Reconstitution of Governing Bodies in Maintained Schools

BRIEFING PAPER

In January 2014 the Government announced that as part of their commitment to a professional standard of school governance, governing bodies will be expected to act more like corporate bodies and only appoint governors with the skills and experience to help their schools succeed.

The DfE has stipulated that by 1 September 2015, all governing bodies of maintained schools must be constituted under the School Governance (Constitution) (England) Regulations 2012 or the School Governance (Federations) (England) Regulations 2012 (as appropriate). Please be aware, all maintained schools reconstituting to the 2012 regulations must have regard to the following statutory guidance issued by the DfE in May 2014:

The Constitution of Governing Bodies of Maintained Schools
(Statutory guidance for governing bodies of maintained schools and local authorities in England)

A copy of this guidance can be found on the DfE website: www.gov.uk (search using the title of the document) or by following the Link below:


What are the main points set out in the May 2014 Guidance?

A. Governing bodies should be no bigger than necessary to secure the range of skills they need. Smaller governing bodies are likely to be more cohesive and dynamic.

B. A key consideration in the appointment and election of all new governors should be the skills and experience the governing body needs to be effective.

C. Governing bodies should use a skills audit to identify any specific gaps that need to be filled in the skills, knowledge and experience of existing governors.

D. Before being nominated for election or appointment, all prospective governors should be helped to understand the role of a governor and the governing bodies’ code of conduct.
E. Anyone appointing governors to the governing body must appoint someone they believe has the skills to contribute to effective governance and the success of the school.

F. Governing bodies and local authorities should take steps to inform governor elections so that the electorate understands the extent to which nominated candidates possess the skills the governing body ideally requires.

G. Foundation governors have a particular purpose to safeguard the character of the school and ensure it is conducted in accordance with any founding documents, but otherwise every governors’ role is to govern the school in the best interest of pupils, not to represent the interests of the constituency from which they were elected or appointed.

H. Meaningful and effective engagement with parents, staff and the wider community is vital. It is not the role of governing bodies to provide this through their membership. They need to assure themselves that specific arrangements are in place for this purpose.

I. Governing bodies should review their effectiveness regularly, including the extent to which their size and structure is fit for purpose and their members have the necessary skills.

J. Governing more than one school can generate a more strategic perspective and more robust accountability through the ability to compare and contrast across schools.

K. All governing bodies must be constituted under the 2012 Constitution Regulations or the 2012 Federation Regulations, as appropriate, by 1 September 2015.

What are the implications of a ‘skills based’ reconstitution for existing Foundation Governors?

- The new guidance requires governing bodies to liaise with the relevant appointing bodies (ie. Diocese/PCCs, Trustees) and reach agreement, regarding the composition of a new skills based Instrument of Government and gain their approval.

- Reconstituting gives governing bodies at church schools an opportunity (if appropriate) to reduce in size and this could affect existing foundation governors.

- During the reconstitution process the Diocese’s objective at each church school will be to ensure that the influence/proportion of foundation governors is not diminished as a result of this new legislation.
**In Aided Schools:**

The requirement to have two more foundation governors than all other governors should ensure that the influence/proportion of foundation governors remains unchanged.

**In Controlled Schools:**

There is a requirement to have at least two foundation governors. If a governing body at a controlled school wishes to reduce in size then the Diocese’s priority will be to ensure that in relation to other governors, the influence/proportion of foundation governors is not diminished.

**Surplus Foundation Governors:**

If a governing body at an aided or controlled school decides to reconstitute and reduce in size then the governing body could find themselves with a surplus of governors, including foundation governors.

The new guidance sets out what should happen in these circumstances:-

“Where negotiations and the result of a skills audit do not result in sufficient resignations and there remains a surplus of governors:

Any surplus in the number of foundation governors must be resolved by the person responsible for appointing foundation governors.

They should decide who should continue to hold office on the basis of which foundation governors are best skilled to contribute to the effective governance and success of the school, and to secure the purposes for which they were appointed as a foundation governor.”

All foundation governors are valued by the Diocese for their Christian service in our church schools. The Diocese’s priority will be to work sensitively with the relevant governing body, ex-officio governor and Parochial Church Council to ensure that (as required) the most appropriately skilled foundation governors are retained, but at the same time the service and commitment of any surplus governors is appropriately acknowledged.

**What is the role of a Foundation Governor within a ‘skills based’ governing body?**

- The new guidance acknowledges that “Foundation governors have a particular purpose to safeguard the character of the school and ensure it is conducted in accordance with any founding documents”

- However, the guidance also notes that the role of all governors is “......to govern the school. This means focusing on the core functions of providing strategic leadership, holding the headteacher to account and making sure the school’s money is well spent. This is a demanding task for which all governors need to have, or develop, relevant and appropriate skills.”
The requirement for foundation governors to bring strategic skills to a governing body, in addition to safeguarding the character and Christian ethos of a church school, is something that PCC’s (as appointing bodies) and also ex-officio governors (who provide foundation governor nominations for the Board of Education) must have regard for.

**What are the implications of a ‘skills based’ Governing Body on the Foundation Governor Appointment Process?**

- The new guidance recognises that the specific skills needed by governing bodies to meet their particular challenges will vary and therefore individual governing bodies and appointing bodies, including the Diocesan Board of Education and Parochial Church Councils must **determine what skills are relevant and also be satisfied that the governors they appoint, have them.**

  “A foundation governor is someone who, in the opinion of the person entitled to appoint them, has the skills to contribute to the effective governance and success of the school, and who is appointed for the purpose of securing:
  - in all cases, that the school's character (including religious character where it has one) is preserved and developed; and
  - that the school is conducted in accordance with the foundation’s governing documents.

  *In appointing a foundation governor, the person entitled to make the appointment should seek to understand and take into account the skills and experience the governing body identifies that they need*. (regulation 9)

- The new guidance also advises appointing bodies that “**They may interpret the word ‘skills’ to include personal attributes, qualities and capabilities, such as the ability and willingness to learn and develop new skills.”**

- The Diocese will also give consideration to the training record of diocesan governors when considering future nominations for reappointment.

- The existing foundation governor appointment process relies heavily on the local knowledge and involvement of the ex-officio governor, Parochial Church Councils and District Church Councils. In order for the Diocese and PCC’s/DCC’s (as appointing bodies) to respond appropriately to this new legislation, a more robust method of appointing FG’s is going to be required which will a) determine what skills are relevant for individual schools and b) ensure newly appointed governors possess these skills.
NEW Foundation Governor Appointment Process (from 1 January 2015)

Prior to appointment:

- Where foundation governor vacancies exist, governing bodies will be asked to identify which skills are needed before nominations are sought.

- All potential foundation governors will be asked to fill out an application statement detailing the skills they could bring to the role, their Christian faith/church involvement, and their willingness to uphold the Christian faith of the school.

(please see appendix 1 for the NEW foundation governor application forms)

What Process must Governing Bodies Follow When Reconstituting?

- Governing body liaises with the Diocese and PCCs/DCCs over the composition of a new skills based Instrument of Government.

- The governing body decides on the size and make-up of the proposed constitution (minimum 7 in VC schools and 12 in VA schools)

- A draft instrument is drawn up (usually by the clerk) and approval must then be sought from the Trustees of the school, the PCC/DCC and/or the DBE (please send to Alison Jacobson)

- The approved draft is sent to the LA

- If the LA is content that it complies with the relevant legal requirements, they draw up the instrument

- A copy of the final instrument must be given to all governors and sent to the Trustees, PCC/DCC and DBE

The governance structure is as follows:

- At least 2 parent governors

- The Headteacher

- 1 (and only one) staff governor

- 1 (and only one) LA governor (nominated by the LA and appointed by the GB)

- Co-opted governors if desired (no minimum or maximum)

- VC schools at least 2 foundation governors (but no more than one quarter)

- VA schools must have foundation governors in a majority of 2

We would encourage all maintained schools to give consideration to converting to a skills based model of working sooner rather than later. Alison Jacobson is the Governance Officer at the Diocese and her role is to support church schools through the reconstitution process. As and when each school begins reconstituting it would be helpful if the ex-officio governor or chair of governors could get in touch with Alison directly. She can be contacted on 01636 817230 or 01636 814504 and by email: alison.jacobson@southwell.anglican.org.