



HPSPC – Holland Park School Parent Collective

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OUR CHILDREN, OUR SCHOOL

HPS Pre-action letter

To the Chair of the board of governors
Holland Park School
Airlie Gardens
Camden Hill Road
London W8 7AF

Via Email: chair@hollandparkschool.co.uk

11 April 2022

Dear Sir/Madam

Judicial Review Pre-Action Protocol Letter – CPR 54

Re: Conversion of Holland Park School to a Multi Academy Trust

This letter has been prepared in accordance with the Judicial Review Pre-Action Protocol. This letter is by the Holland Park School Parents Collective which are a group of concerned parents of children at Holland Park School (the "**Concerned Parents**") and has been prepared with the advice of specialist counsel David Wolfe QC and Sarah Sackman (Matrix). In the event that we do not receive a satisfactory response to our concerns raised below we will be instructing solicitors to issue a claim for Judicial Review.

We are writing because we consider the current decision-making processes affecting the organisation and governance arrangements of Holland Park School ("HPS") to be legally flawed. There are a number of concurrent decision-making processes involving the School's Governing Body which are affected by the legal flaws identified namely, the decision to subsume the school and its assets into a Multi-Academy Trust ("MAT"), the decision to do so into United Learning ("UL") and the appointment of a new permanent Head Teacher to replace the existing interim appointee.

In particular, and as detailed out below, we consider

- i. the “stakeholder engagement” process currently being undertaken by the Governing Body of Holland Park School in relation to the MAT conversion does not constitute a lawful consultation exercise;
- ii. the composition of the Governing Body, responsible for taking these various decisions, appears to be in breach of the Academy Trust’s own Articles of Association.

As a result, any decisions and any steps to subsume the school into a Multi-Academy Trust (“MAT”) with United Learning (“UL”), which you have presented to parents as a *fait accompli* and which you say will need to take effect by 1 September 2022 (a “tight” timetable by your own admission), will be unlawful unless you halt the current process and take the steps outlines below. We are raising these concerns at this stage in order to afford the Governing Body the chance to pause, reflect and restart the process of considering whether to subsume the school into a MAT at all and whether to do so with UL in a lawful manner and thereby avoid the risk of a Judicial Review claim.

Proposed Claimant

The Concerned Parents

Proposed Defendant

Governors of HPS/HPS Trust Board, Airlie Gardens, Campden Hill Road, London W8 7AF.

Details of Interested Parties

Education and Skills Funding Agency (“EFSA”), Regional Schools Commissioner, United Learning

Claimant’s Legal Representatives

Presently the Concerned Parents act as a litigant in person. We have received advice from David Wolfe QC and Sarah Sackman (acting on a Direct Access basis). In the event that it is necessary to commence proceedings we will instruct solicitors with whom you should then liaise. We will let you know if that occurs and the relevant contact details.

Decision Under Challenge

Decision of 1 April 2022 of the Governing Body to embark on “*the stakeholder engagement process around the decision to select United Learning as the preferred multi-academy trust partner for HPS*” (Letter from the Chair of Governors Jane Farrell to parents 1.4.22) and the steps leading to and following that decision.

Potential Grounds of Challenge

Ground 1: Unlawful Consultation

Duty to consult and scope of consultation

1. We understand that the Governors consider, rightly, that parents, students, staff and other relevant stakeholders must be consulted on the decision about whether to join a MAT and whether to select United Learning as the preferred MAT trust partner for HPS. Indeed this is the basis upon which you recently wrote to parents and carers on 1 April 2022, outlining “*the stakeholder engagement process around the decision to select United Learning as the preferred MAT partner for HPS*” (emphasis added). You say that at the conclusion of that process you will produce a report on whether the stakeholders are in favour or opposed “*to the proposal that the school joins UL*”. Those stakeholders clearly here have a legitimate expectation of consultation in relation to the matters involved.
2. The intended scope of the consultation process was set out in a letter dated 18 March 2022 from your solicitors Bates Wells in response to a letter from one of the HPS parents, Mr Ranbir Hunjan. Your solicitors explain (para. 5.1) that the “*stakeholder engagement process*” is the Governing Body’s consultation on the two questions of “*whether the School should join a MAT and their preferred MAT partner, United Learning Trust*”.
3. Having embarked on a consultation with stakeholders, the Governing Body is required to conduct a lawful consultation. We agree that any consultation must encompass first, the ‘in principle’ question of HPS ceasing to exist as a legal entity and operate as single academy trust and then to be subsumed within a MAT and second, whether the trust in question should be UL. The problem is that the current process is legally flawed since (i) it is being conducted only *after* the Governing Body has effectively decided it must enter into a MAT with UL by 1 September 2022 which means it is being conducted with a “closed” mind and (b) consultees have been provided with no meaningful information about the consideration of alternatives to a MAT and alternative partners to UL.

Principles of Lawful Consultation

4. The key features of a lawful consultation are well-established (and were set out in *R v Brent LBC ex parte Gunning* (1985) 84 LGR 168 QBD at 189). In particular, and relevant to our purposes, consultation should be
 - a. be undertaken at a time when the relevant proposal is still at a formative stage;
 - b. give sufficient reasons for particular proposals to permit of intelligent consideration and an intelligent response;
 - c. give consultees adequate time for consideration and response; and
 - d. the product of consultation must be conscientiously taken into account when finalising any proposals.
5. Those principles were endorsed in *Moseley v London Borough of Haringey* [2014] UKSC 116. In that case the Supreme Court made clear that consulting about a proposal “*inevitably involve[s] inviting and considering views about possible*

alternatives” (Lord Wilson at [27]-[29]). It is inherent in a fair consultation that consultees are invited to give views on alternative options, which necessarily entails the provision of some information about what those options are or were and the basis on which they were being considered and evaluated. Where, as here, statute does not limit the subject of the consultation to the preferred option *“fairness will require that interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options”* (Lord Wilson at [27]).

Flaws in present consultation

6. The Governing Body has, in breach of *Moseley* and *Gunning* principles, unlawfully failed to provide stakeholders with any information about the alternatives to conversion to a MAT with UL or as to the way in which those things were evaluated (leading to the Governing Body) to decide to proceed only with the MAT proposal. The failure to provide consultees with such information did not and does not permit of intelligent consideration by consultees. Moreover, the current engagement exercise is being conducted at a time when the Governing Body had made up its mind on the principle of conversion to a MAT and on the identity of the HPS’ trust partner. Stage 3 of its process (as now) is limited to “due diligence” in relation to the decision which has in substance been predetermined, namely to subsume the school into the UL MAT.
7. On 8 February 2022, parents were told they would be consulted with *“at the appropriate time”*. The Governing Body has decided that the “appropriate time” is at Stage 3 once the decision to subsume the school into the UL MAT subject to so-called Stage 3 *“which is an in depth due diligence between HPS and UL”*. The Trust’s description of this stage in the process as *“the due diligence”* process rather than the consultative process is apt. What is happening is in practice not consultation of the requisite kind.
8. Such limited process as is now taking place with parents and other stakeholders did not start until after the Governing Body’s announcement on 14 March 2022, that a *“decision”* had been reached to subsume the school into a UL MAT that *“the governing body has resolved to enter a due diligence process with United Learning Trust”*. The Chairman’s letter explained that *“UL will continue to engage with stakeholders and the school community as their and our due diligence progresses”*. A letter from United Learning of the same date made clear that it sees this phase of the process in the same way and that what is currently taking place is a *“...process of due diligence for your school to join United Learning”*. As Sir Jon Coles and Dame Sally Coates of UL explain, *“between now and the summer we will be completing our due diligence of the school so that it can join us for September 2022”*.
9. In light of such statements there is plainly no real prospect that consultees could now materially influence the decision-making process particularly on the issues of principle unless it relates to questions of “due diligence” about UL. There is no suggestion whatsoever that views are being sought on the principle of a MAT or the identity of the trust partner, that having already been decided by the Governing Body (subject to the question of due diligence).

10. That links to the fact that parents and other stakeholders have been told nothing about the alternative options which were considered, and now, before HPS being subsumed into a MAT. Even if the points had not already been predetermined then, without such information parents are not being genuinely asked for their views on those alternatives. Equally, parents and other stakeholders have been told nothing about the other potential MAT partners which were considered before the Governing Body decided UL was its preferred partner.
11. The scant information which some parents now have has only been obtained through responses to FOI requests from the Governing Body's minutes. This information has not been provided to consultees as part of the consultation exercise. As a result, consultees have been given no meaningful information about why alternative governance models or alternative trust partners were rejected. Reference is made in the FAQs to there having been (at some point) a strong field of MATs under consideration but parents are not told what those were and no details are given. The recently published stakeholder engagement website refers to a shortlisting process having taken place but gives no explanation on what options were considered or why they were discarded.
12. The Governing Body has unlawfully failed to provide stakeholders with any information about alternatives to the MAT and to UL as required by law. That reflects the fact that the Governing Body has already, without explanation, closed its mind to the alternatives of conversion to a MAT and on the identity of the HPS' trust partner. The stakeholder engagement process was required at a time when the proposal for the MAT conversion and the selection of UL was still at a *formative* stage. Instead, it is being undertaken *after* the Governing Body has reached that decision. The description of the "stakeholder engagement" process as "due diligence" is apt. This is a consultation in name only and is legally flawed.
13. This matters particularly in circumstances where there was no imperative on Governing Body to take a decision to convert HPS to a MAT at all. The Notice to Improve from the Education and Skills Funding Agency ("EFSA") issued on 2 November 2021 (Annex B) merely required the Trust "*to consider starting the process for moving the school into a MAT*" and to consider providing a "*selection of possible MATs the school will consider joining*". That condition neither required HPS to opt for a MAT nor dictated the sort of rushed process that has been undertaken since the Notice was issued. None of that provided any basis for or justification for the flawed process which is now being followed.

Ground 2 - Illegality of decision-making due to improperly constituted Governing Body

14. In order for the Governing Body to exercise its powers to enter into contracts with a MAT and appoint a new Head Teacher lawfully, the Governors/Directors of the HPS Academy Trust must be lawfully appointed in accordance with the Trust's Articles of Association. From what we can gather, based on available information held with Companies House, the Governing Body's minutes and the Trust's Articles, it is not clear that the Governing Body has been lawfully constituted.

15. In earlier correspondence we raised our concerns about the unfilled vacancies for both parent governor positions. Article 46(b) expects a minimum of two parent governors to be appointed to the board. Despite knowing well in advance that parent vacancies would arise in Autumn 2021, despite stating at the Governing Body's meeting of 2 September that elections would need to be held in the autumn to fill those vacancies and despite your knowing that the Governing Body would be embarking on a series of important decisions in the life of the school, those vacancies remain unfilled to date. Whereas the Governing Body have rushed to appoint several new Governors (some with no previous connection to the school), the process for electing new parent governors has been characterised by delay and error (including leaving eligible parents off the ballot whilst including ineligible parents). It is hard in the circumstances to avoid the impression that the parent voice is being deliberately marginalised in these important decisions.
16. This Ground raises a different point. Article 46 (a) of the Articles of Association makes clear that "*up to 8 Governors*" on the Governing Body may be appointed under Article 50 i.e. appointed by the Members. One of the Members is also the Chairman of the Governors (Article 12(b)).
17. It appears from the names provided to Companies House by the Trust in Annual Report in the Year to 31 August 2021 that (at certain times) the number of Governors appointed pursuant to Article 50 by the Members of the Academy Trust has exceeded the legal limit of 8 Governors who can be appointed in this way. The number of Governors appointed by Members has at certain relevant times exceeded 8 (see for example minutes of the Governing Body meeting of 28 September 2021).
18. Given the apparent breach of the articles, please provide us with written evidence of each of the appointments of each of the new Governors appointed between September 2020 and April 2022 and all current members of the Governing Body so that we can understand the legal constitution of the Governing Body at the time when key decisions in relation to the future of the school are being reached. In particular, please provide us (a) with any minutes or formal documents relating to the company's decision to appoint new directors during that period (b) any written information which accompanied the appointment of new Members in that period. In each case please provide us with information setting out how the Directors and Members respectively were appointed and by whom.
19. The apparent improper constitution of the Governing Body matters for two reasons: first, because it means that any decisions taken (and any decisions yet to be taken, for example, in relation to the MAT or Head Teacher's recruitment) by the improperly constituted Governing Body are ultra vires and will need to be retaken. Secondly, because questions raised about the Trust's governance structure and specifically the overlaps between Governors/Directors and Members of the Trust go to the heart of the reasons why the Trust was served with a Notice to Improve by the Education Skills and Funding Agency on 2021. Despite the requirement in Annex B on the Trust to provide the EFSA with a revised governance and committee structure by 19 November 2021, it appears that the

Governing Body may be continuing to take decisions, including those of fundamental importance to the future of the school, despite not being lawfully constituted.

Details of the action the Governing Body is expected to take

In light of the identified errors above and the current “due diligence” process we request the Governing Body to immediately halt the current the process to convert HPS into a multi-academy trust and to reconsider its decision to partner with UL until a lawful consultation has been undertaken. A lawful consultation requires providing to parents, students, staff and other stakeholders details of the alternatives to (a) conversion to a large MAT (b) a partnership with UL and allowing consultees to respond at a formative stage in decision-making without the Governors closing their minds to alternatives to a MAT conversion and the selection of UL. The process to appoint a new Head Teacher should also be halted until question marks over the composition of the Governing Body are clarified and the decision in relation to the MAT conversion is clear.

20. In the event that you are not prepared to take those steps then please without delay explain exactly why not. If that is your position then we intend to commence an urgent judicial review challenge (with an associated application for a cost capping order) to be dealt with on expedited basis and/or with an order in place to prevent any irreversible steps being taken pending the hearing of the claim (including, but not limited to, any legal steps to subsume the school into UL or any other MAT).

Information requested

21. In relation to the alternative options which were considered by the Governing Body in relation to whether to subsume the school into a MAT and United Learning in particular please provide us with the papers/reports presented by the MAT Working Group led by Dr Ogden to the Governing Body on 13 December 2021 and on 7 February 2022 and any other papers produced subsequently by the Working Group setting out how alternatives have been considered.
22. Please provide us with written evidence of the appointments all the Members and Governors appointed between September 2020 and March 2022. Please include any minutes or formal documents relating to the company’s decision to appoint new directors during that period and setting out each of the Members and Governors was appointed and by whom.
23. The timing of the appointment of a new Head Teacher and the decision to convert to a MAT are interlinked. As the Governing Body recognised at its meeting of 17 January 2022, the process for appointing a new Head Teacher would best wait until the process to consider the conversion to MAT was progressed. A new Head Teacher would expect to know whether he or she is being appointed to lead a school as part of a MAT or not. The composition of the Governing Body is also critical to the appointment process of the new Head Teacher for which it has responsibility. In relation to that matter, please provide us with any correspondence between the Governing Body/Chair of the Governors and United

Learning in relation to the recruitment and appointment process of the new Head Teacher.

Alternative dispute resolution

24. We hope that a satisfactory resolution can be found so as to avoid proceedings and we would consider entering mediation if that were appropriate. As such, we would be prepared to take part in ADR. If this is of interest to the Governing Body, would you please contact us without delay using the email address below. We would obviously require a comprehensive response to this letter and disclosure before any ADR process could be undertaken.

Details of the legal advisers dealing with this claim

25. As set out above, this letter is sent by the Concerned Parents and has been prepared with the advice of specialist counsel David Wolfe QC and Sarah Sackman (Matrix). In the event that we do not receive a satisfactory response from you we will be instructing solicitors to deal with this claim.

Address for reply and service of court documents

26. Please reply to the firm using referred to in para 25 using the contact details in their letterhead.

Timetable for a response

27. We request a substantive reply to this letter within 14 days, and **by 4.30 p.m. on 26 April 2022**. We look forward to hearing from the Governing Body or your firm as a matter of urgency.

If you have any queries, please contact us by e-mail at hpsparentcollective@gmail.com attention Ranbir Hunjan, Sebastian Peattie and Melanie Juno Wolfe.

Yours faithfully,
HPSPC