

DISPUTE RESOLUTION SERVICE

D00013139

Decision of Independent Expert

London Borough of Hackney - Hackney Learning Trust

and

C2 Technology Limited

1. The Parties:

Lead Complainant: London Borough of Hackney - Hackney Learning Trust
London Borough of Hackney
Hackney Learning Trust
1 Reading Lane
London
E8 1GQ
United Kingdom

Respondent: C2 Technology Limited
74 Etheldene Avenue
LONDON
N10 3QB
United Kingdom

2. The Domain Name:

beststart.org.uk

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

06 August 2013	Dispute received
06 August 2013	Complaint validated
06 August 2013	Notification of complaint sent to parties
26 August 2013	Response reminder sent
29 August 2013	No Response Received
29 August 2013	Notification of no response sent to parties
30 August 2013	Expert decision payment received
20 September 2013	Expert raises a Request for Further Information
07 October 2013	Complainant files a response to the Request for

4. Factual Background

The Complainant is the Education Department of the London Borough of Hackney, which has adopted the name the Hackney Learning Trust. As a local authority it is obliged to maintain a financial scheme concerned with the funding of maintained schools within its local authority area.

Under the Education Act 2002 each governing body of a maintained school is able to collaborate in a number of ways, including by forming a federation under a single governing body. A total of five maintained primary schools in the London Borough of Hackney formed a federation under the name the Best Start Federation. The Executive Principal of the Best Start Federation is Greg Wallace.

The Best Start Federation entered into an IT contract with the Respondent, C2 Technology Limited. The terms of that contract are not clear on the evidence but it appears that, as part of its services, the Respondent registered the Domain Name on 22 June 2009. The Best Start Federation has been using the Domain Name registration for the purposes of a website and for email.

A governing body's right to a delegated budget from the local authority can, in certain circumstances, be suspended. By letter dated 23 July 2013 the Complainant gave notice to the Best Start Federation that its delegated budget was suspended with immediate effect under paragraph 1(2) of Schedule 15 of the School Standards and Framework Act 1998 (the SSFA).

5. Parties' Contentions

5.1 The Complainant

The Complainant's case, which is set out in the Complaint and the response to the Request for Further Information (RFI), is summarised as follows.

Background information about the parties

The Complainant is the London Borough of Hackney and the Complaint was lodged by the Head of IT Services of Hackney Learning Trust, which is the Education Department of the Council.

Five maintained primary schools in the local authority area formed a federation under the name the Best Start Federation. The five schools are Mandeville Primary School, Burbage Primary School, Whitmore Primary School, London Fields Primary School and Woodberry Down Community Primary School.

The Respondent is C2 Technology Limited which supplied, and continues to supply, IT services to the Best Start Federation.

Delegated budget

The Complainant provides a delegated budget to the Best Start Federation. The Complainant says that, as a result of a number of serious concerns about the Best Start Federation's relationship with the Respondent, on 23 July 2013 it gave notice of suspension of the governing body's delegated budget pursuant to section 1(2) of Schedule 15 of the SSFA. The Complainant had particular concerns about the relationship between Mr Greg Wallace, who is the Executive Principal of the Best Start Federation, and the Respondent. The Executive Principal has been suspended by the Complainant.

The powers of a local authority

One of the issues in this case is the extent to which a local authority can intervene in the affairs of a maintained school, particularly in circumstances where it has suspending the delegated budget. The Complainant relies upon a number of provisions as follows:

- Section 50 of the SSFA
- Clause 4 of Schedule 14 and Schedule 15 of the SSFA
- Section 35 and Schedule 2 of the Education Act 2002 (the EA)
- School Staffing Regulations 2009
- Regulation 3(2) of the Education (Information About Individual Pupils) (England) Regulations 2013/2094

The Complainant has reproduced some of these provisions in the response to the RFI but, in summary, its case is that once a school's budget has been suspended, it no longer has the power to spend public money and the delegated financial and staffing powers revert to the local authority. In its response to the RFI, the Complainant went further and said that, on the facts of this case, the Best Start Federation also lost its ability to deal with all IT issues, including the contractual arrangements that were in place with the Respondent.

The Complainant also points to provisions which impose requirements on schools to provide information to the local authority, including information about pupils and employees.

Rights

In the Complaint, the case on rights was put on the basis that the Complainant has a legal right over the ownership of the Domain Name which was being used by the Best Start Federation for a website and email data. That right was said to arise from the fact that the schools within the Best Start Federation are public bodies maintained by the Complainant and it has a legal right of access to all school, employee and pupil data and to exercise control over access to that data. The Complainant said that, as it had exercised its legal powers over financial and staffing matters across the five schools, it required ownership of the Domain Name to be transferred to it.

The Complainant's position on rights was not clear and the Expert raised the RFI. In response to the RFI, the Complainant said that it had a legally enforceable common law right in the name Best Start as the intellectual property in that name belongs to the Complainant. The Complainant says its understanding is that the name Best Start was first created by an employee of the Complainant in the course of his employment. The employee is said to be Mr Greg Wallace, who is the Executive Principal of the Best Start Federation.

Abusive Registration

In essence, the case on abuse is that the Complainant is entitled to take control of the Domain Name and the Respondent has not granted full access to the administrative passwords and has failed to transfer the Domain Name to the Complainant.

The Complainant says that, as it has exercised its legal powers over financial and staffing matters across the five schools, it needs to secure a transfer of the Domain Name for a number of purposes, including:

- to be able to support the email system used by the five schools;
- to be able to take control of the emails which are hosted by Googlemail; and
- to secure employee, pupil and school data held within the email system.

The case in relation to support

The RFI asked the Complainant to explain the basis upon which it is entitled to support the email system used by the five schools. The response from the Complainant was put in the following terms:

'An investigation conducted by the Council's Audit and Anti-Fraud Team made findings of breaches of law and process regarding the school's IT Contractor. As such, the schools lost their power to contract with the IT provider and the Council has taken control of all IT contracts and IT issues. As the employer of all members of staff at the five schools, and the authority that maintains these schools and their budgets, it has a clear entitlement to support the email system the schools use.'

The case in relation to access

The case against the Respondent is that it is refusing to provide the Complainant with administrative access to the websites and emails used by the Best Start Federation. In the response to the RFI, the Complainant said that the Respondent had provided it with administration access to Google Mail associated with the Domain Name on 2 September 2013, i.e. after the Complaint had been referred to the Expert. The Complainant points out that access could be revoked at any time. The Complainant says that it does not have control over the Domain Name.

The Complainant was asked in the RFI to explain the nature of the rights that it had to demand access to the website and emails. The response included the following passages:

‘[The Best Start Federation] has rights, but so does the Council - as the employer and maintaining authority with de-delegated responsibility for finance, contracting and staffing.’

‘The Complainant has considerable legal rights of access as it is the employer, maintaining authority, it has full responsibility for staffing and finance decisions, and the school’s right to contract with the IT Company has been removed due to concerns raised by the Audit and Anti Fraud team.’

In effect, the Complainant says that, in addition to the powers it has assumed over financial and staffing matters, a further consequence of its intervention is that it has assumed the power, previously held by the Best Start Federation, to deal with all IT issues, including contractual matters.

Consequences if there is no transfer

It is said that, if the Complainant is unable to secure a transfer of the Domain Name, it will have to provision an alternative domain name, website and email system for the five schools which will cause considerable disruption.

The Complainant also contends that there is a risk that the Best Start Federation is breaching Principle 7 of the Data Protection Act 1988 by continuing to use the Domain Name. In essence, the case is that the appropriate security measures may not be in place to prevent personal data being accidentally or deliberately compromised. This risk is said to arise because the Best Start Federation does not own the Domain Name and therefore does not have ultimate control of the information security of the personal data held within the systems that are tied to the Domain Name.

Evidence in support

The Complainant has produced a number of letters which are considered in section 6 below.

Remedy sought

The Complainant seeks a transfer of the Domain Name.

5.2 The Respondent

The Respondent did not file a Response to the Complaint and neither did it respond to the RFI.

6. Discussions and Findings

6.1 General

In order for the Complainant to succeed it must prove to the Expert, on the balance of probabilities, that:

‘it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

the Domain Name, in the hands of the Respondent, is an Abusive Registration as defined in Paragraph 1 of the Policy.’

The meaning of ‘Rights’ is defined in the Policy in the following terms:

‘Rights means rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning.’

An Abusive Registration is defined in the Policy as follows:

‘Abusive Registration means a Domain Name which either:

was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or

has been used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights.’

A non-exhaustive list of factors which may be evidence of an Abusive Registration is set out in paragraph 3 of the Policy. A non-exhaustive list of factors which may be evidence that the Domain Name is not an Abusive Registration is set out at paragraph 4 of the Policy.

6.2 General overview

At the heart of this Complaint is the question of what happens, in legal terms, when a local authority exercises certain statutory powers in relation to the management of a delegated budget provided to a group of local schools? In

essence, what happens when the authority in effect 'steps in' to relieve the governing body of the schools of various of its financial functions so that the authority manages the functions itself? This is an area of law which on the face of it is well removed from the limited and relatively narrow field that the Policy is directed at, namely whether a domain name registration is an 'Abusive Registration'. It is not an area of law the Expert professes any specific expertise in (although given the way the Complainant has developed its case comment is made below by the Expert on his understanding of certain provisions).

In summary, what the local authority Complainant says is that, as a result of the events which led it to 'step in' and take over the administration of the schools' budget, the Domain Name, which was registered for the schools in question by their IT contractor (the Respondent) has become an Abusive Registration. This is said to be the case even though the evidence before the Expert indicates that the relevant contract with the Respondent contractor remains in place, and the Domain Name continues to be made available to the schools concerned in the same way as it always has been. In these circumstances, the Expert's view is that this Complaint is simply not within the proper ambit of the DRS Policy.

Even if the Complainant was able to overcome the problem of showing it had the relevant Rights (as to which see section 6.3 below), it does not seem to the Expert that the registration is, in these circumstances, Abusive within the meaning of the Policy (see section 6.4 below for detailed reasoning). It may well be that the applicable statutory framework provides other rights and remedies to the Complainant in these circumstances which may be of relevance, but that is not a matter for the Nominet DRS or this Complaint.

6.3 Rights

The Complainant did not in express terms claim a right in respect of the name Best Start in the Complaint. The case on rights was built on the foundation that a local authority, as the public body providing a budget to a maintained school, has a number of rights. Those rights are said to include a legal right of access to all school, employee and pupil data and to exercise control of the access to that data. In addition, it is said in the Complaint that a local authority has legal powers over the financial and staffing matters of a maintained school when it has given notice of suspension of the delegated budget.

The Complainant contends, in its response to the RFI, that it can assume the power to deal with all IT issues, including the contractual arrangements. In the correspondence with the Respondent, which is considered in detail below, it talks in terms of 'taking control over all contractual arrangements' and the need 'to regularize the contracts.' In effect, the Complainant appears to be suggesting that it is entitled to 'step into the shoes' of the Best Start Federation in its dealings with the Respondent.

The provisions that the Complainant has referred to do support the contention that a maintained school is obliged to provide certain information to the local authority and that, once a delegated budget has been suspended, the local authority does have certain powers in relation to financial and staffing matters. The Expert can find no support in the provisions for a broader proposition that contractual matters are re-delegated to the local authority. This issue is explored in more detail in section 6.4 below.

It is not clear on what basis the right to request information and the power to deal with financial and staffing matters provides the local authority with enforceable rights in respect of the name Best Start. The RFI raised by the Expert was designed, in part, to elicit a better understanding of the parties' positions on the issue of rights. In its response to the RFI, the Complainant said its understanding is that the name Best Start was first created by an employee, the Executive Principal, whilst in the course of his employment with the Council. On this basis, the Complainant says 'it has a legally enforceable common law right on the grounds that the [intellectual property] belongs to the Council.'

There are two difficulties with this line of argument; the first is evidential and the second is legal. The Complainant has not provided any evidence to show that its understanding of the factual position is correct. The Expert is prepared to accept that the Executive Principal was an employee of the Complainant. However, there is no evidence to support the Complainant's understanding that he first came up with the name. It is plausible that the Executive Principal came up with the name Best Start but it is difficult to put it any higher than that on the state of the evidence. Whilst, in the absence of a Response, there is no challenge by the Respondent, that does not necessarily mean that the Complainant has done enough to satisfy the burden of proof.

However, the more fundamental difficulty for the Complainant is that, even if its understanding of the factual position is correct, it does not necessarily follow that the Complainant has thereby acquired enforceable rights in respect of the name. The issue of ownership of intellectual property rights in an employment context has received considerable judicial attention, particularly in the absence of an agreed position as set out in a contract of employment. The Complainant has not produced the contract of employment of the employee and relies upon an undefined common law right.

Where there are statutory provisions that touch on this issue they tend to favour the employer. That is the case in relation to the ownership of patents, copyright, database rights and design rights created by an employee in certain circumstances. However, there is nothing in the provisions relating to trade marks or the law of passing off that establishes that an employer automatically has rights over a name that an employee came up with.

There are circumstances in which it might be possible to advance such a case on the basis of breach of an express or implied duty, for instance where an employee has set up in competition with the employer or sought to exploit a maturing trading opportunity that would otherwise have been available to the

employer. There is no suggestion of such conduct in this case. The Complainant has concerns about the employee's conduct but those concerns relate to his relationship with an IT contractor.

The evidence suggests that the name Best Start was used by the federation of five schools to distinguish itself from other schools and federations. It was not a name used by the Complainant and there is no evidence that it has acquired any common law rights through use of that name. The federation of five schools clearly has a legitimate interest in the name. There is an issue about the boundaries of the trading activity necessary to establish goodwill for the purposes of a passing off action but public bodies discharging public functions can be protected by an action for passing off if their activities generate goodwill. The fundamental issue for the Complainant is that, to the extent there is any goodwill attaching to the name Best Start, it is owned by the governing body of the federation and not by the local authority.

The Complainant produced in evidence a letter dated 25 July 2013 that it sent to the Respondent, which includes the following passage:

'The Council is not necessarily suggesting it has property rights in the externally hosted domains or systems, but as the Best Start Federation schools are public bodies maintained by the local authority, it has a legal right of access to all school, employee, and pupil data and to exercise effective control over access to that data and its security.'

It is interesting to note that the Complainant was not at that stage 'necessarily suggesting' that it had property rights in the Domain Name. It did so once it had been asked to explain the nature of the rights it had in that name. It now suggests that the intellectual property in the name 'belongs to the Council' but that claim does not stand up to scrutiny, certainly on the current state of the evidence.

The Expert is not satisfied on the evidence that the Complainant has a legally enforceable right in respect of the name Best Start. As is explored below, it may have all kinds of rights over the running of maintained schools following a more extensive intervention, such as the appointment of an Interim Executive Board which acts as the governing body, but it cannot succeed under the DRS Policy without first establishing enforceable rights.

Whilst this finding determines the case, the Expert has set out his views on the issue of abusive registration in case this matter proceeds to an appeal.

6.4 Abusive Registration

Abusive registration can be shown either in relation to the registration or the use of a domain name. The definition of abusive registration is broad but there has to be some element of unfair advantage or unfair detriment in relation to the Complainant's rights.

There is no complaint in this case about registration of the Domain Name by the Respondent. The Complainant says:

‘[The Domain Name] was registered while C2 Technology Limited were providing IT Services to the Best Start Federation.’

In terms of use of the Domain Name, there is nothing to suggest that the governing body of the Best Start Federation has any complaints about the use of the Domain Name. The evidence is that the five schools continue to use the website and email addresses. The Respondent was providing IT services pursuant to a contract and it continues to do so. It does not appear to have done anything differently. The intervening act, which is said to make a difference to the analysis, is that the Complainant has exercised its powers to suspend the budget following an investigation. That is said to give rise to an entitlement to take control of the Domain Name.

It is necessary to consider the evidence produced by the Complainant and the regulatory framework that applies in these circumstances in order to reach a finding on abusive registration.

Analysis of the evidence

A total of four letters have been provided as follows:

Letter from the Complainant to the Best Start Federation dated 23 July 2013

The letter is addressed to the Chair of Governors of the Best Start Federation and is dated 23 July 2013. It refers to an interim investigation report dated 18 July 2013, that has not been produced in evidence, which it says highlights a number of major breaches in the governance and finance arrangements at the Federation and particulars are given of six specific allegations. The letter includes the following passage:

‘Accordingly, the Council has serious concerns that the Best Start Federation has grossly and persistently failed to comply with its fundamental delegation requirements and/or mismanaged its delegated budget in contravention of the School Standards and Framework Act 1998 (SSFA).’

‘Accordingly, the governing body’s delegated budget is being suspended with immediate effect under paragraph 1(2) of Schedule 15 of the SSFA.’

Letter from the Complainant to the Respondent dated 23 July 2013

The letter was sent by e-mail to Tony Zangoura and is dated 23 July 2013. The letter notifies the Respondent that the delegated budget of the Best Start Federation has been ‘removed with immediate effect’ and includes the following statements:

‘the Council has resumed control over all financial and contractual matters concerning the Best Start Federation schools.’

‘the Council will be taking control over all contractual arrangements it has with C2 Technology.’

The letter states that the contract is not being terminated ‘for the time being’ and includes the following three requirements:

- ‘immediately hand over to Mr John Crook, Head of ICT Services, all technical documentation, including all the administrative passwords for all systems in use by the 5 schools in the federation, including cloud based systems, such as websites and emails;
- refrain from accessing these systems (or permitting anyone else, including employees of the school) to access the systems, without John Crook’s consent: and
- refrain from entering school premises (which extends to other staff/contractors of C2 Technology as well).’

The letter states that ultimately all employees of the Best Start Federation are employees of the Council and all data held by the schools is ultimately subject to Council authority and where delegated authority is withdrawn, the local authority is directly responsible for security and access to this data.

It is important to note that on the Complainant’s case - which is that it had assumed the power to deal with all IT contractual issues - the contract between the Best Start Federation and the Respondent continued as it was ‘not being terminated for the time being.’ There is nothing in the evidence to suggest that there has been a subsequent attempt to terminate the contract.

Letter from the Complainant to the Respondent dated 25 July 2013

This letter refers to the letter sent two days earlier and re-states the Complainant’s three requirements. It says that the Complainant’s understanding is that the Respondent is taking legal advice and the Respondent’s preliminary view is that the Respondent’s contracts are with the various Heads of School with the Best Start Federation and the Respondent would need to take instructions from them.

The letter points out that any contract with a school is not with the Heads of School but with the governing body as the legal entity. The letter includes these passages:

‘When a Governing Body has its financial and staffing powers removed, as is the case here, the Council has considerable intervention powers it is lawfully entitled and obliged to exercise.’

‘The Council is not necessarily suggesting it has property rights in the externally hosted domains or systems, but as the Best Start Federation schools are public bodies maintained by the local authority, it has a legal right of access to all school, employee, and pupil data and to exercise effective control over access to that adapt and its security.’

The letter says the Council ‘will need to regularise the contracts’ between [the Respondent] and the Best Start Federation as they do not contain ‘the expected or standard provisions a contract with a public body should contain.’

The letter says that if the Respondent does not cooperate the Complainant may have to pursue a breach of contract and/or apply for an access order under the Council’s investigatory powers.

Letter from the Respondent to the Complainant dated 29 July 2013

This letter is marked without prejudice. Paragraph 6 of the DRS Policy confirms that documents marked ‘without prejudice’ may be used in submissions and may be considered by the Expert save in two situations: namely, where (i) the documents were generated within the informal mediation phase of the DRS or (ii) the Expert believes that it is in the interests of justice that the documents be excluded from consideration. This letter pre-dates the Complaint and the Expert can see no reason to exclude it from consideration. It is in fact the only document generated by the Respondent that appears in the papers before the Expert.

The letter acknowledges the letter from the Complainant dated 25 July 2013 and says that the Respondent is taking legal advice. It includes the following statement:

‘I am keen to [be] cooperative with Hackney Learning Trust to resolve this matter as soon as possible. We undertake not to access school systems, pcs, servers or premises. Where possible upon request we will provide you with assistance if you are unsure of the systems put in place.’

The letter therefore addressed two of the Complainant’s three requirements but it did not address the request for all technical documentation, including passwords for the systems in use. The Complainant has subsequently confirmed that access to Google <ail has been provided by the Respondent but points out it can be withdrawn at any point.

Regulatory framework

The Complainant initially argued that it had rights in relation to funding and staffing matters pursuant to the regulations that apply to maintained schools once a delegated budget had been suspended. It expanded that case to include rights over contractual matters. It has therefore been necessary to consider those regulations. It should be pointed out that this is a highly regulated area and the Expert had no prior detailed knowledge of the

regulatory framework. An attempt to gain further clarity from the parties on the relevant provisions and their effect was made through the RFI.

Federated schools

Under section 24 of the Education Act 2002, maintained schools are able to federate together under one governing body. Each federation must have an instrument of government which records the name of the federation, the names of its constituent schools and the constitution of the governing body. The instrument of government has not been adduced in evidence in this case.

The Complainant was correct when it pointed out to the Respondent in its letter dated 25 July 2013 that any contract with a school is with the governing body as the legal entity. Where schools enter into a federation it is the governing body of the federation that is the legal entity. It can own property, exercise rights and incur liabilities.

Regulation 12 of the School Governance (Federations) (England) Regulations 2007 provides:

- ‘(1) On the federation date—
- (a) the governing bodies of the federating schools or federations are dissolved;
 - (b) the governing body of the federation is incorporated;
 - (c) all land and property which, immediately before the federation date, was held by the governing body of a federating school or federation transfers to, and by virtue of these Regulations vests in, the governing body of the federation; and
 - (d) all rights and liabilities subsisting immediately before the federation date which were acquired or incurred by the governing body of a federating school or federation be transferred to the governing body of the federation.’

There is a prescribed process that schools need to follow if they are planning to become part of a federation. The consultation documents and the draft instrument of government have to specify the name of the governing body. There is limited room for manoeuvre on the part of a local authority if maintained schools indicate that they wish to become part of a federation. The local authority may not decline to make the new instrument of government unless it is technically flawed, i.e. unless it does not comply with all applicable statutory provisions.

Delegated budget

Under section 49 of the School Standards and Framework Act 1998 every maintained school is entitled to a delegated budget. Sub-sections 49(5) and (6) provide as follows:

- (5) Any amount made available by a [local authority] to the governing body of a maintained school whether under section 50 or otherwise)—

- (a) shall remain the property of the authority until spent by the governing body or the head teacher; and
- (b) when spent by the governing body or the head teacher, shall be taken to be spent by them or him as the authority's agent.

Powers of intervention

A local authority has broad powers of intervention in relation to a maintained school which include rights to (i) suspend the delegated budget, (ii) appoint additional governors and (iii) appoint an Interim Executive Board (IEB) under section 65 of the Education and Inspections Act 2006. Once appointed, an IEB is considered as the governing body of the school. This would appear to be a route by which a local authority can take control over the property of the governing body and exercise the contractual and other rights of that governing body. There is no evidence in this case of any intervention beyond the suspension of the delegated budget.

Suspension of financial delegation

In certain circumstances, the local authority may suspend the governing body's right to a delegated budget by giving the governing body not less than one month's notice of the suspension. Section 51 of the SSFA provides:

Schedule 15 (which provides for the suspension by a [local authority] of a governing body's right to a delegated budget in the case of failure to comply with requirements as to delegation or of financial mismanagement, etc.) shall have effect.

Schedule 15 of the SSFA provides as follows:

- (1) This paragraph applies where it appears to the [local authority] that the governing body of a school which has a delegated budget—
 - (a) have been guilty of a substantial or persistent failure to comply with any delegation requirement or restriction, [...]
 - (b) are not managing in a satisfactory manner the expenditure or appropriation of the sum referred to in section 50(1) [, or]
 - [(c) are not managing in a satisfactory manner any expenditure, or sums received, in the exercise of the power conferred by section 27 of the Education Act 2002 (power to provide community facilities etc.)]

It does therefore appear that a local authority is able to suspend a governing body's right to a delegated budget and, on the evidence, the Complainant did so in this case by its letter to the Best Start Federation dated 23 July 2013.

Having considered the regulations, the Expert is satisfied that a maintained school is obliged to provide specified information to a local authority. The Expert is also satisfied that a local authority has power to suspend a delegated budget and the local authority can assume financial and staffing powers.

The Expert is satisfied that a local authority can appoint an IEB which acts as governing body and it can therefore 'step into the shoes' of the governing body and exercise its contractual and other rights. However, that is not how the Complainant's case is put and there is no suggestion that an IEB has been appointed in this case.

The Complainant says, in correspondence with the Respondent, that it 'will taking control over all contractual arrangements' concerning the Respondent and 'will need to regularise the contracts.' The Complainant's case in support of its assertion that the governing body has lost the power to deal with IT matters is that the school's right to contract was removed because of concerns raised by the Audit and Anti Fraud team, which made findings of breaches of law and process regarding the school's IT contractor. The Expert cannot, within the confines of the DRS, reach any findings in relation to the legitimacy of those concerns nor would it be appropriate to attempt to do so.

The Expert's reading of the regulatory framework is that the raising of concerns does not of itself trigger a shift in responsibility for dealing with IT issues from the governing body to the local authority, in the manner contemplated by the Complainant. The local authority is not a party to the IT contracts and the Complainant has over-reached itself in terms of its description of its rights.

The governing body of the Best Start Federation could, if it had a concern about the use of the Domain Name, point to paragraph 3(a)(v) of the Policy which is set out below and is one of the factors which may be evidence of abusive registration:

'The Domain Name was registered as a result of a relationship between the Complainant and the Respondent, and the Complainant:

- A. has been using the Domain Name registration exclusively; and
- B. B paid for the registration and/or renewal of the Domain Name registration.'

The Complainant does not suggest that the Domain Name was registered as a result of a relationship that it had with the Respondent. The relationship was with the governing body of the Best Start Federation as the legal entity.

The Expert has to decide whether the Domain Name has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights. Having considered the evidence, the Expert has come to the conclusion that it has not. The use of the Domain Name has not changed and no complaint has been made by the Best Start Federation, which is a party to the IT services contract. The local authority has serious concerns about the governing body's conduct and wishes to take control of the Domain Name. It may be possible to achieve that objective in other ways but the Expert is of the view that this case falls outside the scope of the DRS Policy.

7. Decision

For the reasons set out above, the Expert is not satisfied on the balance of probabilities that the Complainant has rights in a name which is identical or similar to the Domain Name. Whilst it is not necessary to make any findings in relation to abusive registration, the Expert is also not satisfied that the Domain Name is, in the hands of the Respondent, an Abusive Registration. The Expert directs that no action be taken in relation to the Domain Name.

Signed: Andrew Clinton

Dated: 28 October 2013