



Office of
the Schools
Adjudicator

Determination

Case reference: LAN79

Applicant: The Governing Board of Clapgate Primary School, Leeds

Application: Transfer of land to the Governing Board of Clapgate Primary School, Leeds on the removal of a foundation

Date of direction: 29 November 2019

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 hereby direct that the freehold land and buildings known as Clapgate Primary School registered at H.M. Land Registry under title WYK821512 with the exception of the land outlined in blue and marked “1” on that plan, shall be transferred to the governing board of Clapgate Primary School, Leeds upon the removal of its foundation trust.

The Referral

1. On 13 June 2019 solicitors acting on behalf of the governing board of Clapgate Primary School, Leeds (the school) referred a dispute concerning the transfer of land to the governing board upon the proposed removal of the school’s foundation trust to the Office of the Schools Adjudicator.

Jurisdiction

2. 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 2007 Regulations) requires that:

“(1) Before publishing proposals to remove the school’s foundation, the governing body must agree with the trustees and the local education authority 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).*

(2) Where the governing body has not reached agreement with the trustees and the local education 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."

3. The governing board of the school had resolved on 16 May 2017 under regulation 4 of the 2007 Regulations "*That the governing board approve the decision that proposals be published for Clapgate Primary School to leave The Learning Trust (South Leeds).*" No agreement has been reached between Leeds City Council (the local authority), The Learning Trust (South Leeds) (the trust) and the governing board of the school concerning the transfer of land within three months of the decision by the governing board to remove the foundation and so I am satisfied that this matter is within my jurisdiction.

Procedures

4. In considering this matter I have had regard to all relevant legislation and guidance. I have considered all papers put before me including:
 - a) the letter from the school's solicitors dated 13 June 2019, the attachments to that letter and responses to my subsequent enquiries;
 - b) an email dated 10 September 2019 from the governing board confirming that the solicitors were acting for it on this matter;
 - c) a letter from the local authority dated 11 July 2019 and responses to my subsequent enquiries; and
 - d) an email from the secretary to the trust dated 14 October 2019 and subsequent correspondence.

Consideration

5. The referral stated that "*On 2 June 2014 ("the Implementation Date"), the School became a foundation school with a foundation (the Learning Trust (South Leeds) ("the Trust")) under regulation 3 of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 ("the 2013 Regulations").*" The

referral continued *“A dispute has arisen between our client and the local authority serving the School, Leeds City Council (“LCC”), as a result of LCC's failure to agree to and take steps to transfer the the [sic] Property to the Trust so that it may subsequently be transferred to our client upon the School's removal of its foundation. The Property is comprised in Land Registry title WYK821512. We enclose a copy register of title and plan for the same.”*

6. Paragraph 2 of Schedule 5 to The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 (the 2013 Regulations) require that when proposals for a community school to become a foundation school have been approved *“any land which, immediately before the implementation date, was held or used by a local authority for the purposes of the community school or community special school must on that date transfer to and by virtue of this paragraph vest in – (a) the trustees of the school, to be held by them for the purposes of the school or (b) if the school has no trustees, the governing body, to be held by that body for the relevant purposes.”*
7. Regulation 17 of the 2007 Regulations requires that when a foundation is removed *“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 virtue of this regulation vests in, the governing body.”*
8. The referral said that the local authority had not taken the necessary steps to transfer the land to the trust and so that it could be subsequently transferred to the governing board by the trust.
9. In a letter to me dated 11 July 2019 the local authority said that it did not dispute the entitlement of the trust, and subsequently the governing board, to the land and buildings at the school and that it was under a duty to transfer them. The local authority said that the delay in transferring the land was due to *“the high volume of trust and academy conversions the Council has to deal with.”*
10. When I inspected the copy of the title plan I noted that a small area to the north west of the site adjacent to Cranmore Drive was enclosed within a blue line and labelled “1”. This indicated this land was subject to a lease. An email dated 4 October 2019 from the local authority confirmed that this area was leased for the purposes of an electricity substation and it was agreed that it should not form part of the land under consideration for transfer because it was not used for the purposes of the school.
11. At this point in my consideration I noted paragraph 6 of Schedule 5 to the 2013 Regulations which says *“Where immediately before the implementation date in relation to any change of category – (a) any land vested in a local authority is by virtue of any statutory provision required to be transferred to the governing body or*

any trustees of a school, but (b) the land has not been so transferred, paragraphs 2 to 5 are to apply to the school as if it had been so transferred by that time."

12. I also noted paragraph 16 of the same schedule "*Where a transfer to which this Schedule applies relates to registered land, the transferor must execute any instrument under the Land Registration Acts 1925 to 2002(2), deliver any certificate under those Acts, and do such other things under those Acts as the transferor would be required to execute, deliver or do in the case of a transfer by agreement between the transferor and the transferee.*" Paragraph 17 is also relevant "*The adjudicator may issue a certificate stating that any property specified in the certificate, or any interest in or right over any such property as may be so specified, or any right or liability so specified, was or was not transferred by virtue of these Regulations to any body corporate or persons so specified; and any such certificate is to be conclusive evidence for all purposes of that fact.*"

13. I formed the view that although the local authority had not registered the transfer of the land to the trust as it is required to do, the land had in fact transferred to the trust by the operation of the law. However, a further dispute arose when contact was eventually made with the trust.

14. On 14 October 2019 the trust responded to my initial enquiries by email stating "*Clapgate was never a member of the trust*" and asserting that the school was a community school. The evidence which I had to show that the school was a member of the trust was the school's instrument of government dated 2 June 2014. This states that the school is a foundation school and that the school's trust is The Learning Trust (South Leeds) which is entitled to appoint two foundation governors. The trust is also listed as being the school's trust on the Department for Education's database "Get Information About Schools".

15. In support of its assertions, the trust stated that:

- no statutory notice was ever published for the school;
- the trust has never appointed governors to the school;
- no representative of the trust has attended the school's governing board meetings in recent years;
- the school is not described as having a foundation on the local authority's website;
- the instrument of government does not prove that the school joined the trust;
- foundation governors are not mentioned on the school's website;
- there was no representation of the trust when the governing board decided to remove the trust;
- the school made no financial contribution to the trust; and
- the school is not represented on the trust's logo.

16. Neither the school, nor the local authority have been able to provide me with a copy of the statutory notice which the governing board was required to publish as part of the process of changing from a community to a foundation school. This is a matter of concern. However, I have been provided with the minutes of governing board and subcommittee meetings at which the process of becoming a foundation school was discussed. These show that:

- On 17 January 2014 a representative of the trust attended the resources committee. There was a wide ranging discussion about trust membership and the process of joining the trust.
- On 4 February 2014 the governing board resolved to become a foundation school and join the trust which was named in the minutes.
- On 14 March 2014 the resources subcommittee discussed the outcome of public consultation on joining the trust.
- On 18 March 2014 the governing board agreed to “*publish a statutory notice in respect of the South Leeds Learning Trust.*”
- On 13 May 2014 at a meeting of the governing board, at which a representative of the trust was present, it was noted that the statutory notice had been served and there had been no objections. The governing board agreed to become a foundation school with a trust with effect from 2 June 2014.

17. These minutes indicate that the correct process was followed for the school to change category and that the trust was involved in the process. It is unfortunate that on 28 April 2014 the school wrote to the local authority and the Secretary of State for Education stating that the governing board had decided at the meeting on 18 March to become a foundation school and join the trust, when in fact that meeting only authorised the publication of the statutory notice.

18. The former headteacher of the school was listed as a director of the trust by Companies House until she resigned her directorship on 31 July 2019. She was present at the meeting of the governing board on 16 May 2017 when the decision was taken to publish proposals to remove the trust. This refutes the trust’s view that it was not represented on the governing board or in the decision making process.

19. I have also seen copies of correspondence between the chair of governors and the secretary of the trust dating from September and October 2014 concerning the school leaving the trust. In this correspondence the secretary to the trust refers to the statutory processes required for the school to leave the trust. It would appear to me that the school was accepted as being a member of the trust at that time. I have not enquired why the school would be considering leaving the trust within a few months of joining it.

20. On balance, I am satisfied that the evidence is for the school being a foundation school with a foundation and that foundation is The Learning Trust (South Leeds). This means that the land and buildings occupied by the school is vested in the trust by virtue of the 2013 Regulations quoted above whether or not the local authority has registered the land accordingly. Consequently, when the governing board completes the statutory process of removing the foundation, the same land and buildings will be vested in the governing board by virtue of the 2007 Regulations. Paragraph 4 of Schedule 3 to the 2007 Regulations states *“Where a transfer to which this Schedule applies relates to registered land, it is the duty of the trustees to execute any such instrument under the Land Registration Acts 1925 to 2002(a), to deliver any such certificate under those Acts and to do such other things under those Acts as he would be required to execute, deliver or do in the case of a transfer agreement.”* Paragraph 5 of that Schedule says *“The adjudicator may issue a certificate stating that any property specified in the certificate, or any such interest in or right over any such property as may be specified, or any right or liability so specified, was or was not transferred by virtue of these regulations to any body corporate or persons so specified; and any such certificate is conclusive evidence for all purposes of that fact.”*
21. Should it be possible for it to be proved that the school did not join the trust, the local authority has not disputed that the school is a foundation school. In which case the land and buildings would have transferred by virtue of the 2013 Regulations to the governing board. The outcome is the same.

Conclusion

22. It should not have been necessary for the adjudicator to be involved in this matter. There is no dispute about the publicly provided land which was used for the purposes of the school immediately before it became a foundation school. The dispute has arisen because the local authority did not do as it was required by the 2013 Regulations when the school became a foundation school in 2014. That is register the transfer of the land to either the trust, in the case the trust is the school's foundation, or the governing board if the school did not have a foundation. Resolving this dispute has been complicated by the school not being able to provide a copy of the statutory notice that it was required to publish as part of the process of becoming a foundation school and difficulties in obtaining an initial response from the trust.
23. Whatever administrative failings there may have been on the part of the local authority, governing board or the trust the regulations are clear. I am satisfied by the evidence available to me that the school is a member of the trust and therefore the land is currently held by the trust even though it is registered to the local authority. On the removal of the trust the land will be held by the governing board.

24. For the avoidance of doubt, this determination serves as a certificate for the purposes of paragraph 17 of Schedule 5 to the 2013 Regulations and of paragraph 5 of Schedule 3 to the 2007 Regulations.

Direction

25. 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 hereby direct that the freehold land and buildings known as Clapgate Primary School registered at H.M. Land Registry under title WYK821512 with the exception of the land outlined in blue and marked "1" on that plan, shall be transferred to the governing board of Clapgate Primary School, Leeds upon the removal of its foundation trust.

Dated: 29 November 2019

Signed:

Schools Adjudicator: Phil Whiffing