

York Diocesan Board of Education (DBE)



Guidance for schools raising issues about foundation governors

Approved: March 2021

The DBE fulfils its responsibilities in relation to the appointment and removal of foundation governors in line with its vision for schools: to create flourishing Church school communities committed to providing education of the highest quality that is deeply Christian and seeks to serve the common good for their own locality.

For the purpose of this policy:

- “School” should be read to include Church of England maintained schools and academies in the Diocese of York
- “Foundation Governor” should be read to include Foundation Governors and Foundation Local Governors
- “Governing Body” should be read to include Governing Bodies and Local Governing Bodies/Committees.

If you have any queries about this policy, please contact the Deputy Director of Education (claire.graham-brown@yorkdiocese.org.)

Introduction

Foundation Governors are incredibly important to the support and oversight of Church of England schools in the Diocese. The Board of Education is incredibly grateful for the time, energy and expertise Foundation Governors give to schools on a voluntary basis.

Occasionally problems arise regarding Foundation Governors. In such cases, unless the circumstances make this inappropriate, it would be anticipated that the issue would be resolved as set out in this guidance.

Note: This guidance does not cover matters linked to safeguarding. Such matters should be dealt with under your school’s safeguarding policy.

Pre-empting issues - appointment, induction and training

In many cases, problems can be pre-empted by ensuring there are clear expectations of the role and behaviour of Governors prior to appointment and as part of the induction and ongoing training process.

With this in mind, the DBE’s foundation governor appointment process provides guidance on the role of being a Foundation Governor and seeks to ensure that appropriate discussions have taken place between the relevant individual and:

- The Chair of Governors/ Headteacher, regarding what is required of them as a Governor; and
- The Incumbent and (if the Incumbent does not serve on the Governing Body) a serving Foundation Governor, regarding what is required of them as a Foundation Governor.

The forms also seeks specific confirmations:

- From the individual being recommended: that they are committed to upholding the school's Christian ethos and character as a Church of England school and making an effective contribution to the governance and success of the school; and
- From those making the recommendations: that they are confident that the individual being recommended is committed to and capable of achieving the purposes for which they would be appointed as a Foundation Governor and has the skills and attributes required to contribute to the effective governance and success of the school.

It is expected that as part of the school's processes, agreement from each Governor will be secured to a clear set of expectations for behaviour and conduct – as set out in a written Code of Conduct. The Code of Conduct should also detail (within the parameters of relevant regulations and this guidance) the circumstances in which the Governing Body may suspend (or, where permitted, remove) a Governor.

Good training, a thorough induction and effective chairing are also vital in helping to prevent situations occurring in the first place.

Managing arising issues – informal resolution

In the vast majority of cases it would be anticipated that issues relating to Foundation Governors would be dealt with at school level, as would be the case for any Governor. For example, concerns about attendance, lack of engagement, and conduct in meetings should usually be dealt with through, for example, a conversation between the Foundation Governor and the Chair of Governors (or other appropriate individual) in the context of previously expressed expectations around commitment and behaviour. The school should seek any necessary input to inform those conversations from the local authority, clerk/other governance professional within the school/academy trust or Diocese as appropriate to the issue.

It may be, for example, that following such a conversation the Foundation Governor feels able to commit to meeting those expectations going forward. Alternatively they may decide that they are not able to make the necessary commitment and agreement may be reached that the individual will resign as a Governor. In appropriate cases, exploration might take as to alternative ways they may be able to support the school in a non-Governor capacity.

In the ordinary course, the Diocese would not need to be involved at this stage, unless for example advice is needed on Church school specific aspects or the matter is of sufficient seriousness that Diocesan involvement is warranted from the start.

Where it has not been possible to deal with these matters informally at school level, the matter should be discussed with the school's Diocesan adviser, who will offer support/advice and (where necessary) escalate the matter within the education team. Depending on the circumstances, it may be that the school's adviser/another member of the DBE's education team speaks with the individual directly. This may involve seeking the help of the incumbent or relevant Archdeacon for the parish concerned and discussion with local authority or other partners.

Managing arising issues – formal resolution

Exceptionally there may be circumstances where the problems cannot be resolved as outlined above and formal processes may need to be considered.

(a) Suspension

In rare cases, it might be appropriate for Governing Bodies to consider suspension of the relevant Foundation Governor. This might include, for example, a situation where the governor:

- has acted in a way that is inconsistent with the ethos or with the Church of England character of the school and has brought or is likely to bring the school or the governing body or the office of governor into disrepute;
- is the subject of court/tribunal proceedings where the outcome of those proceedings may be that the governor is disqualified from continuing to hold office as governor;
- is in breach of the duty of confidentiality to the school or to any member of staff or pupil at the school; and/or
- (in the unlikely event they are also a paid school employee) is the subject of disciplinary proceedings in relation to their employment.

You should ensure that you obtain appropriate advice from the local authority/clerk/other governance professional within the school/academy trust as appropriate on when it would be permissible for the Governing body to suspend a Governor, including the applicability of the relevant legislation and (where applicable) the academy trust's internal regulations.

Please discuss the matter with your Diocesan adviser before any decision around suspension of a Foundation Governor is made. Please note: the DBE is not able to suspend Foundation Governors.

(b) Removal

In extreme cases, it might be appropriate to discuss removal of a Foundation Governor.

Any DBE appointed Foundation Governor may be removed from office by the DBE. (Governing Bodies cannot remove DBE appointed Foundation Governors.)

The DBE will only exercise its power to remove a Foundation Governor in exceptional and serious circumstances. In making decisions on removal, the DBE will follow relevant legislation, have appropriate regard to DfE guidance and (where appropriate) take into account the purposes for which Foundation Governors are appointed. The DBE will be mindful that removal could mean that the individual is disqualified from being a governor for a lengthy period.

In the case of an ex officio Foundation Governor, removal can be effected by the relevant Archdeacon requesting removal and giving written reasons for the request to the clerk to the Governing Body and the ex officio Foundation Governor in question, followed by a Governing Body resolution to remove the Governor. Further details are included below.

The DBE will support Archdeacons and other individuals or organisations linked to the Church of England who are responsible for decision making related to the removal of Foundation Governors.

Examples which could give rise to removal of a Foundation Governor by the DBE are where:

- There have been repeated grounds for suspension of the Governor;
- There has been serious misconduct by the Governor;
- A governor displays repeated and serious incompetence (for example where they are unwilling or unable, despite all appropriate support, to develop the skills to contribute to effective governance);
- A governor's attendance is so irregular that they are unable to make any meaningful contribution to the work of the Governing Body;
- The Governor has engaged in conduct aimed at undermining the school's Church of England foundation and/or fundamental British values including those of democracy, the rule of law, individual liberty, mutual respect, and tolerance of those with different faiths and beliefs;
- The actions of the Governor are significantly detrimental to the effective operation of the Governing body, distracting it from its core strategic functions; and/or
- The actions of the Governor interferes with the operational efficiency of the school thereby wasting a significant amount of the headteacher and/or senior leadership time.

These examples are illustrative only and should not be seen as an exhaustive list. All cases will be considered on their individual merits.

(c) Process for removal - DBE appointed Foundation Governors

Where the right of removal of Foundation Governors lies with the DBE, the process for consideration of removal shall be as follows:

(i) Preparation

1. The matter will be referred to the Diocesan Director of Education (DDE)¹ for their consideration and advice. The DDE will seek further information and speak to such individuals as they feel is appropriate in the circumstances.
2. The DDE will produce a written report, summarising the matter and (where appropriate) including any views or recommendations they wish to make.
3. The DDE shall convene a panel consisting of at least three members of the DBE who have not had any previous involvement with the matter or might otherwise be deemed to have a conflict of interest. The Panel shall have delegated responsibility from the DBE to consider the issues on its behalf and decisions of that Panel shall be deemed to be decisions of the DBE.
4. The Foundation Governor will be provided with written details of the case against them, including details of how the matter is to be handled and the timescales involved. The timeframes will depend on the nature of the matter, but the DBE will seek to deal with matters in as timely a manner as is reasonably practicable for the benefit of all parties. In each case, the Foundation Governor will be given sufficient time and support to respond in writing.

(ii) Decision making

5. The Panel will meet to consider the matter, including the response from the Foundation Governor.² Where the Panel deems appropriate, the individual may be invited to attend the Panel meeting in person.
6. Panel decisions will be made by majority voting and the Chair of the Panel (to be appointed by the Panel) shall have a casting vote in the event that no majority view can be reached. The Panel shall pass a resolution which states that the Foundation Governor should or should not be removed from office.

¹ Where reference in this guidance is made to the Diocesan Director of Education (DDE), the DDE may allocate another member of the Diocesan education team to fulfil the role where the DDE deems this appropriate.

² Removal of the Foundation Governor shall be specified as an item on the agenda.

7. The Panel shall meet again not less than 14 days after the first meeting to consider confirmation of the removal.³
8. Written notice of any decision to remove will be given to the Clerk to the Governing Body and the Foundation Governor concerned. The Foundation Governor will be advised of their right of appeal and how any such appeal will be handled.

(iii) Appeal

9. In the event of an appeal, the DDE shall convene a further panel consisting of at least three members of the DBE who have not had any previous involvement with the matter or might otherwise be deemed to have a conflict of interest. The Panel shall have delegated responsibility from the DBE to consider appeal.
10. The timeframes will depend on the nature of the matter, but the DBE will seek to deal with matters in as timely a manner as is reasonably practicable for the benefit of all parties.

(d) Process for removal – ex officio foundation governors

Where the Foundation Governor is an ex officio Foundation Governor, it will be for the relevant Archdeacon to consider whether or not to request removal.

(i) Liaison with the Diocese

1. Schools wanting to explore removal of an ex officio Foundation Governor should speak to their Diocesan adviser in the first instance. Where appropriate, the DDE or other appropriate member of the DBE's education team will raise the matter with the relevant Archdeacon.

(ii) Request for removal

2. The Archdeacon may seek the views of the DBE education team and/or the DBE prior to deciding to request removal. A right to respond should also be given to the Governor.
3. In the event that the Archdeacon intends to request removal, they should inform the clerk to Governors in writing of their request, detailing the reasons why (copy to the DDE). Simultaneously the relevant Archdeacon should inform the ex-officio Foundation Governor in writing that he/she has requested the Governing Body removes them from their post as ex-officio Foundation Governor, detailing the reasons why.

(iii) Governing body decision making

4. If the Archdeacon makes a request for removal of the ex-officio Foundation Governor, it is then for the Governing Body to remove that Governor. The request for removal must be considered at the next full Governing Body meeting. The process set out in the Constitution Regulations should be followed in maintained schools. The process as specified by the relevant academy trust should be followed in academies. The DDE should be notified of the outcome.

(iv) Appeal

5. An appropriate Governing Body appeals mechanism should be in place, which could include, for example, a Governor from another school and/or a suitable local authority official.

³ Removal of the Foundation Governor shall be specified as an item on the agenda.