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The Governing Body of Priory Primary School
Percy Park Road
Tynemouth
Tyne & Wear
NE30 4LS

Geoff.Ogle@ 

Our Ref: VMG/LW

Date: 24th May 2013

Dear Mr Ogle

**Re: Letter Before Proposed Claim for Judicial Review concerning Kings Priory
Academy Proposals**

To:

The Governing Body of Priory Primary School
Percy Park Road
Tynemouth
Tyne & Wear NE30 4LS

Copied to the Secretary for Education, the Treasury Solicitor, the King's School Tynemouth
and Woodard Academies Trust (details below).

The claimant:

North Tyneside Council
Quadrant
The Silverlink North
Cobalt Business Park
North Tyneside NE27 0BY

Reference details:

Louise Watson, Senior Manager Legal Services on behalf of Vivienne M Geary, Head of
Law and Governance

The details of the matter being challenged:

The decision challenged is that of the Governing Body of Priory Primary School (“the Priory School”) on 25 March 2013 that Priory School should merge with King’s School Tynemouth and convert into an Academy. This decision was communicated to the Council by letter dated 26 April 2013.

The issue:

The factual background

The Council became aware on 3 September 2012 that the Governing Body of Priory Primary School (a community primary school maintained and funded by the Council) and the Governing Body of the King’s School Tynemouth (“the King’s School”) (an independent school, which charges fees) had made an application under section 3 of the Academies Act 2010 to the Secretary of State for an Academy Order to be made in respect of Priory School. On this date, an announcement was made to parents and the Priory School issued a press release.

The Priory School wrote to its parents:

“to advise you of some major changes our school is about to undertake ...

Following extensive discussions between Priory’s Governors and those of The King’s School, we agreed to submit an Expression of Interest to the Department for Education to become a joint all-through sponsored independent academy. Over the summer we were informed by the Department for Education that our submission had been successful and met with Ministerial approval.

It is therefore proposed that from September 2013 Priory School and The King’s School will join together to become Kings Priory School. King’s will no longer charge pupils fees to attend. The new school will be funded directly by the Department for Education and will be run through its sponsor, Woodard Academies Trust, the educational charity set up by the Woodard Corporation, to which King’s currently belongs. The school will be co-educational, will have a Church of England faith designation and be open to children of all faiths and none

I can assure you that the decision to join with The King’s School and the application for Academy status has not been taken lightly. ...

You will no doubt be anxious to learn more about our plans and the timescale to which we are working. We will be arranging a series of consultation meetings over the coming weeks for parents which we will advise you of.”

An accompanying Frequently Asked Questions document explained that the Priory was converting to Academy status because:

“Academy status will bring greater independence to the governing body and staff to enable us to continue to improve the quality of our educational provision, and crucially it will create a seamless transition for our pupils from primary to secondary

education. Furthermore the Department for Education has agreed to fund a significant improvement to our buildings (subject to the usual local authority planning approval)."

The FAQ document explained that *"All pupils at Priory will be guaranteed a place at King's"* and that *"All King's and Priory pupils will be guaranteed their place at the school through to the age of 18 ... school fees will no longer be payable."* It stated that the new school *"should prove to be a very popular option with existing students and their parents"*.

It described the process as follows:

"Preliminary discussions over the feasibility of an academy have taken place amongst the governing bodies and senior management teams of both schools. The Department for Education has also been assisting with the project. An expression of interest from Woodard to sponsor the new academy has been approved by the DfE. There now follows a period of consultation with parents, staff, pupils and the local community, prior to the Woodard Academies Trust drawing up an Education Brief which will outline the precise structure of the new school. An implementation phase follows during which the actions necessary to prepare for opening will be completed, leading to the opening of the new school. Finally, prior to opening, the DfE will enter into a binding contract (the Funding Agreement) with Woodard as the academy sponsor."

Parents were subsequently invited to Information Sessions, to take place on 10 September 2013. The invitation letter stated that *"The purpose of these meetings is to explain the background to the decision, why we believe that this is the right future for Priory Primary School and what this will mean for you and your child ... this was a unanimous decision by the Governing Body, was well informed, and the result of a careful decision making process. We firmly believe this to be the best decision for the children of Priory and enable us to continue to provide the first class education they receive now."*

Similar information was circulated by King's School to its parents. This emphasised how little would change at King's School, save that the school would no longer charge pupils fees to attend.

It was only after the Council reminded the Governing Body of its obligations under regulation 13 of The School Governance (Procedures) (England) Regulations 2003, that the Governing Body provided the Council with the minutes of the relevant meetings.

Similarly, despite the Secretary of State's obligation to give a copy of any Academy Order on the Council (section 4(4)(b) of the Academies Act 2010), it was not until 25 September 2012 that the Council was given a copy of an Academy Order that had been made on 12 July 2012. The Secretary of State had to be reminded of his obligation before performing it.

The Academy Order is an order *"for the purpose of enabling the school to be converted into an Academy"* (section 4(2) of the Academies Act 2010). However, it is only if and when the Secretary of State enters into Academy arrangements that the Priory School would be converted into an academy. Before the Secretary of State enters into any Academy arrangements:

- the Governing Body must consult on the question of whether or not the conversion should take place (section 5(1) and (4) of the Academies Act 2010);
- Woodard Academies Trust (as the person with whom the Secretary of State would enter into Academy arrangements to provide for an existing educational institution to provide education for pupils of a wider range of ages) must consult “*on the question of whether the arrangements should be entered into*” (section 10(2) of the Academies Act 2010); and
- the Secretary of State is required by section 9(2) of the Academies Act 2010 to “*take into account what the impact of entering into the arrangements would be likely to be on maintained schools, Academies, institutions within the further education sector and alternative provision in the area in which the institution is proposed to be, or is, situated*”.

It is clear from the extracts from the information provided to parents that (prior to any Council involvement in the matter) the Governing Bodies of the Priory School and King’s School had reached a joint decision that the two schools together would become an Academy. Whilst there was recognition that there had to be a consultation exercise, the language of the communications with parents gives the strong impression that a decision has been taken by the Governing Bodies to merge the schools and that Kings Priory School will be opening in September 2013.

The conflict of interest

The Council understands that Mr Ogle, the Chair of the Governors of the Priory School, has a child who attends the Priory School and an older child who attends King’s School and that he pays fees to King’s School in respect of that child . So far as the Council is aware, both children would accept their guaranteed places at Kings Priory School if it opened as proposed. Mr Ogle, who chairs the Governing Body, has never suggested the contrary when the issue has been put to the Governing Body. This would mean that the younger child would benefit from a guaranteed place at the school until the age of 18 (instead of having to apply for a secondary school place) and that fees would no longer be payable in respect of either child’s secondary age education. An academy is prohibited by law from charging fees: Academies Act 2010 section 1(9).

Correspondence about the decision of 26 March 2012

On 28 September 2012, the Council raised this issue in general terms with Mr Ogle, the Chair of the Governing Body of the Priory School. By this date, it had been provided with redacted copies of the minutes and motion from 26 March 2012. The minutes record that the Chair presented the current challenges and pros and cons of moving to Academy status and that he had answered any questions and clarifications. The Governing Body unanimously resolved to adopt the academy approach in partnership with the King’s School. The minutes noted that King’s School had made a resolution on 12 March 2012 which matched and mirrored their motion.

The minutes also record that there would be a meeting with the Council “*at an appropriate point*”. That meeting had not taken place prior to the application to the Secretary of State for

an Academy order and it had still not taken place prior to the public announcement on 3 September 2012. Thus the Council learnt about the proposal from press reports, at the same time as parents.

The Council's letter of 28 September 2012 sought reassurance on the question of any pecuniary interest:

"The minutes record that members of the Governing Body did not declare any "additional interests". You will be aware that where a governor has a pecuniary interest in any matter he or she should withdraw from the meeting and not participate in the vote (in accordance with regulation 14(2)(c) of The School Governance (Procedures) (England) Regulations 2003 (as amended)). To reassure the Council that the decision was taken on a lawful basis I would be grateful if you would confirm that none of the governors who participated in the discussions and vote on 26 March 2012, and subsequent discussions and votes on the proposals, had children enrolled in King's School on a fee paying basis."

Mr Ogle responded to the Council on 5 October 2012:

"On the matter of pecuniary interest, I am not aware of any pecuniary interest that a governor might have to declare. You mention the attendance at the meeting of governors with children at King's School. In my view, there is no related pecuniary interest. If the proposed Academy opens, those parents with a child currently attending King's School will lose the benefit of being able to send their children to King's School. I could see that there would be a pecuniary interest if the matter under discussion related to an arrangement under which King's School waived the fees for Priory Primary School governors' children. However, King's School will no longer exist if the proposals that were under discussion go through."

The Council replied on that same date that:

"I also repeat my request that you confirm that none of the governors who participated in the discussion and vote on 26th March 2012 had children enrolled in King's school on a fee paying basis. The reasoning in your response appears specious and disingenuous. The proposed closure of King's and Priory Schools is not the point. A pecuniary interest will lie in the fact that the new Academy will enable such a governor to secure free education at that Academy for their child as they will no longer be required to pay the fees they are currently paying for that child."

The matter not having been resolved, the Council raised its concerns again in its response(s) of 6 March 2013 to the consultation by the Governing Body of the Priory School and Woodard Academies Trust:

"Pecuniary interests and conflicts of interest may have arisen if any governors with children enrolled in Kings School participated in the decision making process. There appears to have been no consideration of this in the minutes of the Governing Body meetings supplied to date and therefore the Authority has requested the names of any such governors and confirmation of the steps the Governing Body will take to resolve the issue. The Department for Education has indicated that there may have

been a conflict of interest for governors with children attending Kings School and consequently any relevant governors should have declared a conflict of interest.

The Authority asserts that both interests are relevant but that specifically pecuniary interests would have arisen for governors with children enrolled in Kings School as the merger of the two schools (and thus taking Kings School out of the fee paying independent sector) was intrinsic to the decision of the Governing Body of Priory School to pursue academy status. Regulation 14 of the School Governance Procedures (England) Regulations 2003 provides that where either a conflict of interest or a pecuniary interest arises, the governors shall disclose their interest, withdraw from the meeting and not vote on the matter in question.”

The consultation response also made the following points (in summary):

- North Tyneside Council first became aware of the academy proposals in September 2012 at the point at which they became known to the general public. There was no opportunity for the Authority to contribute its views to earlier discussions between the Governing Body of Priory Primary School and the Woodard Academies Trust. The Authority is not opposed in principle to Academies but is opposed to these proposals in their current form due to the anticipated impact upon other schools and the lack of evidenced educational benefit.
- The Council raised concerns about the accuracy of the financial information relied upon in respect of the proposals. In particular, the Council had made repeated requests for the Governing Body to clarify the basis upon which it had projected a deficit for Priory Primary School. Financial considerations have been prominent in all discussions and literature regarding this matter to date. The Council asked for steps to be taken to ensure that members of the Governing Body and consultees are not misled regarding the true financial position of the school and of any resulting academy.
- The Council provided a commentary on the educational case for change, identifying risks and explaining that *“without further information as to how those risks will be mitigated it is unclear how any education benefits will be realised”*.
- The Council raised concerns about the narrowness of the consultation exercise: *“A number of parents have approached the Authority to express concern that no attempt has been made to seek the views of parents other than those who have children in Priory Primary School or Kings School. We seek confirmation as to whether or not this is true and if it is, what steps will be taken to rectify the situation. Given that the proposal has significant implications for the whole school system we believe some attempt should have been made to seek the views of the wider public.”*
- The Council raised further concerns about the impact the proposals will have upon other schools in the Borough and upon which representations will be made to the Secretary of State for Education. The two main concerns *“centre upon the additional*

surplus capacity that the Academy would create in the whole school system at a time when secondary numbers are falling and the significant detrimental impact the merger of the two schools would have upon the principal feeder school which will experience a 35% decline in its pupil roll over a 5 year period.”

The decision of 10 January 2013

In a letter dated 25 March 2013, Mr Ogle provided the Council with the minutes of its meeting of 10 January 2013. The letter stated that:

“The GB revisited this issue recently in our academy planning meeting of 10 January 2013 and the minutes (draft attached as they have not yet been formally ratified) of that meeting should meet your concern. As a point of clarification you should also note that your letter (and consultation response) misrepresents the sequence of events: the decision to take King’s School, Tynemouth out of the fee-paying independent sector was exclusively that of the King’s GB, and made at a meeting which pre-dated any contact with Priory and the Priory meeting and decision. Priory governors had no authority or wherewithal to make any decision over the future of another school. King’s decision was to move to Academy status in any event. The involvement between the two schools was to determine only whether King’s would proceed as an academy in its own right or with Priory. The DfE has already recognised this to be the case, and the GB suggests the Authority should review its position in light of the facts. Nonetheless, the GB will continue to review the issue of interests in all future meetings. ...

The GB minutes of the 26 March 2012 meeting were approved over email immediately following the March meeting, and formally re-approved at the 10 January 2013 meeting. This meeting reviewed the original vote of principle position again and re-considered its original decision. This was still not a final decision. As you will see in the minutes, the academy proposal was voted on again, and again the vote was unanimously in favour.”

In relation to conflicts of interest, the minutes set out the discussion in some detail (with emphasis added):

“15. The LA had raised the issue of whether any Priory governors had failed to declare pecuniary interest or conflicts of interest in the matter of the decision to move forward on the Academy merger. The DfE had clarified their view that there was no pecuniary interest issue, as the decision on the future of King’s lay with, and had been made by, King’s School and their governing body and not by the Priory vote. The King’s decision in principle to move to academy status (and not charge fees) predated the Priory vote as noted at the time.

16. The DfE had however noted that there was at least the possibility that there may be a conflict of interest, although they had also cited that given the unanimous decision, this could not have affected the outcome of the vote and decision made. Nonetheless, as this possibility has been raised, the it was felt by the Governing Body that (although it could not have affected the decision) the matter should be put beyond any doubt, especially given the continued enquiries by the LA on this matter, hence raising it again at this meeting.

17. *The supporting papers considered by governors at the meeting of the 26th March 2012 had raised every opportunity for any challenge or discussion on interests, but it was important that there was no lack of clarity on this.*

18. *The chair suggested that there should be declarations of interest as it was appropriate to now consider conflicts of interest.*

19. *The chair raised that he may have a conflict of interest. He had considered this from a financial and non financial perspective: the financial perspective would have constituted a pecuniary interest (which DfE had confirmed was not present), while the only non financial conflict of interest with regards to his role as chair of Priory School that he could think of was that as a parent of King's he might act against the interests of Priory.*

20. *As he wished to put the matter beyond doubt, the Chair advised that he would now leave the meeting and handed over chairmanship to the Vice Chair for her to chair the subsequent discussion.*

21. *The Chair left the meeting at 19:03 and J Stickland assumed Chair duties.*

22. *The GB discussed:*

- *the issue of parenting children at both schools, or Priory and another LA school;*
- *the fact that the supporting papers issued on the 14 Mar 2012 had explicitly stressed the opportunity for governors to remove themselves from the vote, or raise any issues of propriety in the meeting of the 26 Mar 2012;*
- *the fact that the GB had discussed the voting method and agreed on a secret ballot to avoid any suggestion of influence;*
- *the range of topics the decision/vote had hinged on, and whether there was any substantive conflict of interest between a parental view and a governor view on these topics;*
- *whether there was any scope for undue influence from the Chair or any other governor in the voting process or preceding debates;*
- *whether any GB members had any doubts over the propriety of the process as a whole.*

23. *The Vice Chair summarised the discussion and proposed a summary statement for agreement by the GB (which follows). The GB agreed it (in the absence of the chair).*

24. *The GB AGREED that:*

- *they found no conflict of interest in the Chair's position arising from parenting children at both Priory and King's Schools either now or in March 2012, and that this fact was known to the GB at the time;*
- *no other governors had children at both schools either now or in March 2012;*
- *they found no conflict of interest in G Lawson's role as a governor at both schools, which was also universally known;*

- *no other governors had roles at both schools;*
- *that in any case, the level of challenge and due diligence throughout the decision making process had been rigorous and would have overcome any attempt to 'lead' or 'shape' the debate to a particular end;*
- *the documentation prepared on Pecuniary interest and Conflict of Interest had provided ample opportunity for any disquiet to be heard before or at the 26 March meeting;*
- *the secret ballot had provided for free expression for all governors;*
- *all governors believed they had acted and voted on their conscience as governors and in line with their training and commitments in that role only;*
- *governors further noted that the PPS governing body was capable of thorough challenge and support in all its functions, exemplified this frequently, and was comprised of a wide range of independent thinkers from widely different backgrounds and stances;*
- *given the above, the GB wished to re-affirm its full confidence in G Ogle's leadership;*
- *in light of some of the content of recent communications, the GB wished to again minute and clarify that the GB decision on the 26 Mar 2012 was taken on the basis of a whole range of factors - as outlined at the time and in parental mail and meetings since - including educational and financial aspects (both capital investment and ongoing funding), the wider benefits of a through school and a local sixth form, and what overall seemed likely to provide the best option for Priory pupils now and in the future."*

The minutes record that *"The purpose of the meeting was to take stock of the position with regards to the academy conversion. The original vote on the merger had been a vote in principle and the purpose of the meeting was to review the original decision which was taken in principle subject to a number of caveats"*. There was a secret ballot and the Governing Body unanimously voted in favour of adopting the academy approach in partnership with the King's School.

Correspondence about the decision of 10 January 2013

The Council was not aware of the decision of the Governing Body of 10 January 2013 until 25 March 2013, when the minutes were supplied.

At this time, a local government election was due to take place on 2 May 2013 and therefore the Council was working within the confines of the Code of recommended practice on local authority publicity. Within the spirit of that Code and the conventions of the "purdah period", the Council considered that it would be inappropriate to take steps towards commencing proceedings on what could be seen as a politically controversial issue until the outcome of the elections was known. Further, it was appropriate to wait to consult with the Mayor following 2 May 2013 before commencing any action which might impact upon the schools in the area. As a result of the election the Council has had a change in administration, including a new Mayor.

Council officers responded to the Governing Body writing on 5 April 2013:

"The conduct of the governing body meetings continues to be of concern to the Authority. There appears to be a flagrant disregard of the regulations governing the conduct of such meetings. For example, in your letter you confirm that the minutes of

the meeting of 26 March 2012 were not formally approved until 10 January 2013, some ten months later. The issues of pecuniary and conflicts of interests were not dealt with by the governing body until the meeting of 10 January 2013 and then only as the fourth item on the agenda. Such issues should have been addressed over a year ago and certainly at the outset of governing body meetings. Further, the Authority disagrees with the stance taken by the governing body on this."

The Council subsequently received the responses of the Governing Bodies of the Priory School and Woodard Academies Trust (respectively) to its consultation response. The Council responded on 10 May 2013, identifying further errors in the financial information relied upon by Mr Ogle. The Council also highlighted the extent to which it remained concerned about the conflict of interest, commenting that *"the Authority considers that the issue of conflicts has arisen at other times during the decision making process, for example, in determining the admission arrangements which favour the children of staff and siblings. The impact of those admission arrangements upon children living in the locality of the proposed academy has become apparent in the recent shadow admissions round"*.

The decision challenged

By letter dated 26 April 2013, the Council was informed that the Governing Body of the Priory School had met on 25 March 2013 and that *"Following consideration of the consultation responses, the Governing Body (GB) held a secret ballot on the proposals which were the subject of that consultation. Thirteen Governors voted and the vote was 13-0 in favour of the proposal that Priory Primary School should merge with King's School Tynemouth and convert into an Academy."* The letter stated that *"The GB developed its proposals in the period up to its meeting on 25th October 2012 when it decided that its proposals were sufficiently developed to go out to consultation. The GB's decision to go ahead with the proposals, having taken account of the responses to its consultation, was taken on 25th March 2013. Consultation took place when the proposal was still at a formative stage."*

The decision letter included a further response to the Council's concerns about Mr Ogle's role and any conflict of interest. In particular, it stated that *"The DfE and Priory GB were satisfied that there was no pecuniary interest because the only issue being discussed was whether to merge with King's to become an academy. The King's School Governing Body had already made the decision to move to academy status and not charge fees prior to any approach to Priory Primary School. There simply could not be a pecuniary interest as there was no awareness or involvement in the original King's decision to become an academy."* The letter also responded to the Council's concerns about the financial information relied on by the Governing Body and the educational provisions of the proposal. For the first time, it set out the Governing Body's reasons for the proposal.

The decision to commence the pre-action protocol process

In light of the decision of 25 March 2013 (communicated on 26 April 2013), the Council has reached the point where it has no alternative but to raise the conflict of interest formally. It has raised its concerns on numerous occasions and received no recognition of the conflict or reassurance.

Alongside this pre-action letter, the Council is writing to the Secretary of State to make a complaint under sections 496 and 497 of the Education Act 1996. Given the proposed timetable for the opening of Kings Priory School and the impact on children across the area, the Council considers that it is not practical to await the Secretary of State's decision on that complaint before issuing any proceedings.

The legal basis for the proposed proceedings

The issue, in summary, is that the Governing Body's decision of 25 March 2013 is tainted by the Chair's conflict of interest and for that reason it (and, for the same reason, the decisions of 26 March 2012 and 10 January 2013) should be set aside. The issue goes back to the Governing Body's decision of 26 March 2012 (if not earlier) and all of the Governing Body's decisions to date in this matter have been unlawful.

The decisions of 26 March 2012 and 10 January 2013 to adopt the academy approach in partnership with the King's School were unlawful, by reason of Mr Ogle's involvement as the Chair of Governors in circumstances where he was a parent of a child at the Priory School and of a child at the King's School for whom Mr Ogle pays fees. Precisely the same issues render the decision of 25 March 2013 unlawful. As a parent of a child at the King's School for whom he pays fees, Mr Ogle had a direct pecuniary interest and conflict of interest in any decision to adopt the academy approach in partnership with the King's School. The decision meant that to all practical intents and purposes the King's School would continue as part of the new Kings Priory School, but that Mr Ogle would no longer have to pay fees for his child's place there. Further, his younger child would have a guaranteed place at the school and similarly would benefit from the removal of fees.

Regulation 14 of the School Governance (Procedures) (England) Regulations 2003 provides that:

"(2) Subject to paragraph (4), where—

(a) in relation to any matter there may be a conflict between the interests of a relevant person and the interests of the governing body; ... or

(c) a relevant person has a pecuniary interest in any matter;

that person, if present at a meeting of the school at which the matter is the subject of consideration, shall disclose his interest, withdraw from the meeting and not vote on the matter in question.

(5) Where there is any dispute as to whether a relevant person is required by this regulation or by the Schedule to withdraw from a meeting of the school and not vote, that question shall be determined by the other governors present at the meeting.

(6) The Schedule makes provision about pecuniary interests and other specified conflicts of interest."

The Schedule provides in material part, at paragraph 1:

"1.— Pecuniary interests

(1) For the purposes of regulation 14(2), a pecuniary interest in a contract, proposed contract or other matter includes a case where—

- (a) a relevant person was nominated or appointed to office by a person with whom the contract was made or is proposed to be made;
- (b) a relevant person is a partner of a person with whom the contract was made or is proposed to be made; or
- (c) a relative of a relevant person (including his spouse or some one living with that person as if he or she were that person's spouse), to the knowledge of that person has, or would be treated as having, such an interest.
- (2) For the purposes of regulation 14(2), a relevant person shall not be treated as having a pecuniary interest in any matter—
- (a) provided his interest in the matter is no greater than the interest of the generality of those paid to work at the school;
- (b) by reason only of the fact that he was nominated or appointed to office by, he is a member of, or is employed by, any public body; or
- (c) by reason only of the fact that he is a member of a corporation or other body if he has no financial interest in any securities of that corporation or other body.
- (3) Governors shall not, by reason of their pecuniary interest in the matter, be prevented from considering and voting upon proposals for the governing body to take out insurance protecting its members against liabilities incurred by them arising out of their office and the governing body shall not, by reason of the pecuniary interest of its members, be prevented from obtaining such insurance and paying the premiums.”

The Regulations were considered by Mr Justice Beatson on an application for permission in *R (McCormack) v The Governing Body of St Edmund Campion Catholic School, Secretary of State for Education, Director of Schools Diocesan Schools Commission* [2012] EWHC 3928 (Admin). The claimant (a governor) in that matter alleged that the governing body's decision to suspend him from attending governor body meetings for six months was unlawful. In relation to regulation 14, the claimant argued that on the facts of his case the Governing Body had been obliged by regulation 14(5) to determine a dispute about whether or not an individual should withdraw from the meeting and that it had unlawfully failed to do so. Mr Justice Beatson found at paragraph 79 that there had been a failure by the Governing Body to comply with regulation 14(5). Mr Justice Beatson's discussion of regulation 14 at paragraphs 81 to 84 demonstrates the importance of a Governing Body resolving such issues properly and lawfully.

In this case, Mr Ogle (a relevant person for this purpose) had a pecuniary interest in the matter. The Courts have held that “*Whether or not a legal person or entity has a direct pecuniary interest in the matter under consideration, which by its terms is directed to another person or entity, will be a question of fact in each case. If it is plain as a matter of fact and record that as a consequence of voting on a resolution touching the affairs of A, B is likely to benefit financially, B has a direct financial interest in the resolution although the resolution is not directed specifically to considering the affairs of B*” (*Regina v Kirklees Metropolitan Borough Council* (2001) 3 L.G.L.R. 12 per Mr Justice Newman at paragraph 38).

Mr Ogle also (or alternatively) had a conflict between his interests and those of the Governing Body.

In either case, he was obliged to withdraw from the meetings of 26 March 2012, 10 January 2013 and 25 March 2013 and he was prohibited from voting on the motions.

Similarly, at common law a decision is unlawful where there is a pecuniary interest or other (actual or perceived) bias. A pecuniary interest (however small) will always disqualify a decision-maker: *Dimes v Grand Junction Canal Co Proprietors* (1852) 3 HLC 759; *R v Hammond* (1863) 9 LT (NS) 423). The rule against bias or apparent bias is applied with particular strictness to interests that are pecuniary in nature (see for example *R (Lewis) v Redcar and Cleveland BC* [2009] 1 WLR 83, CA). For the reasons set out above, Mr Ogle had a plain pecuniary interest in this matter. Further, putting Mr Ogle's case at its absolute highest, it is plain that there is at least an appearance of bias: knowledge of all the circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that he was biased because the decision would directly affect his children's schooling (including the guarantee of a place for both children at the new school up to the age of 18 and the absence of fees in circumstances where he had previously been paying fees for materially similar educational provision).

Mr Ogle appears to now accept that he may have had a conflict of interest (see the minutes of the meeting of 10 January 2013). However, he denies that he has a pecuniary interest, on grounds that (a) the King's School is technically closing; and (b) the King's School made its own decision to become an academy and it is that decision (and not the Priory School's subsequent decision) which would lead to the removal of fees. These arguments are disingenuous and ignore the practical reality:

- The information to parents emphasises that very little was expected to change at the King's School. In particular, the (previously fee-paying) pupils and teachers were expected to remain at the school and it would retain its academic emphasis, its extra-curricular activities, the house structure and its pastoral care. Whilst technically the King's School would be closing and the new Kings Priory School opening, in practice the current pupils will receive a virtually identical education save that the parents would no longer have to pay fees.
- On Mr Ogle's second point, it is clear from the minutes of the meeting on 26 March 2012 that the King's School and the Priory School made matching and mirroring decisions to adopt the academy approach "*in partnership with*" each other. They went on to make a joint expression of interest to the Secretary of State. The proposal could only go ahead if each Governing Body adopted its respective motion. It is irrelevant that the King's School made its decision a few weeks prior to the Priory School's decision of 26 March 2012. Mr Ogle would only receive the benefit of a free place at the school if the Governing Body which he chaired also passed the motion.

In short, Mr Ogle championed, promoted and voted upon a proposal the adoption of which would directly benefit him financially. That was unlawful. It is no answer to say that other members of the Governing Body also voted in favour of the proposal. To suggest that he did not influence the outcome would be unrealistic. He was, indeed, the driving force at Priory School in support of the proposal.

For the above reasons, it is plain that the first decision of 26 March 2012 must be withdrawn. The Governing Body has to some extent acknowledged the difficulty and it has attempted to resolve the issue by making a fresh decision on 10 January 2013. However, it cannot sensibly be suggested that the unlawfulness on 26 March 2012 was remedied by the discussion and vote on 10 January 2013, given that:

- whilst Mr Ogle withdrew from the discussion of pecuniary interests on 10 January 2013, he was present at both meetings for the substantive discussions about adopting the academy approach in partnership with the King's School;
- moreover, Mr Ogle led the discussion at the meeting on 26 March 2012 and it is plain that he was heavily involved in the selection and interpretation of the information which was before the Governing Body at both meetings;
- the Council has identified a number of significant concerns about the accuracy and completeness of the material considered by the Governing Body (as set out in detail in its consultation response), which highlights the importance of ensuring that no conflict of interest tainted the Governing Body's decision making process;
- the minutes demonstrate that the Governing Body had no concerns about the discussion and vote of 26 March 2012; and
- whilst there was a fresh vote on 10 January 2013, it appears that there was no fresh discussion of the pros and cons of the proposal. The Governing Body simply affirmed its decision of 26 March 2012.

Further, the unlawfulness of the decision making continued and (so far as the Council is aware) Mr Ogle played a full part in the decision of 25 March 2013 that, in light of the consultation responses, the Priory School should merge with the King's School and convert into an Academy. This decision cannot stand.

The details of the action that the defendant is expected to take

In light of the plain pecuniary interest, conflict of interest and (at least) perception of bias, the Governing Body is asked to withdraw its decision of 25 March 2013 (and the previous decisions of 26 March 2012 and 10 January 2013) and to reconsider the matter afresh.

No Governor with a child at King's School, or any other conflict of interest, should be involved in the decision. The Governing Body must review the extent to which the Chair has influenced the information available to the Governing Body and take steps to ensure that it has a full and fair understanding of the background when reconsidering the issue.

If the Governing Body makes a fresh decision to adopt the academy approach in partnership with the King's School, it will need to undertake a fresh consultation exercise, where consultees are given proper information about the proposal in order to have a genuine opportunity to respond meaningfully.

The details of the legal advisers, if any, dealing with this claim

Louise Watson, Senior Manager Legal Services on behalf of Vivienne M Geary, Head of Law and Governance.

The details of any interested parties

The Secretary of State for Education
 Department for Education
 Sanctuary Buildings
 Great Smith Street
 London
 Greater London
 SW1P 3BT

The Treasury Solicitor
 One Kemble Street
 London
 WC2B 4TS

The Governing Body of the King's School
 Huntington Place
 Tynemouth
 Tyne and Wear
 NE30 4RF

Woodard Academies Trust
 1 Adam Street
 London
 WC2N 6LE

The details of any information sought:

Please confirm whether any other Governor has a child who attends the Priory School or the King's School, or has any other conflict of interest in relation to this decision.

The details of any documents that are considered relevant and necessary:

We are not aware of any other relevant documents.

The address for reply and service of court documents:

Vivienne M Geary
 Head of Law and Governance
 Law and Governance
 North Tyneside Council
 Quadrant
 The Silverlink North
 Cobalt Business Park
 North Tyneside NE27 0BY
 Reference: Louise Watson, Senior Manager Legal Services

Proposed reply date:

You are requested to reply by no later than 4pm on Friday 7 June 2013.

Yours faithfully



Vivienne Geary, LLM Solicitor
Head of Law and Governance