

<b>MAYOR</b>			
<b>Report Title</b>	Change of status of Prendergast Ladywell Fields College and Making of Instrument of Government - The Governing Body of The Leathersellers' Federation of Schools .		
<b>Key Decision</b>	Yes	Item No.	
<b>Ward</b>	Ladywell, Crofton Park, Lewisham Central		
<b>Contributors</b>	Executive Director for Children and Young People Head of Law		
<b>Class</b>	Part 1	Date:	22 July 2014

### **Reason for urgency**

This matter has not been included in the Council's Key Decision Plan. However, the decision must be taken by such a date that it is impracticable to defer it until after it has been included in the next Key Decision Plan and until the start of the period to which the next Key Decision Plan relates. The reason for this is that the Governing Body of the Leathersellers' Federation of Schools completed their consultation of change of status of Prendergast Ladywell Fields College with an implementation date of 1 September 2014. As a result of this, the Governing Body are required to have the Instrument of Government effective on the 1 September 2014, which is before the next Mayor and Cabinet meeting scheduled for the 3 September 2014. In accordance with the provisions of Regulation 10 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, written notice has been given to the Chair of the Business Panel and made publicly available by posting at the Town Hall for 5 clear days and being made available on the Council Website.

### **Reason for lateness**

The report has not been available for 5 clear working days before the meeting and the Chair is asked to accept it as an urgent item. The report was not available for despatch on Tuesday 15 July 2014 because of the need to consider fully the financial and legal considerations after the close of the schools' consultation. The report cannot wait until the next meeting because the implementation date for the change of status of Prendergast Ladywell Fields College within the Leathersellers' Federation of Schools is before the next meeting and the requirement is for them to have a reconstituted Governing Body in place by 1 September 2014.

## **1. Summary**

- 1.1 The report sets out the background to the Governors of the Leathersellers' Federation of Schools decision to change the status of Prendergast Ladywell Fields College to be aligned with the status of the other schools in the Federation

to enable the strategic development of the federation in terms of staffing, timetabling and collaboration. As a result, there needs to be a variation to the Instrument of Government for the Leathersellers' Federation of Schools. The report also proposes a nominee for the appointment as Local Authority governor by the Governing Body.

- 1.2 The Governing Body are reconstituting under the School Governance (Federations) (England) Regulations 2012 'the Regulations'. A variation to the current Instrument of Government is required as a decision has been made to change the school category of Prendergast Ladywell Fields College from community to foundation status.

## **2. Purpose**

- 2.1 To note the Governors' decision to change the status of Prendergast Ladywell Fields College from community to foundation status and to seek approval to the variation of the Instrument of Government for The Leathersellers' Federation of Schools; and to note the land transfer arrangements on Prendergast Ladywell Fields College becoming a foundation school.

## **3. Recommendations**

That the Mayor:

- 3.1 notes the Governors of the Leathersellers' Federation of Schools decision following consultation, to change the status of Prendergast Ladywell Fields College.
- 3.2 approves that the Instrument of Government for The Leathersellers' Federation of Schools be made by Local Authority order dated 1 September 2014.
- 3.3 considers and approves the nomination of the Local Authority governor detailed in paragraph 6 below for appointment by the Governing Body.
- 3.4 notes that the Council is under a duty to transfer the land and buildings held or used by the Local Authority for the purposes of the school to the Governing Body of the school for the purposes of the school.
- 3.5 delegates authority to the Director of Regeneration & Asset Management in consultation with the Executive Director for Children & Young People and the Head of Law, to agree the final terms of the transfer and to agree and conclude any other outstanding issues in connection with the land transfer arrangements.

## **4. Policy Context**

- 4.1 Each school has to have an Instrument of Government. The Local Authority must satisfy itself that the Instruments of Government for schools conform to the legislation. The Local Authority must also agree its content.
- 4.2 Lewisham's Children & Young People's Plan sets out our vision for improving outcomes for all children. The main purpose of a governing body is to account for the achievement of children and young people in their schools.

- 4.3 The appointment of governors supports the broad priorities within Lewisham's Sustainable Community strategy, in particular those of being "ambitious and achieving" and "empowered and responsible". Governors help inspire our young people to achieve their full potential and they also promote volunteering which allows them to be involved in their local area.
- 4.4 Two specific corporate priorities that are relevant pertain to "community leadership and empowerment" and "young people's achievement and involvement".

## **5. Background**

- 5.1 At the Governors' meeting of the 27 March 2014 held at Prendergast Hilly Fields College, Governors agreed the following proposal. "In accordance with Regulation 3 of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, the Governing Body proposes to publish the notice and Proposal for Foundation Category Change of Prendergast Ladywell Fields College".
- 5.2 The change in status will mean that all schools will work under the same legal framework and will have the same employer. The change in status also means that the school will also be its own admissions authority as is already the case for Prendergast Vale College and Prendergast Hilly Fields College. The school has given assurances that they will continue to adhere to Lewisham's admissions policy and the Federation will continue to exercise its right to be a full participant in Lewisham's Admissions Forum.
- 5.3 Governors carried out a full consultation, which was published on Friday 23 May in the local press, at other schools and colleges locally, on the school website and at the school gate. Consultation closed on the 20 June 2014.
- 5.4 At the Governors' meeting held on 11 July 2014, in accordance with Regulation 3 of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013, the Governing Body ratified the decision to change the school category of Prendergast Ladywell Fields College to Foundation Status. The resolution was passed by the Governing Body of The Leathersellers' Federation of Schools.
- 5.5 As a consequence of the above resolution, the Instrument of Government for the Governing Body of The Leathersellers' Federation of Schools requires amending in line with the Regulations.
- 5.6 The Leathersellers' Federation of Schools currently comprises three schools: Prendergast Hilly Fields (a voluntary aided school); Prendergast Vale College (a foundation school); and Prendergast Ladywell Fields College (a community school).
- 5.7 As a consequence of the recent resolution of the Governing Body it is now necessary for the Local Authority to consider and approve the Instrument of Government as drafted and submitted by the Governing Body in pursuing the change of status of the school from a community school to a foundation school.

- 5.8 The hard federation will continue to be known as The Leathersellers Federation of Schools, with a single Governing Body of the following schools from 1 September 2014:-
- Prendergast Hilly Fields College (a voluntary aided school)
  - Prendergast Ladywell Fields College (a foundation school)
  - Prendergast Vale College (a foundation school)
- 5.9 The Governing Body of every federation must be constituted in accordance with the Regulations. The total membership of the Governing Body of a federation must be no fewer than seven governors.
- 5.10 The Governing Body of a federation must include the following:-
- a) one parent governor elected or appointed in accordance with regulation 14 in respect of each school in the federation;
  - b) the headteacher of each federated school unless any such Headteacher resigns the office of governor in accordance with regulation 19 of the Constitution Regulations 2012 (N.B. *In the case of The Leathersellers' Federation of Schools this will be the Executive Headteacher*);
  - c) one staff governor; and
  - d) one Local Authority governor.
- 5.11 The Governing Body may in addition appoint such number of co-opted governors as they consider necessary provided that the requirements in regulation 22 are met in respect of Governing Bodies of federations comprising foundation and voluntary schools.
- 5.12 The total number of co-opted governors who are also eligible to be elected as staff governors under Schedule 3, must not exceed one-third of the total membership of the governing body.
- 5.13 The Regulations provide additional requirements for federations comprising foundation and voluntary schools. The applicable provisions for The Leathersellers' Federation of Schools are set out in Regulation 22(7) whereby "the Governing Body of a federation comprising more than one category of school including at least one foundation, foundation special or voluntary aided school must also include at least two foundation governors ( or partnership governors as appropriate in respect of any school without a foundation)".
- 5.14 The Regulations now also state that the Local Authority governor is nominated by the Local Authority but appointed by the Governing Body.
- 5.15 Appendix 1 details the Instrument of Government the Local Authority is proposing to make by order.

## **6. Governor recommended for Nomination by the Local Authority .**

- 6.1 Andrew Holmes, details of whom appears at Appendix 2, is the Local Authority nominee for appointment as the Local Authority governor by the Governing Body of The Leathersellers' Federation of Schools.

## **7. Financial implications**

- 7.1 The school site is currently the subject of a Private Finance Initiative (PFI) project which has responsibility for the maintenance and running of the school site with the exception of some "retained estate". The change to Foundation status has no impact upon the school's or the Local Authority's financial responsibilities in respect of the PFI. In terms of the retained state elements the Authority will be responsible for the maintenance of the external structure and major plant to the extent it is required as a result of latent defects for the period of the PFI Project Agreement . It shall meet the cost of this through the Capital Maintenance Grant or DSG CERA as appropriate.
- 7.2 In terms of the revenue funding of the school the school will continue to receive its delegated budget share from the Dedicated Schools Grant through the Local Authority. The calculation of the budget share will change as Foundation Schools receive 80% mandatory relief from NNDR. However, the school's funding will reflect that lower charge. The Council will receive a reduced NNDR income however as mandatory relief is picked up by central government there is no net impact on the General Fund resources of the Council.

## **8. Legal implications**

- 8.1 Section 20 of the Education Act 2002 requires all maintained schools to have an Instrument of Government which determines the constitution of the school and other matters relating to the school.
- 8.2 Each school must have an Instrument of Government detailing the name of the school, the type of school and the membership of the Governing Body. The category of governor and the number in each category is specified in the Regulations.
- 8.3 The Instrument of Government proposed for the Governing Body of The Leathersellers' Federation of Schools conforms to The School Governance (Federations) (England) Regulations 2012.
- 8.4 Under the School Organisation (Prescribed Alterations to Maintained Schools (England) Regulations 2013 which came into force on the 28 January 2014 school governing bodies are able to consider changing category of school from community, voluntary aided or voluntary controlled to a foundation school. In the case of a proposal to change the category of a school to become a foundation school there is a requirement on the Governing Body to inform the Local Authority in writing in advance of any meeting to discuss such a proposal. This requirement has been complied with.
- 8.5 As a consequence of Prendergast Ladywell Fields College having changed category from a community school to a foundation school the main changes are

that the Local Authority will no longer be the employer of staff at the school nor will it continue to be the admissions authority. Such responsibilities will now vest in the Governing Body of the school and shall transfer on the implementation date . i.e. the 1 September 2014. The Local Authority will also be required to transfer any land held by the Local Authority for the purposes of the school to the school's Governing Body.

- 8.6 Where a school changes category to foundation, the responsibilities for admission arrangements transfer. On a transitional basis the new admission authority will be required to honour any admission decisions taken by the Local Authority, as admissions authority in respect of admissions to the school for the existing admissions round.
- 8.7 Similarly in relation to staff transfers anything done by the Local Authority in respect of its former employees is considered from the implementation date to have been done by the governing body and any agreements entered into by the Local Authority in respect of an individual's terms and contract of employment must be honoured by the new employer. i.e the Governing Body of the school.
- 8.8 Schedule 5 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013 requires that on a change of category from a community school to become a foundation" school on the implementation date any land held or used by the Local Authority for the purposes of the community school must transfer to the Governing Body of the foundation to be held by them for the purposes of the school. Consequently any land held by the Local Authority for the purposes of the school transfers automatically to the school's Governing Body.
- 8.9 Prendergast Ladywell Fields College and Prendergast Vale College are both subject to PFI arrangements. Prendergast Vale College is subject to a Project Agreement which covers works and services to it and Bonus Pastor College and Drumbeat School which was entered into on the 22 December 2010 between the Council and Lewisham Schools for the Future SPV4 Limited under the Lewisham BSF Scheme. The change to a hard federation will not impact upon the legal and commercial arrangements of this PFI arrangement. The Governing Body entered into an agreement with the Authority agreeing to it entering into the Project Agreement, (the Governing Body Agreement) and this Agreement binds successors in title.
- 8.10 Prendergast Ladywell Fields College is subject to a PFI Project Agreement covering works and services to it and Forest Hill School and Greenvale School under a Project Agreement between the Council and BY Education (Lewisham) Limited dated 3 August 2006. The conversion of this College to Foundation status will not have a legal or commercial impact upon the PFI arrangement. The Council entered into a Governing Body Agreement with the Governing Body of this College (formerly Crofton School) on the same date as the entry into the Project Agreement. This Agreement also binds successors in title, in this case, the Leathersellers' Federation of Schools.
- 8.11 The Council is currently the owner of the site at Prendergast Ladywell Fields College and it will be required under legislation to transfer the school site to the Governing Body.

- 8.12 Notwithstanding the fact that both Colleges are the (or will become) the owners of the school sites and premises, through the Governing Body Agreements referred to above and in consequence, the entry into the respective Project Agreement with the relevant PFI contractor, the responsibility for building works, maintenance and facilities management of the site and premises has been delegated to the Authority to enable it to procure the accommodation and related facilities management services under the relevant Project Agreement for the term of the PFI arrangement.
- 8.13 The Leathersellers' Federation of Schools will continue to be liable to pay its contribution towards the cost of these services as set out in the original Governing Body Agreements which still apply. It will remain subject to the obligations under the Governing Body Agreements to not take any action or fail to take any action which would cause the Authority to be in breach of its obligations under the Project Agreement.
- 8.14 In relation to Prendergast Ladywell Fields College, certain parts of the site including the new primary school phase building and the former community learning centre buildings and some landscaped areas are subject to different maintenance obligations under the PFI. These are referred to as "Retained Estate". The consequence of this is that the Council remains liable for any latent defects relating to these areas. However, as indicated in the Financial Implications in paragraph 7 of this Report there will be no change to the funding of the Prendergast Ladywell Fields College as a result of the change to Foundation status and there will therefore be no additional exposure of costs to the Authority.

#### Equalities Legislation

- 8.15 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 8.16 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - advance equality of opportunity between people who share a protected characteristic and those who do not.
  - foster good relations between people who share a protected characteristic and those who do not.
- 8.17 The duty continues to be a "have regard duty", and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 8.18 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled

“Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

8.19 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

8.20 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

## 9. Crime and Disorder Implications

9.1 There are no specific crime and disorder implications.

## 10. Equalities Implications

10.1 Governors will have enough flexibility in their choice of constitutional models to enable them to address issues of representation of stakeholder groups and to ensure that Governing Bodies reflect the communities they serve.

## 11. Environmental Implications

11.1 There are no specific environmental implications.

## Background Documents

Short Title of Document	Date	File Location	Contact Officer
School Governance (Federations) (England)	2012	<a href="http://www.legislation.gov.uk/ukxi/2012/1035/introdu">http://www.legislation.gov.uk/ukxi/2012/1035/introdu</a>	Suhaib Saeed



Regulations 2012		<a href="#">ction/made</a>	
School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013	2013	<a href="http://www.legislation.gov.uk/uksi/2013/3110/contents/made">http://www.legislation.gov. uk/uksi/2013/3110/content s/made</a>	Suhaib Saeed

If there are any queries arising from this report, please contact Suhaib Saeed, Strategic Lead Governors' Services and School Leadership, 3<sup>rd</sup> Floor, Laurence House, telephone 020 8314 7670.

## APPENDIX 1

### INSTRUMENT OF GOVERNMENT FOR FEDERATED GOVERNING BODIES

1. The name of the federation is: **The Leathersellers' Federation of Schools**
2. The names and categories of the schools in the federation are:

Name	Category
1. Prendergast Hilly Fields College	Voluntary Aided
2. Prendergast Ladywell Fields College	Foundation
3. Prendergast Vale College	Foundation

3. The name of the Governing Body is: "**The Governing Body of The Leathersellers' Federation of Schools**"
4. The governing body shall consist of the following:

Category of governor (state where the term of office is less than four years)	No. of governors in each category	Name of school (For parent and foundation governors)	No. of governors for each school
Parent governors	<b>3</b>	Prendergast Hilly Fields College	1
		Prendergast Ladywell Fields College	1
		Prendergast Vale College	1
Executive Headteacher	<b>1</b>		
Staff governor	<b>1</b>		
LA governor	<b>1</b>		
Co-opted governors	<b>6</b>		
Foundation governors	<b>6</b>		

5. Total number of governors: **18**
6. The Leathersellers' Company is entitled to appoint the Foundation governors.
7. This Instrument comes into effect on **1 September 2014**.
8. This Instrument was made by order of Lewisham Local Authority on **22 July 2014**.
9. A copy of the Instrument must be supplied to every member of the Governing Body ( and the Executive head teacher if not a governor) and any trustees.

**MAYOR AND CABINET**

**LA Governor Nominee**

**APPENDIX 2**

<b>Name</b>	<b>School</b>	<b>Occupation</b>	<b>Residential Area</b>	<b>Précis of Suitability to be considered as a school governor</b>	<b>Governor Monitoring Information</b>
Andrew Holmes	The Leathersellers' Federation of Schools	Chartered Engineer	SE3	<p>Andrew was previously a Community Governor and Foundation Governor at the Leathersellers' Federation. He joined as a Governor in 2009 and has been extremely professional and helpful. Andrew's professional expertise and experience has been invaluable to the Federation's various building projects, not least at Prendergast Hilly Fields and Prendergast Vale.</p> <p>In addition to the Federation, Andrew is also a Governor of the University of Greenwich. He is currently the Local Authority appointed Governor at the Federation and the Governing Body wish him to be nominated.</p>	Male White British