

School governance – briefing paper

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Introduction

1. Reforms to the system of state education in England undertaken by successive governments, over a number of years, have seen a general shift away from a schools system organised, governed and largely funded by local authorities, to one where local communities are served by a variety of different schools with different arrangements for governance, funding and accountability.
2. Local authorities retain nonetheless an important role in both the provision and organisation of schools in England, a role that is now shared with independent and charitable sector providers, religious institutions and groups of parents. The Department for Education (DfE) – the Secretary of State personally and through the department's various agencies, such as the Education Funding Agency (EFA) – has an increasingly direct, "hands on" role to play in local education provision, as well as devising strategy and making the law for the country as a whole.
3. The increasing diversity of types of school and the organisations involved in organising and supporting them has created quite complex structures of governance and accountability. The aim of this briefing paper is to explore some of those structures.

How are schools organised?

4. Schools in England can be categorised in a number of different ways:
 - **Age:** the vast majority of schools cater specifically for the "primary" (ages 5-11, academic years Reception-6) and "secondary" (11+, year 7 upwards) phases of education. However there are also nursery schools; "infant" and "junior" schools which cater for younger and older primary aged children; middle schools; "all-through" schools for primary *and* secondary school age pupils; and schools which do not cater for a particular age range.
 - **Selective and non-selective:** in the state sector, some local authorities still maintain grammar schools which select pupils at age 11 according to *ability*. A number of non-selective state schools have also adopted admissions arrangements which select a small number of pupils by *aptitude* in a particular area of specialism (e.g. sport, music, foreign languages)
 - **Gender:** some schools cater only for boys and some only for girls. Those with both are usually called "co-educational". Some single sex schools have a co-educational sixth form.
 - **Religious character:** the Church of England and Roman Catholic church were involved in establishing schools from the 19th century, even before the state started to play a significant role. Almost a third of all schools in England have a religious character, and while the vast majority of them are Christian there are a small number of Jewish, Muslim, Sikh and Hindu denominational schools.

- **“Special” and “Mainstream”**: a special school is one specially organised to make special educational provision for pupils with special educational needs. “Mainstream” is the label often used to denote non-special schools.
 - **Specialism**: “Special” schools are not to be confused with schools which have a *specialism* in a particular area. Some schools have adopted a particular specialism in a particular area of the curriculum, but others, such as university technical colleges and studio schools, offer a different type of curriculum geared more towards vocational training.
 - **“Alternative provision”**: this term is often applied to schools whose pupils attend because they are unable to receive a suitable education because of exclusion, ill health or some other reason. These might include “pupil referral units” (often for pupils who have been excluded, or are at risk of exclusion) and hospital schools. But the term might also be applied to education provided other than that at a school.
5. While these “categories” are useful for describing different types of school, they do not shed much light on the contrasting systems of governance and accountability that exist: the governance of a primary school does not significantly differ from that of a secondary school, for example, just because they teach children in different age ranges. **When comparing and contrasting governance and accountability structures, the most important method of categorising schools is to look at how they are owned, controlled and funded.**

Maintained and non-maintained schools

6. This is the common shorthand used to distinguish schools which have varying degrees of relationship with the local authority from those that instead have a direct legal and funding relationship with the Secretary of State. Maintained schools broadly share the governance arrangements and structures, in comparison to non-maintained schools where there are somewhat different arrangements. That said, there are some functions and responsibilities that are common to *all* schools.
7. There are essentially three different types of **maintained** school operating in Southwark:
- **Community schools** have the strongest, most direct link to the local authority, which owns and maintains the school premises, employs the staff and sets the admissions arrangements.
 - **Voluntary schools** were historically established by churches or a philanthropist. They are maintained by the local authority, but run by voluntary organisations (mostly churches and other religious organisations) which also own the premises. The governing body of the school itself employs staff and sets its own admissions arrangements.
 - **Foundation schools** are a relatively modern innovation. It is a form of maintained school, but one with a greater degree of independence from the local authority in that (like most voluntary schools), it owns the school premises, employs staff and sets its own admission arrangements. “Foundation” refers to either the governing body, which forms a “foundation”, or a charitable “foundation body” which owns a number of schools and appoints governors to a governing “foundation” of one of its schools. Confusingly, a school can still have a foundation status without either a foundation or a foundation body: in this case the governing body is a statutory corporation.

8. The most common types of non-maintained “state” school are **academies**. Free schools, a more recent innovation, along with university technical colleges, city technology colleges and studio schools are all technically “academies”.
9. Some academies will have been established as completely new schools by a “sponsor” (an individual or a corporate/charitable body), whereas some are former maintained schools which have “converted” to academy status. The conversion of maintained schools to academy status has been a controversial issue: decisions to make “academy orders” are ultimately taken by the Secretary of State, without reference to a maintaining local authority who must nonetheless cooperate and provide assistance to enable the conversion to take effect. Conversion can happen voluntarily (at the behest of the governing body) or compulsorily (because the school is considered a “failing school”)
10. Free schools, the most recent significant innovation, are in effect academies which have been sponsored commonly by groups of parents, who have identified the need or have the desire to provide a school.
11. Academies are in nature independent of the local authority and provide for children of different abilities drawn mainly from the area in which the academy is sited. Academies must offer a broad and balanced curriculum, but unlike maintained schools they are not obliged to offer the National Curriculum.
12. Academies set their own admissions arrangements. Funding agreements with the Secretary of State will usually require participation in the coordinated admissions schemes established by local authorities.
13. The land and premises occupied by academies will, in the case of a converter school, be owned by the local authority which maintained the predecessor school and then let to the academy on a long lease. New schools are often established on new sites (often land previously owned by other public sector organisations) which are purchased by the EFA and then let on a long lease.

The legal status of schools

14. Whatever category a school might be placed in, and whatever its relationship with local and national government, all schools have some form of **corporate status**.
15. Every maintained school in England has a **governing body** which is a “statutory corporation” – i.e. a corporate body designated by statute. This formally sets it apart from the local authority (which has its own corporate status), but as we have seen there are greater and lesser degrees of dependence and involvement. The governing body has legal personality, so can do things (such as enter into contracts, and bring and defend legal action) in its own right. An “instrument of government”, drafted by the governors and approved by the local authority, determines the composition of the governing body.
16. The governing bodies of some non-maintained and independent schools will have been incorporated as a **charity**. In any event, by law the governing bodies of all voluntary and foundation schools, and all foundation bodies, are deemed to have charitable status. They must then abide by the law and regulatory framework governing charities.

17. The governing bodies of two or more maintained schools can enter into a **federation**. The law provides a process whereby schools in a federation have a single governing body. This enables collaboration and the oversight of a group of schools under a unified leadership, but in practice the schools forming a federation continue to occupy their own premises and day-to-day operational decisions are taken by leadership staff in each school.
18. Such arrangements are often called “hard” federations, in contrast to more informal collaborations and groupings of schools which are sometimes referred to as “soft” federations and in which participating schools maintain their own leadership and governance. There are examples of both in Southwark.
19. **Academy trusts** are corporate bodies which, like the governing bodies of maintained schools, have legal personality. They “own” and run the academy. Academy trusts have by law charitable status. Some academies have been grouped underneath “umbrella” or “multi-academy trusts” which own and support a number of schools. These must be incorporated and registered as charities.
20. The academy trust has a legal relationship with the Secretary of State and receives funding directly from the DfE, through the EFA. The legal relationship is usually enshrined in an “academy agreement”. This is a legal document in which the academy trust undertakes to establish and carry on a school, in return for which funding is provided. This includes both revenue funding for running the school and capital funding to maintain for example buildings and premises.
21. Academies employ their own staff. When a maintained school converts to academy status, there are legal provisions governing the transfer of staff and undertakings to the new academy employer.

The make-up of the governing body

22. The composition of governing body will vary according to the type of school:
 - In community schools, governors are drawn from three groups: parents (who might contest an election to a vacant term, or be appointed if an election is not effective or possible), local authority representatives (who are appointed) and staff (the head teacher is always a governor unless they choose not to serve).
 - Voluntary schools and foundation schools have “foundation” governors, who occupy their roles ex officio or by appointment. They are often representatives of the voluntary body (such as the diocese) or foundation which established and runs the school.
 - All schools are able to appoint partnership governors – people the governing body believe have skills to contribute to the effective governance of the school – and co-opt governors. Associate governors – who may attend meetings but who are not full voting members – may also be appointed.
23. The governing body must have a minimum of seven members, but there is no upper limit. In foundation and voluntary schools, the proportion of foundation governors to other governors is prescribed by law.

24. Government guidance provides that governing bodies should comprise members who are able to bring the necessary skills and experience to contribute to the good governance of the school. Election/appointment to some classes of governor can only be made from people who qualify (such as parents). Members of all classes of governor can be disqualified in certain circumstances.
25. Academy trusts, and umbrella and multi-academy trusts, will be incorporated. The incorporated body is made of individual members (like shareholders in a company). Members will then appoint trustees (from among their number, or from outside the membership) to undertake governance responsibilities, as a governing body in a maintained school would. The only difference is that trustees are in law company directors and must comply with company law, but in practice this requirement is satisfied by carrying out the role in the same that any diligent governor of a maintained school would.
26. The membership of boards of trustees is not prescribed by law, as is the case for maintained schools. The governance arrangements will be set out in articles of association, and the model articles issued by the DfE do require a minimum of two elected parent trustees, and limit the proportion of “local authority influenced” members and trustees.

The role of the governing body

27. All governing bodies, whether maintained or non-maintained, have the same **three core functions**:
- To set the direction of the school;
 - To hold the head teacher to account; and
 - To ensure financial probity
28. These are important *strategic* functions. The day-to-day running of the school is very much the responsibility of the head teacher, and the staff directed by them.
29. While a significant part of the strategic role of the governing body is to hold the head teacher account and to ensure probity, the governing body themselves can be said to be accountable to the wider community of parents, prospective parents and the local community at large. The effectiveness of a governing body is something that Ofsted will consider in school inspections. Where a school is considered to be underperforming, it may be the governing body that has to account for that to the maintaining local authority who may take measures to make new appointments or apply other sanctions to the school.
30. Governing bodies also have a number of more specific functions. They are varied and contained in different pieces of legislation. The list below is not exhaustive but contains some more commonly encountered examples. It is possible for governors to delegate some functions to sub-committees of governors, and certain staffing functions can also be delegated to the head teacher.
- **Admissions:** governing bodies of voluntary and foundation schools, and academies, are “own admissions authorities”, and make their own admissions arrangements.

- **School organisation:** the governing bodies of foundation and voluntary schools have some powers to alter the size or character of their school (decisions which are for the local authority in community schools). Academies have significant freedoms to alter schools and establish new ones. The governing body of a maintained school may also voluntarily apply for an academy order enabling it to convert to an academy.
- **Discipline and exclusion of pupils:** only head teachers may exclude pupils, but if a review of the review decision is requested it must be reviewed by a panel of governors. In academies, the “proprietor” (i.e. the academy trust) is responsible.
- **Complaints:** all schools must have a procedure for dealing with complaints. While it is usual for a head teacher to deal with a complaint at the initial stage, some policies allow for a complaint to be escalated to a second stage and to be heard by governors. Complaints about head teachers should also be heard by governors.
- **Information governance:** all maintained schools are “public authorities” and must comply with the Freedom of Information Act 2000. Academies are also treated as such in relation to some, but not all, of the information they hold. All schools control significant amounts of personal data and must also comply with the Data Protection Act 1998. Both pieces of legislation impose obligations and regulatory requirements, and compliance will ultimately be the responsibility of the governors. The governing body is also ultimately responsible for the transfer of school records when pupils move between different schools.
- **Safeguarding:** day-to-day responsibility for ensuring the safety and wellbeing of pupils lies with the staff, but government guidance requires governors to put in place policies and procedures for managing safeguarding in schools, including a staff code of conduct.
- **Special educational needs and disability:** governors are under a duty to use their “best endeavours” to provide for the needs of pupils with special educational needs. If a child has an “education, health and care plan” and the plan states that a child should attend a particular school, the governors are under a duty to admit that child. Parents who believe that a school has discriminated against pupil on grounds of disability have the right to bring a claim against the governing body in the First Tier Tribunal.