

## **GOVERNANCE GUIDANCE**

### **REMOVAL OF FOUNDATION GOVERNORS APPOINTED BY THE DIOCESE OF ELY BOARD OF EDUCATION (DBE)**

#### **I - Introduction**

Occasionally problems arise regarding the appointment or re-appointment of foundation governors, which prove difficult to rectify at school level and are referred to the DBE for support and advice for a local resolution. This may involve seeking the help of the incumbent or relevant Archdeacon for the parish concerned. Exceptionally, there may be circumstances where a foundation governor appointed by the DBE is causing difficulties locally, which cannot be resolved at school level. The DBE may then need to consider removing the foundation governor.

This guidance, issued by the Diocese of Ely Board of Education, outlines arrangements for the potential removal of foundation governors, appointed to Church of England Voluntary Aided (VA), Voluntary Controlled (VC) schools and standalone academies under the auspices of the Diocese of Ely.

Clearly, in all cases the removal of a governor is a most serious matter and professional advice must be obtained both as to the appropriateness of removal and as to the correct procedure to be followed.

All church schools are advised to consult the Diocesan Director of Education (DDE) before taking any formal steps.

#### **2 - Key points to note**

2.a. The majority of foundation governors for VA / VC schools and standalone academies in the Diocese of Ely are nominated by the incumbent or Parochial Church Councils (PCCs) and are subsequently appointed to the school's Governing Body (GB) by the DBE. Individual foundation governors may only be removed by the body which appointed them, with the power to remove appointed foundation governors in voluntary schools cited in Regulation 20(1) of the School Governance (Constitution) (England) Regulations 2012 (SI 2033 No 348):

*Removal of foundation governors*

*20. - (1) Any foundation governor other than an ex officio foundation governor may be removed from office by the person who appointed the foundation governor.*

*(2) The person referred to in paragraph (1) must give written notice of the removal from office to the clerk to the governing body and to the foundation governor who is being removed.*

- 2.b. Incumbents are often the ex-officio foundation governors of their local school and can only be removed at the request of the relevant Archdeacon.
- 2.c. Only the body with the power to appoint can remove an appointed foundation governor except in the case where the GB disqualifies a governor who fails to attend meetings for 6 months without suitable apologies.

- 2.d. The system of removing appointed foundation governors is different from that for removing ex-officio foundation governors. However, any concerns should be raised in the first instance with the DDE.
- 2.e. If it is not possible to resolve the issue at local level, the decision to remove a Foundation Governor will be referred to a separate panel of DBE Trustees, following the process outlined in this policy.
- 2.f. Foundation governors appointed to church schools in the Diocese of Ely by a charity or charitable foundation are subject to those charity or foundation's guidance for removal.

### **3 - Possible reasons for removal**

- A Governor is no longer compliant with safeguarding requirements.
- A refusal to uphold the continuance or effectiveness of the religious character of the school.
- A serious breakdown of relationships for which the individual can reasonably be shown to be primarily responsible and which is impacting on the effectiveness of the GB.
- Persistent actions or views that contradict the underlying objectives of the school or its foundation trust.
- Unwillingness to accept and implement regulatory requirements from a published Ofsted or SIAMS report.
- Responsibility for serious damage to the stability of the school through inappropriate action or public statement.
- Violence on school premises (to persons or property).

NB This list is not exhaustive or listed in order of priority and is largely based on breaches of the Governing Body code of conduct which all Governing Bodies are encouraged to adopt and use as part of their induction procedures.

## 4 - Process for the removal of a foundation governor appointed by the DBE

- 4.a. The Chair of Governors, or representative member of the governing body makes a formal and written request to the DDE for the DBE to remove the foundation governor from post. This request should include reasons why the governing body feels it necessary to take such a step, what steps have already been taken to resolve the issue at local level and what evidence the governing body has to support their view.
- 4.b. Initially, the DDE will consider whether the case should be considered by a panel of trustees selected from the DBE and will liaise with the Governing Body to ensure that;
  - i the governors have made attempts to resolve issues internally;
  - ii the governors have sufficient evidence to present to a DBE panel

NB: where a disagreement over sufficiency of evidence exists between the DDE and Governing Body, governors may request that the Chair of the DBE make a decision on whether to move to Stage 2 (point 4c onwards).  
Should the DDE find no clear evidence for the removal of the foundation governor, then the DDE may suggest other ways to resolve the issue at hand.
- 4.c. Consideration to remove an appointed foundation governor from office mid-term should be referred to a DBE panel with a minimum of 3 members, which must not include the DBE Chair.
- 4.d. As removal is a serious matter an extraordinary meeting may be called.
- 4.e. The foundation governor concerned will be informed in writing of the decision to refer consideration of their removal to a DBE panel by the DDE. They will be given the right, within 10 working days, to make written representations to the DBE panel prior to a decision being made.
- 4.f. A meeting of the DBE panel will, within a further 10 working days, be convened to discuss the case. The DDE shall attend for the purpose of advising and the meeting will be clerked.
- 4.g. The DDE will present the reasons for requesting the removal of the foundation governor.
- 4.h. The panel will consider any written representation from the foundation governor.
- 4.i. The panel will make their decision and the DDE will write, within 10 working days, to the foundation governor concerned and the clerk to the Governing Body, to convey the decision without giving details of the case.
- 4.j. Both the Governing Body and the Foundation Governor will have 10 working days from receipt of the decision to exercise their right of appeal against the panel's decision. Appeal evidence must be submitted in writing by both parties and must include additional information or evidence. A re-submission of the same evidence is not permitted and will result in the appeal being rejected.
- 4.k. Any appeal against the original decision will be heard within a further 10 working days by 3 'untainted' members of the Diocesan Board of Education to include the Chair of the DBE. The decision of the appeal panel is final and will be communicated within 10 working days to the parties listed in 4i and 4j above.
- 4.l. The DDE will advise the following people and organisation of the final decision, once the 10 working days for appeal have lapsed (as outlined in section 4.j.): DBE; PCC; headteacher; relevant Archdeacon and Governor Services at the LA for record keeping purposes.

## 5 - Process for the removal of an ex-officio foundation governor

The instrument of government for the school should specify the person entitled to request the removal of an ex-officio foundation governor. This is likely to be the relevant Archdeacon of the Archdeaconry in which the relevant parish is situated.

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 by following the procedure set out in regulation 25 of the Constitutional Regulations;

### *Removal of ex officio foundation governors*

*21.—(1) The governing body may, in accordance with the procedure set out in regulation 25, remove any ex officio foundation governor at the request of the person named in the instrument of government as the person entitled to make such a request.*

*(2) A person requesting the removal of an ex officio foundation governor must give written reasons for the request to the clerk to the governing body and the governor in question.*

*25.—(1) This regulation applies in relation to the removal of a governor from office in accordance with regulations 21(1), 23 or 24.*

*(2) A resolution to remove a governor from office which is passed at a meeting of the governing body will not have effect unless—*

*(a) in relation to the removal of a governor under regulation 21(1) and 23(2), the governing body has considered the reasons for removal and the governor whom it is proposed to remove has been given an opportunity to make a statement in response;*

*(b) in relation to the removal of a governor (“P”) who is a co-opted governor or partnership governor under regulation 23(1) or a parent governor under regulation 24, the governor proposing P’s removal has at that meeting given reasons for doing so and P has been given an opportunity to make a statement in response;*

*(c) it is confirmed by a resolution passed at a second meeting of the governing body held not less than fourteen days after the first meeting; and*

*(d) the matter of the governor’s removal from office is specified as an item on the agenda for each of those meetings.*

5.a. The Chair or Governors makes a formal and written request to the DDE for the DBE to remove the ex-officio foundation governor from post. This request should include details of the reasons why the governing body feels it necessary to take such a step, what steps have already been taken to resolve the issue at local level and what evidence the governing body has to support their view.

5.b. Initially, the DDE will consider whether the case should be considered by the relevant Archdeacon and will liaise with the Governing Body to ensure;

i. the governors have made attempts to resolve issues internally;

ii. the governors have sufficient evidence to convince the relevant Archdeacon that removal is appropriate.

NB: where a disagreement over sufficiency of evidence exists between the DDE and Governing Body, governors may request that the Chair of the DBE make a decision on whether to move to Stage 2 (point 5c onwards).

If the relevant Archdeacon is also the Chair of the DBE, then the Vice-Chair of the DBE or another member of the DBE should be consulted to make the decision to refer.

5.c. The relevant Archdeacon will consider whether they wish to remove the ex-officio foundation governor.

5.d. The relevant Archdeacon informs the clerk to governors in writing, with a copy to the Chair of the DBE and the DDE, that he/she requests the governors to remove the ex-officio foundation governor and detailing the reasons why.

5.e. Simultaneously the relevant Archdeacon informs the ex-officio foundation governor in writing that he/she has requested the governors to remove them from their post as ex-officio governor, detailing the reasons why.

5.f. The request for removal must be considered at the next full Governing Body meeting.

- 5.g. The request must appear as an item of business on the agenda - to be received at least 7 days in advance of the meeting.
- 5.h. The clerk gives the reasons for removal at the meeting.
- 5.i. The ex-officio foundation governor must be given the opportunity to give a statement in reply before they withdraw from the meeting.
- 5.j. A vote must take place to agree (or not) the request from the relevant Archdeacon to remove the ex-officio foundation governor.
- 5.k. The removal must be confirmed by resolution at a second meeting, which the ex-officio governor will not attend and which is not fewer than 14 days after the first.
- 5.l. The confirmation must appear as an item of business on the agenda.
- 5.m. If the removal is confirmed, the clerk informs the ex-officio foundation governor in writing that the governors have agreed the removal.
- 5.n. Simultaneously the clerk confirms the decision to the relevant Archdeacon (copy to the DBE and DDE).
- 5.o. The Archdeacon liaises with the DDE to initiate the process to appoint a substitute governor.

Proposed to the Diocese of Ely Board of Education: 18<sup>th</sup> June 2020  
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Review scheduled: 2022

Background Papers:

The School Governance (Constitution) (England) Regulations 2012  
The School Governance (Roles, Procedures and Allowances) (England) Regulations 2013