

Committee: Community & Children's Services Committee	Dated: 13/09/2019 Agreed under urgency - 29/7/2019
Subject: Reconstitution of the Governing Body of Sir John Cass's Foundation Primary School	Public
Report of: Andrew Carter, Director of Community and Children's Services	For Information
Report author: Theresa Shortland, Head of Service – Education and Early Years	

Summary

This purpose of this report is to update members on the reconstitution of the Governing Body of the Sir John Cass's Foundation Primary School ("the School"), a voluntary aided school located in the City of London, which Members will recall has not had a properly constituted governing body since 1 September 2015 due to a failure of the interested parties to agree.

To resolve this, the Secretary of State for Education has now issued directions dated 15 July 2019 under the powers conferred on him by section 498(1) of the Education Act 1996. (Refer: **Appendix 1**)

The Secretary of State directed the Governing Body of the School to submit the Instrument of Government (IoG) in the form contained in the direction to the City Corporation by the 26 July 2019. This was submitted to us on the 19 July 2019.

The City of London Corporation, in exercising its functions as a local authority in the City of London, has been directed to make the IoG by 9 August 2019.

Action taken

Under Urgency Provision, the Town Clerk, in consultation with the Chairman and Deputy Chairman of the Community and Children's Services, agreed to make the Proposed Instrument of Government in the form at Appendix 3 to this Report as directed by the Secretary of State for Education.

RECOMMENATION, that – the report be noted.

Main Report

Background

1. The Department for Education required all governing bodies of maintained schools to be constituted under the School Governance (Constitution) (England) Regulations 2012 or the School Governance (Federations) (England) Regulations 2012 by 1st September 2015.
2. The City of London Corporation exercises the relevant functions of a local authority in respect of Sir John Cass's Foundation Primary School, the one local authority-maintained school which is in the City of London.
3. The 'Statutory guidance for governing bodies of maintained schools and local authorities in England - August 2017, outlines the requirements of the arrangements for the constitution of governing bodies-maintained schools constituted under the School Governance (Constitution) (England) Regulations 2012.
4. Section 20 of the Education Act 2002 requires all maintained schools to have an instrument of government which determines the constitution of the governing body and other matters relating to the school. Part 5 of the 2012 Constitution Regulations makes provision regarding the contents and form of the instrument and the procedure for making and reviewing it.
5. In respect of the making of the instrument of government, and the review and variation of such instruments, governing bodies and local authorities must have regard to any guidance from the Secretary of State. The City of London Corporation is required, in exercising their functions as a local authority, to approve the Instrument of Government submitted to the local authority subject to the Instrument of Government complying with the relevant statutory requirements.
6. The Sir John Cass's Foundation Primary School Governing Body reviewed their governance arrangements within the statutory guidance in October 2014. By March 2015 all appointing bodies approved the proposed Instrument of Government with the sole exception of the Sir John Cass's Foundation whose agreement was required. There has been a subsequent ongoing dispute between the trustees of the Foundation and the other bodies presently entitled to appoint foundation governors for the Sir John Cass's Foundation Primary School in formulating and agreeing the new Instrument of Government such that it could be submitted to the City of London Corporation for approval.
7. The consequence of this dispute is that, since 1st September 2015, the governing body of the Sir John Cass's Foundation Primary School Primary has not been legally constituted, in accordance with current regulations (the School Governance (Constitution) (England) Regulations 2012). The Governing Body have been unable to proceed with the reconstitution and the school remains without a legally constituted Governing Body. They are currently operating under the previous Instrument of Government.

Current Position

8. In order to resolve the dispute, in August 2018, the Secretary of State for Education invited all parties to participate in a mediation process. All parties engaged in this process which has been ongoing since October 2018 when a mediation agreement was finalised.
9. The Secretary of State for Education has the power to make directions under section 498 of the Education Act 1996 (“a section 498 direction”) whereby reason of the default of any person a maintained school does not have a properly constituted governing body. Following the mediation process and further attempts to resolve the matter, the Secretary of State for Education was of the view that this dispute would not be resolved without intervention.
10. The Secretary of State for Education issued directions on 11th July 2019 (See **Appendix 1**). The directions were sent with a letter that outlines the reasoning in formulating the directions for the Instrument of Government (IoG) for Sir John Cass’s Foundation Primary School. (See **Appendix 2**.)
11. The Secretary of State for Education has set out in the directions the actions required by all parties to secure the IoG for Sir John Cass’s Foundation Primary School. These are:
 - By 26 July 2019, the Governing Body shall submit the IoG to the Corporation pursuant to regulation 29(1) of the 2012 Regulations; and the IoG shall be validly submitted even if not approved by all of the persons prescribed in regulation 29(2) of the 2012 Regulations.
 - By 9 August 2019, the Corporation shall make the IoG, which shall be valid even if the Corporation could not reasonably be content that the IoG has been approved by all of the persons prescribed in regulation 29(2) of the 2012 Regulations.
12. The Chair of Governors for Sir John Cass’s Foundation Primary School submitted the IoG in the form directed by the Secretary of State to the City of London Corporation on 19th July 2019 as required. (See **Appendix 3**) This IoG is compliant with the directions and the School Governance Regulations 2012.
13. The Corporation of London is required, in exercising their statutory functions as a local authority, to approve the Instrument of Government submitted by the governing body of Sir John Cass’s Foundation Primary School. The Direction from the Secretary of State for Education has requested this is completed by 9th August 2019.
14. The Secretary of State also has directed that between 1st September 2015 and the date on which the Corporation makes the IoG, all decisions and resolutions of the Governing Body that would have been lawful had the Governing Body been constituted in accordance with the 2012 Regulations, are rendered valid.

Conclusion

15. The directions from the Secretary of State outline the process required for the Corporation of London to ensure that Sir John Cass's Foundation Primary School is legally constituted and compliant to the School Governance Regulations 2012 and this report presents relevant matters to the City Corporation for decision in compliance with those directions.

Appendices

Appendix 1. Direction by the Secretary of State for Education under Section 498 of the Education Act 1996 dated 15th July 2019.

Appendix 2. DfE Primary School Direction dated 11th July 2019.

Appendix 3. Instrument of Government – Sir John Cass's Foundation Primary School, submitted on the 19 July 2019 by the Governing Body to the City of London Corporation.

Background Papers

- The School Governance (Constitution) (England) Regulations 2012 (the “2012 Constitution Regulations”)
- The School Governance (Federations) (England) Regulations 2012 (the “2012 Federation Regulations”)
- The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013

Theresa Shortland

Head of Service – Education & Early Years

T: 020 7332 1086

E: theresa.shortland@cityoflondon.gov.uk

DIRECTION BY THE SECRETARY OF STATE FOR EDUCATION UNDER SECTION 498 OF THE EDUCATION ACT 1996 CONCERNING SIR JOHN CASS'S FOUNDATION PRIMARY SCHOOL

The Secretary of State for Education ("the Secretary of State"), in exercise of the powers conferred on him by section 498(1) of the Education Act 1996, directs that:

1. In this direction:
 - (a) "the 2012 Regulations" means the School Governance (Constitution) (England) Regulations 2012;
 - (b) "the Corporation" means the City of London Corporation;
 - (c) "the Governing Body" means the Governing Body of the Sir John Cass's Foundation Primary School; and
 - (d) "the IoG" means the instrument of government in the form contained in Annex 2 to this direction.
2. By 26 July 2019, the Governing Body shall submit the IoG to the Corporation pursuant to regulation 29(1) of the 2012 Regulations; and the IoG shall be validly submitted even if not approved by all of the persons prescribed in regulation 29(2) of the 2012 Regulations.
3. By 9 August 2019, the Corporation shall make the IoG, which shall be valid even if the Corporation could not reasonably be content that the IoG has been approved by all of the persons prescribed in regulation 29(2) of the 2012 Regulations.
4. Between 1 September 2015 and the date on which the Corporation makes the IoG, all decisions and resolutions of the Governing Body that would have been lawful had the Governing Body been constituted in accordance with the 2012 Regulations, are rendered valid.

Signed by authority of the Secretary of State for Education

Lesley Jones

Date 15/07/2019

Name of Signatory Lesley Jones

Reasons

The Secretary of State is satisfied that:

1. Sir John Cass's Foundation Primary School ("the School") is a voluntary aided school to which section 498 of the Education Act 1996 ("the EA 1996") applies.
2. There is no properly constituted governing body of the School: the present constitution does not comply with the 2012 Regulations.
3. Regulation 13(1) of the 2012 Regulations required the governing body of each school to reconstitute lawfully by 1 September 2015; the Governing Body has failed to do so and is therefore in default.
4. The lack of a properly constituted governing body has been caused by the default of the Governing Body.
5. There is no reasonable prospect of the Governing Body submitting an instrument of government to the Corporation pursuant to regulation 29(1) of the 2012 Regulations that has been approved by all of the prescribed persons in regulation 29(2), and therefore no reasonable prospect of the default being cured save by direction of the Secretary of State.
5. It is therefore necessary and expedient for a direction to be made under section 498(1) of the EA 1996 to:
 - (i) require the Governing Body to submit the IoG to the Corporation and to render valid any invalidity or defect arising from non-compliance with regulation 29(2) of the 2012 Regulations;
 - (ii) require the Corporation to make the IoG and to render valid any invalidity or defect arising from non-compliance with regulation 29(3) of the 2012 Regulations; and
 - (iii) rendering valid any decisions or resolutions of the Governing Body, that would have been lawful had the Governing Body been lawfully constituted, between 1 September 2015 and the date on which the Corporation makes the IoG.
6. The form of the IoG has been the subject of consultation with the Governing Body, the Corporation, Sir John Cass's Foundation and the London Diocesan Board of Schools ("the relevant parties").
7. The Secretary of State's reasons for selecting the form of the IoG are set out in his letter dated 11 July 2019 to the relevant parties.

Instrument of Government
Sir John Cass's Foundation Primary School

1. The name of the school is Sir John Cass's Foundation Primary School.
2. The school is a voluntary aided school with a foundation. The foundation is the Sir John Cass's Foundation.
3. The name of the governing body is "The governing body of Sir John Cass's Foundation Primary School".
4. The governing body shall consist of:
 - 2 parent governors;
 - 1 LA governor;
 - 1 co-opted local community governor;
 - The headteacher (ex-officio);
 - 1 staff governor; and
 - 8 foundation governors.
5. The total number of governors shall be 14.
6. The foundation governors shall be appointed as follows:
 - i) 1 shall be appointed by the London Diocesan Board for Schools;
 - ii) 1 shall be appointed by the Parochial Church Council of St Botolph-without-Aldgate;
 - iii) 1 shall be appointed by the City Deanery Synod; and
 - iv) 4 shall be appointed by the Sir John Cass's Foundation.
7. a) The holder of the following office shall be a foundation governor ex officio: The Rector of St Botolph-without-Aldgate.

b) The Archdeacon of the Archdeaconry in which the school is situate shall be entitled to appoint a foundation governor to act in the place of the ex officio governor whose governorship derives from the office named in a) above, in the event that the ex officio governor is unable or unwilling to act as a foundation governor, or has been removed from office under regulation 23(2) of the Regulations.

Appendix 1 - Page 4 of 4: Direction by the Secretary of State for Education under Section 498 of the Education Act 1996

8. The Archdeacon of the Archdeaconry shall be entitled to request the governing body to remove the ex-officio foundation referred to in 7 above and appoint any substitute governor.
9. Ethos statement:
Recognising its historic foundation, the school will preserve and develop its religious character in accordance with the principles of the Church of England and in partnership with the Church at parish and diocesan level. The school aims to serve its community by providing an education of the highest quality within the context of Christian beliefs and practice. It encourages an understanding of the meaning and significance of faith, and promotes Christian values through the experience it offers to all of its pupils.
10. The term of office of all categories of governor shall be 4 years with the exception of the Headteacher and the Rector of St Botolph-without-Aldgate, whose terms of office shall be for the periods they were appointed to their respective offices.
11. A copy of this Instrument of Government must be provided (free of charge) to every member of the governing body (and to the Headteacher if not a governor), to the trustees of Sir John Cass's Foundation and to the London Diocesan Board for Schools.
12. This Instrument of Government comes into effect on.....
13. This Instrument was made by order of the City of London Corporation on.....

Appendix 2 – See next page



**Maintained Schools Governance Team
Level 3
Bishopsgate House
Feethams
Darlington
DL1 5QE**

OFFICIAL SENSITIVE BY EMAIL

Our ref: LJ Cass P

The Chair of Governors
Sir John Cass's Foundation Primary School
St James' Passage
Duke's Place
London EC3 5DE

Date: 11 July 2019

And

Corporation of London
Education Services
PO Box 270
Guildhall
London EC2P

Dear Sirs

**Directions for the constitution of the governing body of the Sir John
Cass's Foundation Primary School**

Thank you for your patience in this matter and for the contributions you have made throughout the process. We are now in a position to inform you how we intend to resolve this dispute.

The Secretary of State is concerned that the school has not had a properly constituted governing body since 1 September 2015 and he is now of the mind that this dispute will not be resolved without his intervention by making directions to the parties. He has the power to make directions under section 498 of the Education Act 1996 ("a section 498 direction") where the school does not have a properly constituted governing body.

Rationale for issuing directions

For a direction to be made, there are three threshold requirements:

- i) There is no properly constituted governing body of the school;
- ii) A person is in default; and
- iii) The Secretary of State is satisfied that the lack of a properly constituted governing body has been caused by the default.

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We consider that the threshold requirements have been met:

- i) the governing body of the school is not constituted in accordance with the 2012 Regulations;
- ii) the governing body as an entity is in default because it has not submitted an agreed Instrument of Government (IoG) to the relevant local authority to be made; and
- i) this default has resulted in the school not having a properly constituted governing body.

DfE's reasoning in formulating the directed IoG

Policy position

The 2012 Regulations at Reg 14 set out that, for a voluntary aided school, the governing body must include such number of foundation governors as to outnumber all the other governors by two. Reg 9 (a) of the 2012 Regulations defines a foundation governor as a person who:

- i) is appointed as a governor by any person other than the local authority;
- ii) is appointed for the purpose of securing that the character of the school including, where the school has a particularly religious character, such religious character, is preserved and developed;
- iii) where the school has a foundation, is appointed for the purpose of securing that the school is conducted in accordance with the foundation's governing documents, including, where appropriate, any trust deed relating to the school; and
- iv) would, in the opinion of the person entitled to appoint the foundation governor, be capable of achieving the purposes for which they would be appointed as a foundation governor.

Our aim is to enable the school to put in place a highly functioning and effective governing body, the make-up of which complies with the 2012 Regulations. Our policy position is that governing bodies should be no larger than they need to be to have all the skills necessary to carry out their functions. Smaller governing bodies are more likely to be cohesive, dynamic and able to act decisively. We are also mindful of the Church of England ethos of the school and of the particular features of voluntary aided schools.

Parity of appointment rights of foundation governors between church bodies and the Foundation

Given the protracted nature of the dispute and the strong feelings which this has provoked, our aim is to achieve parity between appointments by the church bodies and the Sir John Cass's Foundation ("the Foundation"). We hope that this will lead to a spirit of co-operation between the church bodies

Appendix 2 – Page 3 of 4: DfE Primary School Direction

and the Foundation where neither has the majority rights of appointment of foundation governors and they can work together and alongside the non-foundation governors for the benefits of the school and, in particular, the school's pupils.

Sir John Cass first funded a school in the churchyard of St Botolph-without-Aldgate in 1710. The school later closed but re-opened in 1730 under the auspices of the Sir John Cass's Foundation after disputes over Sir John's will were resolved. Therefore, there is a particularly strong historic tie between the original all-age school (in which buildings the Primary School is current housed) and the Sir John Cass's Foundation. In the early 1960s, the original school divided to provide separate schooling for primary- and secondary-aged pupils

Whilst we think there is merit in the arguments put forward by the Foundation in relation to the historical context for voluntary aided schools, we believe this is less important in terms of providing a strong and effective governing body than having the right number and balance of committed governors and protecting the Church of England ethos of the schools.

The Rector of the local church is an ex officio foundation school governor and also an ex officio governor of the Cass Foundation. Therefore, Rev Laura Jorgensen is an ex officio foundation governor of the Primary School. This stems from her position as Rector of St Botolph-without-Aldgate, a Church of England appointment. This is likely to be due to the strong historical connection between the Sir John Cass's Foundation and this particular church, the original Cass school being established in buildings in St Botolph's churchyard. Having taken into consideration the representations made by the parties, we have treated her as a church-appointed foundation governor for the purposes of calculating the balance of foundation governors. This stance has been agreed by all parties in the dispute.

The IoG which we are directing creates the situation that:

- i) the Foundation and church bodies appoint equal numbers of foundation governors (4 each), which acknowledges the roles of both the Church of England and the Foundation in the historical development of and life of the school;
- ii) there are 2 more foundation governors than non-foundation governors so that the IoG complies with the 2012 Regulations and;
- iii) the governing body is still relatively small, which supports DfE's policy that governing bodies should be no larger than necessary.

Validating previous acts

As the school has not had a properly constituted governing body since 1 September 2015, actions taken by the governing body and the Local Authority since that date may be unlawful. We put this to you all and all agreed that remedial actions are necessary to reduce future risks.

Equality and diversity

By adopting an loG which recognises the historic origin of the school but does not allow either the Foundation or church bodies to have dominance in appointment of foundation governors, we have attempted to balance the sensibilities of the appointing bodies while allowing for the appointment of governors from the wider community.

The Foundation has asked for equality clauses within the loG. We have considered the matter but consider that we have no power to insist on this. Our expectation is that the governing body would comply with their duties under the Equalities Act 2010 (including the Public Sector Equality Duty) and follow guidance in the Governance Handbook.

Actions

The Secretary of State's direction is attached to this letter. It requires the school's governing body to submit the attached loG to City of London Corporation as the Local Authority and that Local Authority to make the loG in the terms stated. It also renders valid all decisions and resolutions of the governing body that would have been lawful had the governing body been constituted in accordance with the 2012 Regulations .

We should be grateful if the Chair of the governing body would inform us when the loG has been submitted to the Local Authority and if the Local Authority would inform us when the loG has been made.

Yours sincerely

Lesley Jones

Lesley Jones

**Deputy Director
Schools Infrastructure and Access Division**

cc Howard Kennedy LLP acting on behalf of the Sir John Cass's
Foundation

Richard Foley, Sir John Cass's Foundation

London Diocesan Board for Schools

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Appendix 3 – Page 2 of 2: Instrument of Government – Sir John Cass's Foundation Primary School

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