

Agenda Item 5 - Evidence Set 1
Education and Children's Services Scrutiny Committee
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Governance and the relationship between the Local Authority and Academies / Free Schools

Information in this report was produced on behalf of	
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i) Whole System Overview

- 1.1 The governance of all schools and academies is set out in the School Governance (Roles, Procedure & Allowances) Regulations 2013 (the 2013 Regulations) and are managed by the Department for Education (the DoE).
- 1.2 The 2013 Regulations and the accompanying non statutory advice apply to the governing bodies and school leaders of maintained schools and of federations of maintained schools and the management committees of pupil referral units in England. The regulations do not apply to academies. However, many of the principles of good governance set out in the advice are reflected in the Governors' Handbook which also applies to the boards of academies.
- 1.3 An academy school is a charitable company (a trust) limited by guarantee. The trustees of the charitable company are also directors of the charitable company for the purposes of charity law. Financial requirements on academy trusts are set out in the Education Funding Agency's 'Academies Financial Handbook' and also in their individual funding agreement.
- 1.4 Local authorities have a statutory responsibility to provide governors of maintained schools with advice, guidance and access to training, and to recommend for appointment LA Governors. They are also able to provide these services to academies and free schools, but are under no obligation to.

Academies are able to get advice on governance from Suffolk County Council & Schools' Choice Governor Services, from the Regional Commissioner and from the DoE.

- 1.5 There are a range of independent, mainly voluntary sector, organisations providing support and advice to governors, ranging from Suffolk Governors' Forum to the National Governors' Association and encompassing specialist groups such as School Governors' One Stop Shop which plays an important role in the recruitment of governors nationally, and which SCC/Schools' Choice takes full advantage of. Church schools can also access support and advice from their Diocese office.
- 1.6 The Local Authority (the LA) has powers of intervention set out in the Education & Inspections Act 2006 (the 2006 Act) where governors of maintained schools are failing to fulfil their roles adequately. Where SCC has significant concerns about a governing body (GB) it may issue a Warning Notice requiring a detailed recovery plan to ensure a series of identified actions leading to the outcome of specified improvements in a school's performance. And, within a specified timeframe as set out in the Warning Notice. Following the issue of the Warning Notice, should the GB fail to take the required action to improve the school's performance, the local authority may remove the school's delegated budget to be managed through the local authority, and/or it may place on the governing body additional governors of its choosing, and/or it may apply to the Secretary of State for an Interim Executive Board (IEB) to be established to replace the governing body. Where a school is in an Ofsted category of "inadequate" these powers of intervention can be used without a Warning Notice.
- 1.7 The 2006 Act provides the LA with the power to appoint "additional Governors" where a school's performance requires improvement. The role of these additional governors is to apply their expertise in respect of maintained schools to ensure delivery of the legal requirement for a GB to 'conduct the school with a view to promoting high standards of educational achievement at the schools.
- 1.8 It is important to note that the 2013 Regulations provide that in **all** types of schools, governing bodies should have a strong focus on three core strategic functions:
 - a. Ensuring clarity of vision, ethos and strategic direction;
 - b. Holding the head teacher to account for the educational performance of the school and its pupils; and
 - c. Overseeing the financial performance of the school and making sure its money is well spent.
- 1.9 All academy boards of trustees have additional functions and responsibilities. For example, they may own land, act as employers, admission authorities, or boards of charitable trustees and company directors. Therefore, the position in respect of Academies is that they are responsible to their governing Trust for their governance. In a single academy this may be the same people as on the Local Governing Board (LGB), and in a multi-academy trust it will be the trustees of all the academies in the trust. The Regional Schools Commissioner

is able to issue a Warning Notice to the Trust regarding unacceptably low performance standards of pupils at an academy.

1.10 Within Suffolk:

- Governor Services sits within Schools' Choice. Non-chargeable statutory work is carried out by officers, and an agreed amount of money is made available by Education and Learning for this.
- The Senior Adviser, Governance, is employed across SCC & Schools' Choice with a split of 60% Education & Learning and 40% Schools' Choice.
- Training and clerking are fully traded; Governance Reviews are moving to a position where they are partially traded.
- At all levels there are close working relationships with Suffolk Governors Forum (SGF), who aim to represent all governors, and who elect representatives to School Forum, Schools' Choice Customer Panel.
- There are also close working relationships with the education officers for both the Church of England and Roman Catholic dioceses.
- Warning Notices to Local Authority maintained schools are sent where governance is failing to deliver a high enough standard of educational performance, or where governance itself is judged to be failing.

Future of Governance Systems

1.11 The drive to academise is changing the nature of school governance. For example, in multi-academy trusts (MATs) are also a single legal entity but its board of trustees is accountable for a number of academies in its chain. Each academy may have a LGB to which the MAT trustees may delegate some governance functions.

1.12 Local governors who sit on LGBs bodies are not trustees of the academy trust unless they also sit on the trust's board. This raises the possibility that academisation may progressively reduce local accountability, and schools may be without LA, parent, staff or local community representation at a school level.

1.13 The current government has an explicit expectation that governors will be appointed for the skills they can bring. For many schools this is not achievable as they struggle to recruit to their governing bodies. However, as Governor Services guides schools through reconstitution under the 2012 School Governance (Constitution) Regulations, these expectations are being made very clear.

1.14 Schools which choose to remain within the LA maintained system will continue to need LA governors, advice and guidance. And, also direct intervention in the event of unacceptable standards of low performance of pupils. Schools' Choice will continue to offer a high quality service to schools through its training and clerking services to maintained schools and academies through fully traded packages.

ii) What data is available about how well school governing bodies are performing?

- 2.1 There is no specific data collected on how effective governing bodies are performing as Ofsted no longer grades governance separately. However, Ofsted does judge the performance of a GB through its fourth judgement category – “the quality of leadership in and management of the school”. The best way for parents to judge the strength of governance in a school or academy is through this overall Ofsted category. Governance is part of the leadership of the school, and a school failing to provide a good or outstanding education does not have a strong governing body (the exception to this being when the school is moving forward from a judgement of Requiring Improvement or Inadequate but is awaiting a further inspection), though it may have individual governors with the right skills and experiences.
- 2.2 Governor Services uses several tools to help it assess the strengths and limitations of governing bodies, including a health check, Governance Reviews, Local Authority Reviews of Pupil Performance and Leadership and Management, feedback from School Improvement Boards etc. A governing body at a school judged to be requiring improvement may be required by Ofsted to undertake a Review of Governance, but this does not have to be through the Local Authority and there are various local providers who will carry it out should the governors choose to go elsewhere.
- 2.3 The LA and Regional Commissioners make use of the Ofsted criteria for evaluating governance. Key to this is the statement from the Grade Descriptor for an Outstanding school:
- Governors, or those with a similar responsibility, stringently hold senior leaders to account for all aspects of the school’s performance

and for a Good school:

- Governors, or those in a similar position, systematically challenge senior leaders. As a result, the quality of teaching and pupils’ achievement have improved, or previous good performance in these areas has been consolidated.

iii) Governor Recruitment

- 3.1 The Local Authority is responsible for appointing LA Governors to schools where the governing body has not yet reconstituted under the School Governance (Constitution) Regulations (the 2012 Regulations). It is also responsible for recommending LA Governors where a GB has reconstituted in accordance with the 2012 Regulations. The process, following an initial evaluation, is:
- A potential LA governor self-nominates, either directly to SCC or via SGOSS (School Governors’ One Stop Shop)
 - Governor Services processes the application

- Two references are taken up
- Potential governors are matched with vacancies
- Details of the potential governor are sent to the school head, chair and the SCC members for the area where the school is located
- Comments are collated and a schedule of possible appointments is sent to members of the relevant LA Governor Appointment Panel (in West, South or North)
- Members attend the panel meeting and make appointments or recommendations as appropriate
- It is the responsibility of the school to carry out Disclosure and Barring Service checks where they consider these necessary.

3.2 Suffolk is one of the few Local Authorities continuing to make appointments and recommendations by formal panel. In many areas this has been replaced by delegation to the Cabinet Member. This speeds up what can be a long process, but reduces the involvement of members. The Suffolk system now requires a formal process review as there is a need to further strengthen and streamline the process to ensure that only the best candidates are being put forward on behalf of the LA. And, also to consider “conditions” of recommendation such as willingness to attend SCC’s training for new governors.

iv) **What actions have been taken in the past to improve governance?**

4.1 Over the last few years SCC has formalised its intervention programme so that more Additional Governors and Interim Executive Boards have been appointed. There are currently 20 Additional Governors in post supporting GBs to improve their performance. However, following the recent issue of Warning Notices there is an urgent need to increase the number of governors to a pool of at least 30. There are no IEBs presently operating in Suffolk schools, although applications for consent to appoint IEBs may be made to the Secretary of State for Education following the issue at the end of September of 17 Warning Notices by the council.

4.2 The impact of these interventions, and of the less formal supporting governors the LA places, is measured through establishing clear targets for the outcomes to be achieved in a two to three term timeline. Regular reviews of progress are made and the impact evaluated at the end of the placement.

4.3 It is an important and demanding role being a governor. Governors represent the largest number of unpaid volunteers working to ensure that every child reaches their potential when attending a school in Suffolk. Nevertheless, formal interventions into governance are made when governors fail to carry out their statutory duties. Evidence suggests that those that deliver it well do so by:

- understanding their strategic role – building a productive and supportive relationship with the head teacher while holding them to account for school performance and taking hard strategic decisions in the light of objective data;

- ensuring governors have the necessary skills and commitment, including to challenge the school to bring about improvement and hold leaders to account for performance;
- appointing an effective chair to lead and manage the governing body – guidance on the crucial role of the chair of governors, developed jointly with the National Governors' Association (NGA) is available on the NCTL website;
- appointing a high quality clerk to advise them on the nature of their functions and duties and ensure the governing body operates efficiently and effectively;
- evaluating their performance regularly in the light of Ofsted expectations and other good practice and making changes as necessary to improve their effectiveness; and
- governing more than one school to develop a more strategic perspective and create more robust accountability through the ability to compare and contrast across schools.

4.4 Effective governing bodies also think carefully about how they are organised. This includes thinking about whether and how to use their powers to delegate functions and decisions to committees or individual governors. Governing bodies may decide to task individual governors to take an interest in a specific area, such as SEN, safeguarding or health and safety, but there is no legal requirement for either maintained schools or academies to do so.

4.5 There are many different models and governing bodies are generally best placed to decide for themselves what will work best in their own circumstances. It is the overall governing body, however, that in all cases remains accountable in law and to Ofsted for the exercise of its functions. The Government expects every governing body to focus strongly on its core functions and to retain oversight of them.

4.6 Regional Commissioners have similar intervention powers that they can use with academy governance.

v) Case Studies

5.1 Primary School

- Placed in Special Measures Feb 14
- 2 additional governors appointed late Feb 14 (one resigned Oct 14 for personal reasons)
- Governance Review carried out
- First HMI visit continued to raise concerns about governance
- Bespoke training (July 2014) on monitoring for governors demonstrated very low levels of monitoring and raised concerns about progress against review action plan
- LA Review (September 14) included governance, and challenged governors about progress against review (chair and vice-chair were not present)

- Additional governor worked closely with other governors to discuss the options available to them to ensure improvement
- Chair and Vice-Chair were voted out of office and a new chair and vice-chair appointed
- Second HMI visit reported:

...The governing body has undergone much change recently and is now well placed to fulfil its role effectively. The experienced and skilled leadership of the new Chair of the Governing Body is quickly having an impact by monitoring the school's progress and asking probing questions. She is supported by other governors who share her passion and commitment to making a difference for pupils.

External support

- 5.2 The local authority has provided appropriate and effective support. The local authority recruited the deputy headteacher to strengthen leadership. It also recruited the additional experienced governor who is now the Chair of the Governing Body.

vi) Strategy for Improving Governing Bodies

- 6.1 Ensuring good governance in academies, free schools, alternative provision and maintained schools requires:
- Recruiting the right governors with the right skills
 - Giving them easy access to key training
 - Providing up to date, useful information
 - Making available professional, trained, highly skilled clerks
 - Identifying early governing bodies which are not good enough and providing support & challenge to improve them quickly
 - Making use of skilled and experienced governors across the county to support and develop other governing bodies
 - Issuing Warning Notices and following through with governance interventions in line with the School Improvement strategy.
- 6.2 Schools' Choice Governor Services will be competing for business in an increasingly complex marketplace, and must ensure that quality and price are both giving good value for money in order that maintained schools and academies continue to buy in, enabling governor services to give joined up messages about governance.

vii) The Effectiveness of School Governor Mechanisms in preventing extremism etc.

- 7.1 The Report into Allegations Concerning Birmingham Schools (July 2014) makes it clear that individual governors need to understand the responsibilities and limitations of their role in supporting and challenging the school to which they are appointed. The training provided to Suffolk governors makes this clear, as does the information provided to them. Training courses also cover the statutory requirement for schools to teach British values, and to ensure that discriminatory bullying is not tolerated.
- 7.2 Governors contribute to this through holding the Headteacher to account, making regular monitoring visits to the school, conducting parent, pupil and staff surveys, and holding each other to account for upholding the Nolan Principles of public life.
- 7.3 Governors are advised to request termly reports on bullying incidents and incidents of discrimination and for one governor to view the bullying log regularly as part of monitoring behaviour. They are expected to consider whether there are incidents of pupils with special educational needs or disabilities being bullied, or of any children suffering discriminatory bullying.