



GUIDANCE ON FEDERATIONS

FOR CHURCH OF ENGLAND SCHOOLS IN THE DIOCESE OF YORK

September 2017

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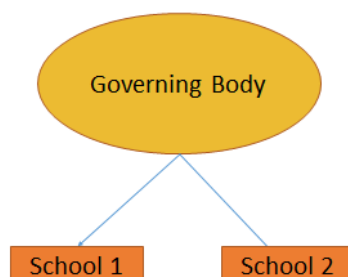
Please note: This guidance is not intended to provide exhaustive information regarding federation in Church of England schools and how they might be established. It is intended to provide a starting point for Church of England schools in the Diocese of York considering their options, to aid early discussions and to outline certain minimum Diocesan requirements. It is not a substitute for schools doing their own research, seeking appropriate advice and engaging with your local authority and the Diocese at an early stage.

SECTION 1: INTRODUCTION TO FEDERATION

A. What is a federation?

In a nutshell: At least two maintained schools are governed collectively under a single governing body under section 24 of the Education Act 2002 and the School Governance (Federation) (England) Regulations 2012 (as amended).

Federation: a visual representation



The existing governing body is dissolved and a new governing body is incorporated.¹ The new governing body takes on the rights and liabilities of the old governing bodies and any land and property owned by the old governing bodies is transferred to the federated governing body on the federation date. There is no change to the status of the schools – they remain separate, local authority maintained schools.

The governing body of a federation which includes a Foundation/Voluntary Aided/Voluntary Controlled school is a charity.

B. Governing Body composition

The new governing body will need to be constituted under a new Instrument of Government.² This Instrument will specify the number and type of governors on the new governing body.

The federated governing body must include at least seven members,³ including:

- **Two parent governors** – elected or, in the event that a vacancy is not filled by election, appointed by the governing body
- **The headteacher of each federated school** - unless they have resigned their position as governor⁴
- **One elected staff governor**
- **One local authority governor** – nominated by the local authority and appointed by the governing body
- **An appropriate number of foundation governors** – on which please see section 3.A.A (Foundation Governance) below
- **Co-opted governors (as considered necessary)** – appointed by the governing body for their skills.⁵

(Note there are restrictions on the number of governors who are employed at the school.)

¹ It is also possible for a school to join an existing federation.

² If a school is joining an existing federation, amendments will be required to the existing federation's Instrument of Government.

³ In practice there will be more than seven in order to satisfy the foundation governor requirements.

⁴ in accordance with the Constitution Regulations 2012.

⁵ A federated governing body may also appoint associate members (who are not governors) as a member of any committee.

It is inevitable that some governors will need to step down as you move from separate governing bodies to one composite governing body overseeing all the schools within the federation. Often the issue of surplus governors is resolved by individuals deciding to step down. However, where this is not the case, the governing body will need to determine which governors have the most relevant skills to contribute to the effective governance and success of the federation. A skills audit will be essential here. There is a set procedure in the Regulations governing this process. The exception is foundation governors: it will be for the Diocesan Board of Education (DBE) to determine which foundation governors are best placed to contribute to the effective governance and success of the federation and to preserve and develop the Church of England ethos of the CE school(s) within the federation.

Governing bodies should consider whether those governors who will not continue to serve on a federated governing body should be asked to serve the school in other ways. This might be in a non-governor related role, or could involve being an associate member. Associate members are not governors, but can be appointed by the governing body to be a member of a governing body committee.

C. Leadership and staffing arrangements

Schools frequently feel that federation is the natural progression from softer collaborative relationships, particularly where schools already share a headteacher – who is frequently struggling to juggle meetings of two governing bodies, two sets of policies etc – or where they are looking at sharing a headteacher in due course. Shared leadership and staffing arrangements are a common characteristic of federations, however it is still possible for schools to retain their own headteacher where the federated governing body is in favour of this.

In general, staff contracts will be unchanged as a result of the federation:

- **In Voluntary Controlled schools**, as for Community schools, the employer doesn't change (it remains the local authority) and staff will continue to work under the same arrangements as previously.
- **In Voluntary Aided schools and Foundation schools**, the employer changes - from the former governing body to the federated governing body – however the existing terms and conditions of employment will transfer across to the new employer under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE). HR advice on TUPE will be required in this context.

Whether staff can be required to work across the schools in the federation will depend on what is in their contracts/what can be negotiated with individual staff/whether you are able to amend the terms and conditions. HR advice should be obtained.

Note there may also be practical considerations in “mixed federation” arrangements regarding who is the employer of staff. For example:

- **Existing staff:** Where the two types of schools have different employers, agreements may need to be put in place to govern any shared working arrangements.
- **New staff:** where you have some existing staff employed by the federated governing body and some employed by the local authority, and you wish to take on new staff to work across the federation, you will need to explore whether they should be employed by the federated governing body or the local authority and what arrangements will need to be put in place to support this.

Again, you will need to obtain specific HR advice on these points.

There may be implications in this respect in connection with the rights of governing bodies in some schools to ask for Christian commitment/support of the school's ethos in Church of England schools – please see section 3.A.B (Leadership and Staffing).

D. Financial implications

Governors should look carefully at the financial implications of federating at an early stage in their consideration of this option. For example:

- Federation lends itself well to having a single headteacher/executive headteacher and potentially other shared staffing arrangements, which can provide significant cost savings.
- Whilst the up to date position should be verified with your local authority: (1) Federated schools usually retain the budget share which they would receive if they were not federated, however (2) there is a greater opportunity for pooling of budgets if governors on the federated governing body deem this to be desirable at any point.

It is important to understand what the financial implications of future funding and budget pooling arrangements might be. You should discuss this specifically with your local authority adviser.

E. Understanding the other school(s) in the federation

It is important that schools looking to federate get to know each other sufficiently before going ahead with the federation. This is to make sure that there is a commonality of purpose, that the ethos of the schools are complementary and that federation is in the best interests of all schools. This should include understanding the situation of the other school(s) you are seeking to join with – and understanding what impact that might have on your school. Areas such as curriculum & school performance, finances, property, staffing and governance should all be carefully considered. It is recommended that governing bodies create a joint working group with selected governors from all governing bodies to explore these aspects and others pertinent to the potential federation.

F. Forming and leaving a federation

Your local authority will be able to help you with the specifics of the process to form (or join, as the case may be) or leave a federation.

A summary of key steps involved in establishing a federation is included in Section 2 below for illustrative purposes. In the main the process will be led by the governing body with procedural advice from the local authority.

Schools can leave a federation/a federation can be dissolved in certain circumstances, however this is rare in practice and should not be undertaken lightly. Schools becoming a federation should only do so where they see structural collaboration with the partner school(s) as a permanent arrangement. In general, we would not expect schools to leave a federation/a federation to be dissolved unless at least one of the schools in the federation was becoming an academy.⁶

⁶ Note there are special provisions in the Regulations regarding the number and type of members of the federated governing body who must vote in favour of making an application for an academy order.

SECTION 2: Process

Below is a brief overview of the process to join a new federation, provided for illustrative purposes only. In the main the process will be led by the governing body with procedural advice from the local authority.

You should, however, make sure that the “Diocesan perspective” is fully reflected in the process. References shown in purple within the outline process below is to the relevant part of Section 3 of this guidance, and is intended to show where Diocesan involvement is required.

Governing bodies informally explore federation
<ul style="list-style-type: none"> ○ Governing body considers collaborative options available, having considered the guidance available,⁷ and explores collaboration with potential partner schools
<ul style="list-style-type: none"> ○ Governing bodies informally agree to explore option of federation
<ul style="list-style-type: none"> ○ Governing bodies create a joint working group with governors from all governing bodies to explore federation, looking at areas including curriculum & school performance, finance and property, staffing and governance. This should include understanding the situation of other schools you are seeking to join with – and understanding what impact that might have on your school.
<ul style="list-style-type: none"> ○ Appropriate local authority, Diocesan and other advice is sought and DBE’s application form is returned. (See Section 3.B.1)
<ul style="list-style-type: none"> ○ Joint working group reports to governing bodies
Governing bodies decide whether to proceed to consultation and firm up plans
<ul style="list-style-type: none"> ○ Individual governing body meetings called to consider a report on the proposal. The proposal must be an item at a meeting for which at least 7 days’ notice is given. Each governing body to decide whether it wishes to proceed to consultation.
<ul style="list-style-type: none"> ○ Draft consultation proposals drawn up – often by joint working group. Local authority, Diocesan and other input is sought as appropriate. (See Section 3.B.2)
<ul style="list-style-type: none"> ○ Governing bodies agree joint proposals for federation in line with requirements in the regulations.
Consultation
<ul style="list-style-type: none"> ○ Joint proposals for federation are published and made available for inspection – consultees specified in the regulations. Minimum 6 week consultation period. (See Section 3.B.2)
<ul style="list-style-type: none"> ○ Consultation meetings to take place as desired e.g. with parents and staff
<ul style="list-style-type: none"> ○ Any necessary TUPE consultation and process is carried out (NB in a Voluntary Aided and Foundation school, the employer will change from the single governing body to the federated governing body).
Final consultation and decision
<ul style="list-style-type: none"> ○ Joint governing body meeting to consider responses
<ul style="list-style-type: none"> ○ Individual governing bodies to consider their individual school’s position and make final decision on whether they wish to proceed to federation
<ul style="list-style-type: none"> ○ Notification of decisions made in accordance with regulations
Implementation
<ul style="list-style-type: none"> ○ Draw up and agree Instrument of Government – to be approved by governing body, local authority and Dicoese. (Depending on the timescales between the end of the consultation and the federation date this may need to be done during the consultation period). (See Section 3.B.3)
<ul style="list-style-type: none"> ○ Finalise list of those who wish to remain on the governing body post federation/make any necessary new appointments. NB surplus governors to be managed in accordance with the regulations. (See Section 3.B.4)
<ul style="list-style-type: none"> ○ Individual governing bodies prepare report on discharge of their functions for the purpose of assisting federated governing body and make all minute and papers available to federated governing body.
<ul style="list-style-type: none"> ○ Individual governing bodies dissolved on the federation date and governing body of federation incorporated. Land/property of dissolved governing bodies vests in federated governing body and rights and liabilities transferring to federated governing body.
<ul style="list-style-type: none"> ○ First meeting of federated governing body.
<ul style="list-style-type: none"> ○ Notify changes to relevant parties. (See Section 3.B.5)

⁷ Please see <http://dioceseofyork.org.uk/supporting-schools/collaboration/> for details of latest Diocesan guidance.

SECTION 3: Diocesan specific considerations

A. Introduction

The DBE must approve governing body proposals for Church of England schools to become part of a federation.

The DBE will have certain expectations relating to the governance of federations involving Church of England schools and these should be reflected within your proposals from the outset. **It is essential that appropriate governance arrangements are put in place to ensure that the Church of England foundation of your school is protected** and it is important that you understand these requirements at an early stage. Key areas for consideration in this respect will include:

A. Foundation governance - composition of the federated governing body

Foundation governors are governors with special responsibility to secure that the school's religious character is preserved and developed and that (where applicable) the school is conducted in accordance with the school's trust deed. In general, governing bodies will include the Incumbent as an ex officio foundation governor appointment plus a specified number of additional foundation governors.

It is important that we are in a position to ensure that there are a sufficient number of foundation governors on the federated governing body to preserve the Church of England foundation of your schools and ensure that the trusts underpinning the operation of the school as a Church school are upheld.

The DBE will only consider proposals for you to join or establish a federation which includes the following minimum Foundation governance:

- a. *Federations including a Voluntary Aided school* - The DBE is happy to consider federations that include only Voluntary Aided schools, or federations that include Voluntary Aided schools and other Church/non-Church schools. However, **it is expected that any proposals for a federation involving a Voluntary Aided school will include the usual Voluntary Aided majority on the federated governing body** i.e. that the foundation governors will outnumber all other governors by two.
- b. *Federations not including a Voluntary Aided school* - The DBE is happy to consider Church of England only or Church of England and non-Church of England federations in this context. However, **it is expected that any proposals will include at least the proportion of Foundation Governors found on the pre-federated governing body of your school (subject to a minimum of two foundation governors and a maximum of 25%/45%, depending on your specific context).**

You will need to include the proposed size of the federated governing body and the proposed number of governors for each category of governor in your consultation documents and ultimately in the federation's Instrument of Government.

B. Leadership and staffing

Governors of a **Voluntary Aided school** need the legal right to ask for Christian commitment in appropriate cases and in practice ask for such commitment at (at least) Headteacher and Deputy headteacher level. They can also have regard, in connection with the termination of the employment of a teacher at the school, to any conduct which is incompatible with the precepts of, or with the upholding of the tenets of, the school. However, if governors of a **Community school** asked for Christian commitment from a member of staff, this would likely be viewed as discriminatory and could have legal consequences. In **Voluntary Controlled and Foundation** schools, in general⁸ Christian commitment cannot be taken into account, however special

⁸ I.e. unless they are a "reserved teacher" (appointed to teach denominational RE where required).

considerations apply in the appointment of the headteacher - with governors able to take into account their ability and fitness to preserve and develop the religious character of the school.

There is a key question about how the proposed employment arrangements will map onto the federated governing body's ability to look for Christian commitment in appropriate cases in Church of England schools. **It will be important that the plans for leadership and staffing are clear and that they will enable the Christian foundation of your school to be appropriately safeguarded both at the outset and in future.** Specific HR/legal advice may be necessary on this point.

C. Wider protection of the Church of England foundation in changed arrangements

When schools federate, because the schools remain individual schools, much will remain the same. For example, in the Church school context:

- The Church of England school will **remain a Church of England designated school and will continue as a Voluntary Controlled, Voluntary Aided or Foundation school** (as the case may be). The Instrument of Government for the federated governing body must reflect this and must include an appropriately worded **ethos statement**.
- **Religious Education** should continue to be taught **as appropriate for a Church of England school of the relevant status**. (Note it may be that this requires different syllabuses to be taught in different schools in the federation).
- The **daily act of Collective Worship** must continue to be provided **in accordance with the trust deed/Anglican tradition**.
- The school will continue to be **inspected** in the same manner under the **SIAMS** (and Ofsted) framework.
- The federated governing body would **still need to find the usual 10% capital contribution** in the case of capital works to a **Voluntary Aided school**.
- **The admissions authority will not change** (save that, in the case of a Voluntary Aided or Foundation school, the relevant admissions authority will become the federated governing body)
- **The ownership of site and buildings will not change.**⁹

It will be important to ensure that those governors who are new to governing a Church of England school, or your particular type of Church of England school, are aware of the differences so that they can abide by the differing structural requirements. It is hoped that the Appendix setting out key differences will be helpful in this regard.

Depending on your proposed arrangements, governors may be required to enter into a Memorandum of Understanding with the DBE, committing to upholding the ethos of your school in certain ways. We will advise you of this on a case by case basis.

⁹ NB - if there are any planned works connected to the proposal to federate which may affect the land used by the Church of England school you should contact our School Buildings Officer (simon.quartermaine@yorkdiocese.org) to discuss any implications.

B. Diocesan involvement

1. You should inform us if you are actively considering federation arrangements.

Please keep your SLA Adviser abreast of your discussions relating to collaboration, including your consideration of joining or establishing a federation. They may be able to assist you in assessing potential partners and will help you to ensure that you have carefully considered the proposal and the impact it will have on your school and its Church of England foundation. If you do not have an SLA Adviser, please contact the PA to the Director of Education and Administrator to the Education Team (admin@yorkdiocese.org).

In the event that you are minded to go ahead with the federation following your initial discussions, you will need to complete and return the **DBE's application form**. The application form can be found at <http://dioceseofyork.org.uk/supporting-schools/collaboration/>. You will need to provide the following in support of the application:

- A letter from your Chair of Governors expressing a desire to join or form a federation, providing details and the reasons why;
- A copy of all relevant governing body resolutions; and
- A proposal paper¹⁰/(if available) a draft consultation paper setting out the proposals.

Please return the form and supplementary documentation to the Deputy Director of Education (claire.graham-brown@yorkdiocese.org).

2. You should provide us with a copy of your proposed consultation documents for input from a Diocesan perspective – and a copy of your published proposals.

You should send us a copy of your draft consultation documents for us to consider the Diocesan specific elements prior to them being published. This includes any pre-consultation. Please send them to the Deputy Director (claire.graham-brown@yorkdiocese.org).

You should make sure that you allow sufficient time for us to input into your draft consultation documents: **no consultation document should be sent out before these have been agreed with us**. This will need to include details of proposed leadership arrangements and composition of the proposed federated governing body.

The Diocese, your foundation governors, the PCC, any other person or body included in the appointment of your foundation governors and the site trustees should be involved as stakeholders in your **formal consultation** and as such should receive copies of your final consultation documents.

3. We will need to approve your proposed Instrument of Government and related formal documentation

The federated governing body's Instrument of Government will need to be approved by us prior to the federation coming into being. We will need to be satisfied that the appropriate ethos statement and number of foundation governors is specified within the draft Instrument, and that there is nothing in the draft Instrument which would have an adverse impact on the preservation of the Church of England ethos of your school. Depending on your proposed arrangements, governors may be required to enter into a Memorandum of Understanding with the DBE committing to upholding the ethos of your school in certain ways. We will advise you of this on a case by case basis.

Please contact the Deputy Director (claire.graham-brown@yorkdiocese.org) for a template Instrument to help you with your drafting, to seek approval of your draft and to identify any additional documentary requirements. Please ensure that you have sent the draft Instrument to us before sending it to the local authority for their approval. They will "make" the Instrument, but only after the DBE's consent has been obtained. **Our consent to the federation is indicated by our formal approval of the Instrument of Government and of any additional formal documentation.**

¹⁰ The details provided should include who you are exploring federating with, your proposed timescales, the proposed name of the federation, and details of your broad plans.

4. We will need to determine which foundation governors will continue on the federated governing body/which additional foundation governors will be appointed.

Where there are more serving foundation governors across the federating governing bodies than places for foundation governors on the federated governing body, and there are insufficient numbers of foundation governors indicating that they wish to step down, we will need to work together to identify those who are best placed to contribute to the effective governance and success of the federation and to preserve and develop the Church of England ethos of the CE school(s). Please liaise with the Deputy Director (claire.graham-brown@yorkdiocese.org).

Where there will be vacancies in the number of foundation governors on the federated governing body, we will need to appoint additional governors. Note that it may be that there are others serving on one of the federating governing bodies – including governing bodies of Community schools - who might be appropriate appointments to foundation governor positions. We will need to consider this at an early stage to enable appropriate recommendations to be sought and proposals to be properly considered in good time for the federation coming into being. Our processes for the appointment of Foundation Governors will need to be followed in making foundation governor appointments to the federated governing body – please see <http://dioceseofyork.org.uk/uploads/attachment/2474/fg-appointments-process-maintained-schools.pdf>.

5. You will need to notify us that the federation has come into being

Please notify your SLA Adviser and the Deputy Director (claire.graham-brown@yorkdiocese.org) that the federation has come into being, send us a copy of the “made” Instrument of Government and let us know if there are any changes in details so we can update our system (e.g. new email addresses).

APPENDIX A

Summary of some key differences between school types

	Community schools	Church schools (most common types)		
		VA	Foundation	VC
Foundation governors - governors with special responsibility to secure that the school's religious character is preserved and developed and that the school is conducted in accordance with its trust deed.	N/A	In the majority on the GB. Foundation governors must outnumber all other governors by two. Generally one of their number will include the Incumbent (ex officio) and others will be appointed by the Diocesan Board of Education on the recommendation of the Parochial Church Council.	In the minority on the GB. Must be at least two Foundation governors. Generally one of their number will include the Incumbent (ex officio) and others will be appointed by the Diocesan Board of Education on the recommendation of the Parochial Church Council.	In the minority on the GB. Must be at least two Foundation governors. Foundation governors must make up no more than 25% of the governing body. Generally one of their number will include the Incumbent (ex officio) and others will be appointed by the Diocesan Board of Education on the recommendation of the Parochial Church Council.
Employer of staff	Employed by LA, funded from the delegated budget. Staff are appointed and dismissed by GB (working to LA appointing policies).	Employed by GB, funded from the delegated budget. Staff are appointed and dismissed by the GB. Christian commitment should be taken into account in the appointment of the headteacher and may be taken into account for other members of staff where appropriate. Foundation governors should be involved in headteacher appointment and their performance management.	Employed by GB, funded from the delegated budget. Staff are appointed and dismissed by the GB. In general Christian commitment cannot be taken into account. Special considerations apply in the appointment of the headteacher - with their ability and fitness to preserve and develop the religious character of the school being taken into account - and in the appointment of reserved teachers (who must be able to teach denominational RE where required). Foundation governors should be involved in headteacher appointment and their performance management.	Employed by LA, funded from the delegated budget. Staff are appointed and dismissed by GB (working to LA appointing policies). In general Christian commitment cannot be taken into account. Special considerations apply in the appointment of the headteacher - with their ability and fitness to preserve and develop the religious character of the school being taken into account - and in the appointment of reserved teachers (who must be able to teach denominational RE where required). Foundation governors should be involved in headteacher appointment and their performance management.
Admissions Authority All these schools are bound by general admissions law as it operates within the maintained sector, including the Admissions Code. Academies are bound by virtue of the wording in their Funding Agreements. The LA co-ordinates the application process in all cases.	LA is admissions authority. LA decides on admissions policy and makes decisions on who will be offered places in line with that policy. LA arranges appeals.	GB is admissions authority. GB decides on admissions policy (having considered Diocesan guidance) and makes decisions on who will be offered places in line with that policy. Some schools have foundation places allocated by reference to faith-based oversubscription criteria. Consultation with the Diocese is required before changes are made to existing policy. GB makes arrangements for appeals.	GB is admissions authority. GB decides on admissions policy (having considered Diocesan guidance) and makes decisions on who will be offered places in line with that policy. Some schools have foundation places allocated by reference to faith-based oversubscription criteria. Consultation with the Diocese is required before changes are made to existing policy. GB makes arrangements for appeals.	LA is admissions authority. LA decides on admissions policy and makes decisions on who will be offered places in line with that policy. LA arranges appeals. Faith-based oversubscription criteria are rare.
Site and Buildings ownership	Owned by LA	Owned by site trustees (except for the playing fields). The site trustees hold the land for specific purposes as specified in their trust deed and have a responsibility to ensure that the activities on the site comply with the requirements of the trust deed. The site trustees will frequently be the York Diocesan Board of Finance or the vicar and church wardens. Playing fields and any structures thereon are usually owned by the LA.	Owned by site trustees (except for the playing fields). The site trustees hold the land for specific purposes as specified in their trust deed and have a responsibility to ensure that the activities on the site comply with the requirements of the trust deed. The site trustees will frequently be the York Diocesan Board of Finance or the vicar and church wardens. Playing fields and any structures thereon are usually owned by the LA.	Owned by site trustees (except for the playing fields). The site trustees hold the land for specific purposes as specified in their trust deed and have a responsibility to ensure that the activities on the site comply with the requirements of the trust deed. The site trustees will frequently be the York Diocesan Board of Finance or the vicar and church wardens. Playing fields and any structures thereon are usually owned by the LA.
Capital Funding	From LA.	90% from government/LA and 10% from GB statutory contribution. NB GBs cannot use their devolved capital formula to meet the statutory 10% contribution.	Funding comes from LA.	Funding comes from LA.
Ethos	No faith based ethos statement.	Instrument of Government will include faith based ethos statement.	Instrument of Government will include faith based ethos statement.	Instrument of Government will include faith based ethos statement.
RE In each case parents (or sixth formers) have certain withdrawal rights.	In accordance with locally agreed syllabus.	Denominational RE. This will be the Diocesan syllabus where one exists.	In accordance with locally agreed syllabus. In certain circumstances denominational RE may need to be provided.	In accordance with locally agreed syllabus. In certain circumstances denominational RE may need to be provided.
Collective worship In each case parents (or sixth formers) have certain withdrawal rights.	Daily act is required. Must be wholly or mainly of a broadly Christian character.	Daily act is required. Must be in accordance with trust deed/Anglican tradition.	Daily act is required. Must be in accordance with trust deed/Anglican tradition.	Daily act is required. Must be in accordance with trust deed/Anglican tradition.
Inspection	Ofsted	Ofsted & SIAMS (separate inspections) SIAMS covers Christian Character, Collective Worship, and leadership of the school as a Church school. Schools have a subject inspection for RE. Frequency of inspection will generally depend on the outcome of the previous inspection.	Ofsted & SIAMS (separate inspections) SIAMS covers Christian Character, Collective Worship, and leadership of the school as a Church school. Wider contribution of RE is looked at within these areas as appropriate. Frequency of inspection will generally depend on the outcome of the previous inspection.	Ofsted & SIAMS (separate inspections) SIAMS covers Christian Character, Collective Worship, and leadership of the school as a Church school. Wider contribution of RE is looked at within these areas as appropriate. Frequency of inspection will generally depend on the outcome of the previous inspection.

Note: This is generic guidance based on the "usual" situation and the actual position may vary as between schools.

August 2017