registry entry dated 23 November 2016 for title number WYK127057 and various plans; and
- a copy of a draft Land Registry TR1 form completed by the school's solicitors.

8. I arranged a meeting at the school on 19 September 2017 (the meeting) attended by representatives of the school, the trust, and the council. Before the meeting I arrived early and took the opportunity to view at first hand the school and its site, accompanied by the headteacher. When the other parties arrived, I explained that I had viewed the school site. From what I had seen, it appeared to me that no part of the site was used other than for the purposes of the school, or by any person other than under licence from the school. I asked whether any of the parties also wished to view the site, and whether anybody had any observations to make in relation to shared use. None of the parties present wished to view the site. The council's lawyer mentioned a "*turning circle*" which was outside the boundary fence. The headteacher had already confirmed to me that the governing body does not wish to make any claim to this area of land, and that it is owned by the council. I relayed this information to the council's lawyer, who agreed that this correctly reflected the position and that this area was not part of the school land.

9. I have considered the representations made to me at the meeting, and all the correspondence submitted. Representations on behalf of the school have been submitted by the school's solicitors, and representations on behalf of the council and the trust have been submitted by the council's lawyer. All correspondence submitted to me has been copied to the school, the trust and to the council, with each party able to comment on the other's submissions.

## Background

10. In 2011, the council undertook a public consultation in relation to the need for a new primary school. The site of the former Leeds Sports Centre on Beeston Road in the Beeston area of Leeds was identified for this purpose and is where the school is now located. Having considered the outcome of the consultation, the council decided to proceed with a competitive exercise to invite bids to set up a new school on this site. The trust submitted a bid to set up a foundation school with the trust as its foundation. The proposal stated: *“The school will belong to a group of schools for which a foundation body acts under section 21 of SSFA 1998. The name of the foundation is The Learning Trust (South Leeds).... The proposed constitution of the governing body of the new primary school is: Local Authority 2, Parent 4, Staff 3, Community 3, Associates 0, Trust/foundation 2 ... It is anticipated that there will be no deviation from the requirements set out in the School Organisation (requirements as to Foundations) (England) Regulations.”*

11. Section 21(1) of the Schools Standards and Framework Act 1998 (the 1998 Act) provides that there can be 3 types of foundation school –

- a) those having a foundation established otherwise than under the Act;
- b) those belonging to a group of schools for which a foundation body acts under this section; and
- c) those not falling within either of paragraphs (a) and (b).

It appeared from the reference in the proposal to a foundation body acting under section 21 of the 1998 Act that the trust’s intention was to set up a foundation under section 21(1)(b) of the 1998 Act. However, the Department for Education has confirmed that the school has been set up under section 21(1)(a). This means that I have jurisdiction to direct that the land must transfer on removal of the trust. This would not have been the case if the school had been set up as a foundation school under section 21(1)(b) of the 1998 Act as a different statutory process applies when a school wishes to leave a group of schools for which a foundation body acts.

12. The council’s Executive Board considered proposals summarised in a joint report by the Director of Children’s Services and the Director of Environments and Neighbourhood dated 17 October 2012. The report recommended the trust as the preferred bidder to set up a foundation school with a foundation. The reasons given were that the trust *“has good local knowledge, a good track record and links to the teaching school. They repeatedly described a vision for strong 0 – 19 pathways. They bring the strongest local accountability with a unique bid for a non academy proposal, and displayed a passionate commitment to local collaboration.”* On 19 October 2012 the Board approved the trust’s proposal to set up the new primary school in the following terms: *“... approval be given for The Learning Trust South Leeds to be the party to open a new 420 place school with a 26 place nursery on land at the former South Leeds Sports centre, and to open in September 2014 and serve families in the area.”*

13. The approval by the council does not say, in terms, that the trust be approved to set up a foundation school with a foundation. It would, however, be reasonable to infer that what the Board approved was what the trust had bid for - namely that the school would be a foundation school with a foundation. I have looked at the relevant paragraphs in Schedule 2 to the 2006 Act that were in force at the time the proposals were published and subsequently approved. These provide that a local authority may approve any proposals to establish a school, with or without modification. Where proposals have been approved, they must be implemented in the form in which they were approved, therefore in approving the proposal without modification the council will have determined the category of the proposed new maintained school as a foundation school with a foundation.

14. Lane End Primary School opened on 1 September 2014 initially situated on the site of Cockburn School in temporary buildings provided by the trust. The trust appointed 3 trustees to run the school, who remained in post as foundation governors when the school formally set up its governing body. The school transferred to its permanent site, and began to operate from that site in September 2015. It is a two form entry primary school for pupils aged 3 – 11.

15. The trust had been incorporated on 1 July 2011 as a company limited by guarantee with charitable status. I was sent a copy of its Articles of Association (the Articles) which was undated and unsigned. The document names the following schools: Hugh Gaitskell, Westwood Primary, Cockburn, Middleton Primary, Beeston Primary and Clapgate Primary. Middleton Children's Centre is also named. Lane End Primary School is not named. I was informed that Beeston Primary School joined the Trust in 2013 and Clapgate Primary School joined in 2014, so the document sent to me cannot have been a copy of the Articles in their original form. The trust's representative explained at the meeting that the Articles were not amended to incorporate Lane End Primary School when the school was originally set up because *"the school was not considered to be separate from the trust – the trust simply ran the school from the Cockburn site."* If the Articles had been amended, the position would be more straightforward in relation to the question of whether the trust can exercise its powers in relation to the school. It is unclear why the Articles were not amended when the school established its own governing body and began to operate from a separate site, but all parties confirmed that this had not happened. For the avoidance of doubt, I make the point that the school as a foundation school was – and remains for that matter – conducted by and under the direction of its governing body in accordance with section 21 of the Education Act 2002 (the 2002 Act). The trust's role was to hold the school's land and appoint foundation governors to the school.

16. Article 3 of the Articles sets out the objects of the Trust, which are: *"...to advance the education of pupils at the Schools, to advance the education of other members of the community, and otherwise to benefit the community, it being acknowledged that in carrying out the Objects the Trust must have regard to its obligations to promote community cohesion under the Education Acts"*.

17. Article 5 sets out the powers of the trust, which may only be used in promoting the Objects. I have set out the powers which are relevant of the purposes of this determination:

*“5.1. To act as the foundation of the Schools;*

*5.2. to acquire or hire and hold property of any kind, including the acquisition of freehold or leasehold property to be held by the Trust (either alone or jointly with any other person) in trust for the purposes of the Schools;*

*5.3 to develop, improve, let or dispose of property of any kind, including the acquisition of freehold or leasehold property to be held by the Trust (either alone or jointly with any other person) in trust for the purposes of the Schools;*

*5.4. in relation to the Schools, to appoint and remove foundation governors in compliance with the provisions of the Education Acts;*

*5.5. to act as the trustee of any trust relating to any of the Schools;*

*5.6. to nominate one or more governors for appointment to the governing body of any other school;*

*5.7. to exercise its rights as the foundation of the Schools;*

*.....”*

*“School and Schools” are defined as “ a school for which the Trust acts as a foundation for the purposes of the School Standards and Framework Act 1998.”*

Article 14 refers to the Trustees:

*“14.4. There shall be the following Trustees:*

*14.4.1. 2 Trustees appointed by each of the Schools, being the Head Teacher and the Chair of Governors (or the Chair of Governors’ nominee);*

*14.4.2. 1 Trustee appointed by each partnership organisation; and*

*14.2.3. 2 Trustees appointed by the Forum from amongst their number.”*

## **Consideration of Case**

18. The school’s solicitors initially approached the OSA on 20 January 2017 to make various enquiries before formally making their referral under regulation 6 of the Regulations on 28 April 2017. Matters had reached something of an impasse between the school, the trust and the council, and I have seen protracted email correspondence between these parties. There is a desire on the part of the school to move forward in order to implement the governing body’s decision to remove the school’s foundation (which is the legal term for its trust used in the 1998 and 2006 Acts). The school’s solicitors requested the adjudicator:

*“(1) To determine that the land should vest in the governing body of the school on removal of the trust as a foundation;*

*(2) To direct the trust and the council to enter into a tripartite transfer to effect this: and*

*(3) To direct the council and/or the trust as relevant to disclose the building contract and related documents such as collateral warranties, as well as the site plan and the disclosure of any matters affecting the site to the governing body of the school to allow the governing body of the school to enter into the tripartite transfer referred to above with full knowledge of the extent of any matters affecting the site.”*

19. I have referred briefly above to jurisdiction, and I will now set out the relevant legislative provisions in more detail. Regulation 4 of the Regulations provides that a decision to publish proposals to remove the school’s foundation must be confirmed by the whole governing body at a meeting held not less than 28 days after the meeting at which the initial decision was made.

20. Regulation 6(1) of the Regulations states that before a governing body can publish proposals to remove the school’s foundation, the governing body must agree with the trustees and the council *“all matters relating to:*

*c) The land to be transferred under regulation 17, including, where appropriate, the terms of any transfer agreement to be made for the purposes of regulation 17(3), and*

*d) Any payment to be made under regulation 18(1) or (2),*

*which would arise as a result of the governing body’s approval of the proposals (with or without modification).”*

21. Regulation 6(2) provides that *“where the governing body has not reached agreement with the trustees and the local authority as to any of the matters set out in paragraph (1), within 3 months of*

*(c) the initial decision to publish proposals under regulation 4, or*

*(d) receipt of notice by the clerk under regulation 5(2),*

*such matters must be referred to the adjudicator for his determination.”*

22. Regulation 17(1) states that *“any publicly provided land which, immediately before the implementation date, was held by the trustees for the purposes of the school transfers on that date to, and by virtue of this regulation vests in, the governing body.”*

23. Regulation 17(3) requires that *“any other land which, immediately before the implementation date, was held by the trustees for the purposes of the school transfers to and vests in the governing body in accordance with a transfer agreement.”*

24. Regulation 18(1) requires that *“where the trustees have incurred capital expenditure in relation to*

*a) land transferred under regulation 17(1) or (3), (the transferred land), or*

*b) other land, the proceeds of the disposal of which were used to acquire or enhance the value of the excluded land,*

*the governing body must pay to the trustees such sum representing the value of the transferred land as may be agreed between them or determined by the adjudicator under regulation 6.”*

25. Regulation 18(2) contains a similar provision requiring the trustees to compensate the governing body or the council (as the case may be) by a sum agreed by them, or as determined by the adjudicator, *“for incurred capital expenditure in relation to*

*a) any land held by the trustees for the purposes of the school which is not transferred land, (the excluded land), or*

*b) other land, the proceeds of the disposal of which were used to acquire or enhance the value of the excluded land.”*

26. The representations submitted by the school’s solicitors have been simple and straightforward throughout. In summary, these were as follows: the school was set up as a foundation school with a foundation in accordance with the statutory proposals; that is what it is; the trust neglected to amend its Articles when the school joined the trust; but all parties have always proceeded on the understanding that the school is a foundation school with the trust as its foundation; the definition of “*school*” in the Articles would include Lane End, even though the school is not named specifically; members of the trust were appointed as foundation governors of the school; the governing body employs the staff; the headteacher of Lane End attended trust meetings along with the headteachers and chairs of governors of the other trust schools.

27. The governing body of the school has taken a decision to remove the trust. This decision was properly taken, and they were entitled, as the governing body of a foundation school with a foundation, to take such a decision. When a foundation school removes its foundation, the school land transfers to the governing body of the school upon completion of the required procedures. The school had not been able to make progress in getting the council or the trust to agree that the school land should transfer to the governing body upon removal of the trust, therefore solicitors had been instructed to refer the matter to the adjudicator.

28. The council and the trust submitted their representations jointly. This was said to be in order to avoid duplication in the production of documentation. I was concerned to ensure that all of the relevant documentation was provided and that there were no issues relating to a possible conflict of interest. The OSA sent an email on my behalf on 10 May 2017 requesting confirmation from the trust that it was content for the council to respond on its behalf. This confirmation was received on 10 May 2017. I also made clear that I would need a summary of any issues where there was disagreement between the trust and the council.

29. The school’s solicitors also raised the issue of conflict of interest. The council clarified its position in a letter of 5 July 2017 and subsequently at the meeting. This was that the council had spoken to both the trust and the headteacher of the school. It was not advising either party. The letter stated: *“The Council’s role has not been to*



*advise its sole purpose has been to carry out a fact finding exercise in order to get to the bottom of what has happened since the bidding exercise... The Council has agreed to respond to the adjudicator with both the Council's comments and the Trust comments – which have been kept separate from the Council's comments. The Council merely inserts responses given by the Trust which are dealt with independently from the Council. This was thought to be a more convenient way to deal with responses required by the adjudicator...The Council has had to liaise with the Trust for information regarding the Trust – so it made sense and it did save time to do it that way.”*

30. In essence, the council and the trust shared the view, as set out in the council's letter of 24 May 2017, that the council had approved the trust to set up a new school; however, the school had never formally joined the trust. The trust had been involved in the management of the school, but did not employ the school staff, who were paid by the council and employed by the council. There was no evidence that the school had been set up as a foundation school or a trust school, and the school had not *“completed the Trust Articles”*. The letter concluded that the trust's position was that the school land should be transferred to the Cockburn Multi-Academy Trust. I can find no basis in law for any claim that the land should transfer to this Multi-Academy Trust, not least since the school is a maintained school as opposed an academy. The Cockburn Multi-Academy Trust is a separate legal body to the Learning Trust South Leeds, with the latter being the foundation (that is the trust) for the school. The trust later acknowledged that there was no basis for this claim, and the council also subsequently acknowledged that its statement about staff being employed by the council was mistaken.

31. In a subsequent letter dated 1 June 2017 the council further argued that it had not been *“proved”* that the school ever joined the trust because there is no legal documentation to support this position. Whilst the council agreed that, *“if a school left a Trust, then the site would automatically vest in the existing school by virtue of the Regulations”*, it considered that *“the circumstances surrounding Lane End Primary School are unclear as to whether the school joined the Learning Trust at all or is even a foundation school... Lane End appears to be a community school run by the Learning Trust rather than a foundation school.”* The letter stated that the trust's view was that *“in line with the Council's recommendation the Trust should continue to run the school...as recommended by the Council's Executive Board following a consultation exercise.”*

32. In dismissing the school's assertion that it is a foundation school with a foundation, the council considered that this could not be the case in the absence of documentary proof. Records on Edubase could not be relied upon, as this is a *“read only”* site and information can be inputted by schools. Attendance at trust meetings by the headteacher was not sufficient. This is simply something that would be expected as the trust were running the school. There was no significance attached to the trust being represented on the school's governing body. The (then) chair of governors, who was also the Secretary to the trust, was appointed in order that the trust could be represented in accordance with the bid.

33. In an attempt to better understand the basis of the arguments being put forward by the parties, I wrote letters to them on 8 June 2017 asking detailed questions. I also encouraged them to meet and discuss the issues in disagreement.

The parties did meet, but were unable to reach any agreement, however the council's position had changed by the 5 July 2017. In a letter of that date it is stated that "*Lane End appears to be neither a school with a foundation or a foundation school with a foundation and appears at present to have no status*". The letter continues "*The council would transfer the land to whichever body the adjudicator directs. I am unclear as to how this matter could have actually proceeded without first resolving the issue of the status of the school. The Regulations referred to apply to schools withdrawing from a Trust. If there is no evidence to show that the school ever joined the Trust – then do these Regulations still apply? The Regulations also state that when a school removes itself from the Trust – then the land automatically vests in the governing body of the school. This is on the assumption that the freehold land vests in the Trust in the first place. I am unclear as to whether the land does vest in the Learning Trust. This is based on the fact that legislation states that all land held or used by the local authority for the purposes of the school vests in the Trust on the implementation date of the Trust. Lane End was constructed after the implantation date of the Learning Trust and Lane End site is therefore I think exempted. This would mean that the land does not automatically vest in the Trust and the freehold still lies with the Council.*"

34. At the meeting the council's lawyer summarised the council's position as follows: a competition process for a new school had taken place; the "*contract*" was awarded to the trust with the expectation that the new school would join that trust. However, the paperwork was never formalised so the new school never did join the trust. If the adjudicator's decision is that the land transfers to the governing body of the school, then a paper would have to be presented to the Executive Board as the council's lawyers considered this to be "*a grey area*." I have to say that I am somewhat surprised by some of the points made by the council as they have very little basis in the statutory framework relating to schools. The council approved the establishment of a foundation school with a foundation. It did not then transfer the land to the school's foundation (that is the trust), as required by law and was accordingly in default of a statutory duty. It did not approve, indeed, under the provisions of the legislation then in force, could not have approved, the establishment of a community school. As I have stated above, references to the trust "*running the school*" are also of concern given the provisions of section 21 of the 2002 Act.

35. The trust's representative explained that this was a unique position for them. They had applied through the competitive tender process and were successful in bidding for this new school. No paperwork was ever completed in relation to the land transfer from the council to the trust. This new school came into existence because of the trust – other schools in the trust were already established before they joined the trust. The Articles were amended when schools joined the trust, but the trust did not think any paperwork was necessary when Lane End was set up because the school was set up by the trust, so the legislation to transfer land was not appropriate.

36. The solicitor on behalf of the school said she had heard nothing new, and she was surprised to be sitting in this meeting today. The process was simple in her opinion – the school has applied the Regulations very carefully. There was no paperwork to join the school into the trust. All parties had worked on the basis that the school was a foundation school with a foundation. The school had checked

everything with the governance and legal teams of the council – they had done everything that they had been advised to do.

37. Firstly, I raised the question of compensation, and explained regulation 18 of the Regulations to the parties. I put it to them that, on the basis of the information submitted to me, I could see no evidence that either the trust or the governing body of the school had incurred any capital expenditure in relation to the school land and buildings. I asked whether there was any other evidence that anybody wanted to bring to my attention. The parties did not have any further relevant evidence, and each of them agreed that there was no basis for any claim for compensation under regulation 18 of the Regulations.

38. I then put it to the parties that, on the facts of this case, there were only two possibilities. These were:

- a. the school is a foundation school with a foundation, in which case the land is required to be vested in the trust under the relevant statutory provisions, but will vest in the governing body of the school if it removes its foundation; or
- b. the school has accidentally been set up as a foundation school without a foundation, in which case, the land is required to be vested in the governing body of the school under the relevant statutory provisions.

39. Either way, the school land must end being vested in the school's governing body. If the school does go ahead and remove its trust, the land will vest in the governing body at that point. If the school actually has no foundation, the law requires that the land be transferred to and vest in the governing body,. I asked the parties to think carefully and then explain their position exactly in light of this. I suggested that they might wish to have discussions privately, and that it would be open to the trust to seek advice before replying if they so wished. The parties left the room.

40. On returning to the meeting, the trust confirmed that it had decided not stand in the way of the school moving forward. It wanted all monies to go to the children, rather than to be spent on legal fees. "*Lane End would be responsible for its own destiny.*" The trust said it had taken this decision in the interests of local children. They requested that I record this, which I have done. The council confirmed that it would advise the Executive Board that the land would be transferred to the school's governing body.

41. I have concluded on the basis of the evidence presented to me that the school's governing body took a valid decision on 31 October 2016 to publish proposals to remove the school's foundation under regulation 4 of the Regulations. No agreement was reached on the questions of the land to be transferred or any compensation payable within a period of 3 months from the date of that decision, therefore there was a requirement for this dispute to be referred to the adjudicator. The council and the trust originally suggested that the school land should transfer to Cockburn Multi-Academy trust. I can find no basis in law upon which this suggestion could be upheld. In any event, the parties indicated at the meeting that they would

cooperate with the school in taking forward proposals to remove the trust, which will lead to the school land being transferred to the governing body of the school.

42. It is not within my jurisdiction to determine the category of the school, but it would not be possible for me to make a determination in relation to the transfer of the school land without there being a conclusion reached on this point. My conclusion is that the school is a foundation school with a foundation, as reflected in the published statutory proposals. The council adopted without modification the trust's proposal to set up a foundation school with a foundation, and this was what was implemented. All parties operated on this basis prior to the referral to the OSA. The trust simply neglected to amend its Articles for the reasons explained to me at the meeting. The school was initially run by the trust; the composition of the governing body reflected that of a foundation school with a foundation; the headteacher of the school attended the trust's Annual General Meeting on 30 November 2016, the trust's headteachers' strategy group meeting on 13 July 2015 and the trust's Board of Trustees meeting on 4 March 2015. If the school had not been part of the trust, the trust would have had no powers under its Articles to set up the school or appoint governors. The Articles define 'a School' for the purposes of the Articles as "*a school for which the Trust acts as a foundation for the purposes of the School Standards and Framework Act 1998.*" The trust was acting as a foundation for Lane End Primary School in accordance with its proposal to set up the school, and in compliance with the terms under which the proposal was accepted by the council.

43. I am required by regulation 6 of the Regulations to ensure that any matters relating to the land to be transferred have been resolved. I am satisfied that there are no matters relating to the land to be transferred which need to be resolved. I conclude that the school land must be transferred by the council to the trust, as is required under paragraph 28 of Schedule 2 to the 2006 Act. The land is currently registered to the council. However, as I have stated above, where a local authority is required to provide a site for a proposed foundation school, it must transfer its interest in the site and in any buildings which are to form part of the school's premises to the school's trustees to be held on trust for the purposes of the school. Since the council has not complied with its statutory obligation in this regard, this must be rectified without further delay. The land must then be transferred from the trust to the governing body of the school upon removal of the trust.

44. The council have not argued that any grants or fees were payable, or that any capital investment should be refunded. I have therefore concluded that no compensation is required to be paid to the council. No evidence has been presented to me which demonstrates that the trust has incurred any capital expenditure with respect to the land which has been held for the purposes of the school, or that there will be any future liabilities on transfer of the land. The land has remained intact and unchanged since the school was built; no land has been added and none has been sold off. I am satisfied that no compensation payment is due to the trust relating to the land to be transferred. All parties accepted at the meeting that no compensation is payable under regulation 18 of the Regulations.

45. From the evidence made available to me, I am persuaded that in accordance with regulations 17 and 18 of the 2007 Regulations, all matters relating to the land

which has been held for the purposes of the school have been agreed. There are no matters which need to be resolved.

### **Summary**

46. I have considered all the evidence provided and all the points made to me. I acknowledge that much time has been spent discussing the category of the school, however my role is to determine what should happen to the land in the event that the governing body proceeds with its proposals to remove the trust. I determine for the reasons given above that the school land shall transfer to the trust in the short term; that it shall transfer in its entirety to the school's governing body on removal of the trust; and that no compensation is payable.

### **Determination**

47. Under the powers conferred on me by regulation 6 of The School Organisation (Removal of Foundation, Reduction in Number of Foundation Governors and Ability of Foundation to Pay Debts) (England) Regulations 2007, I direct that the freehold land and buildings known as Lane End Primary School registered at H.M. Land Registry under title number WYK127057 to Leeds City Council shall be transferred forthwith to The Learning Trust (South Leeds). I further direct that the said land shall transfer to, and vest in the Governing Body of Lane End Primary School, upon the school's removal of its foundation.

Dated: 25 October 2017

Signed:

Schools Adjudicator: Dr. Marisa Vallely