Foundation and Trust Schools

Guide for governing bodies

March 2012
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Please note that this document is intended as a summary guide only. All information is provided in good faith and believed to be accurate at the time of publication. Governing bodies should ensure they have taken appropriate professional advice (e.g. HR, Legal, Property, Insurance, etc.) in relation to their responsibilities as a foundation or trust school regarding actions or queries relating to the particular circumstances of their school.
What are foundation and trust schools?

What is a foundation school?

A foundation school is a category of local authority maintained school (other categories include community, voluntary-aided and voluntary-controlled schools).

Foundation schools, like all maintained schools, must teach the national curriculum, follow the School Admissions Code, employ teaching staff under the terms of the School Teachers’ Pay and Conditions Document and be inspected by Ofsted. The Local Authority will fund the school on the same basis as all other LA maintained schools and will retain its intervention powers if there are problems at the school.

However, in a foundation school the governing body, rather than the local authority is the employer of staff. The governing body will also be responsible for setting the school’s admission arrangements (in line with the School Admissions Code) and will usually hold the freehold to the land and buildings which the school occupies.

What is a trust school?

A trust school is a foundation school (with the characteristics described above) that is supported by a charitable foundation (known as a trust) acquired under the Education and Inspections Act 2006. The trust will usually consist of a number of partners.

Instead of the governing body owning the land and buildings, the trust will hold them on trust for the school.

The trust will also appoint foundation governors to the governing body of the school.

What is a Co-operative trust?

A Co-operative trust is a variation of trust which includes the Co-operative Society as a member (usually via the Co-operative College) and which is co-operative in its nature. As well as partners, it will include a stakeholder forum in which parents, pupils, staff and other stakeholders can be involved and have a say in how the trust is run.

Are foundation and trust schools exempt from local authority re-organisation plans?

No. The Local Authority is able to propose the closure of all types of maintained school. However, the governing body or trustees of a foundation or trust school can appeal to the Schools Adjudicator against an LA’s decision – this right of appeal is not available to community or voluntary-controlled schools.

Who makes the decision for a school to become a foundation or trust school? What is the process?

The governing body must consult on and publish its proposals to become a foundation or trust school in line with the School Organisation (Prescribed Alterations to Maintained Schools) England Regulations 2007 (as amended). Guidance on the regulations and the processes can be found on the Department for Education website at http://www.education.gov.uk/schools/leadership/schoolorganisation/a0075170/foundation-and-trust-proposals-changing-school-category-to-foundation

Once the governing body publishes its proposals to become a foundation school and/or acquire a trust, the final decision will usually be made by the governing body. However, the Local Authority
may refer the proposals to the Schools Adjudicator for decision in certain circumstances. These are if the Local Authority believes:

- Statutory consultation was not undertaken correctly and in line with the regulations
- The governing body failed to have regard to the outcomes of the consultation in deciding to proceed to the publication of proposals
- The trust will have a negative impact on standards

The Local Authority will therefore review all published foundation and trust proposals with regard to the above.
Governance

As maintained schools, the governance of foundation and trust schools is bound by the same regulations as other maintained schools (School Governance (Constitution) (England) Regulations 2007).

The governing bodies of foundation and trust schools consist of five compulsory groups:
- Parents
- Staff
- Local Authority
- Community
- Foundation*

*In a foundation school without a foundation (i.e. not supported by a trust, for example), foundation governors are known as partnership governors. In a foundation school with a foundation (i.e. a trust school), the trust will appoint the foundation governors.

Questions and Answers

If we become a foundation/trust school, is our school governing body dissolved?

No, the governing body continues to exist but is reconstituted in line with the school’s new status as a foundation or trust school. The reconstitution needs to be completed within three months of the implementation date.

How many governors will the trust appoint to our governing body?

This depends on the wishes of the existing governing bodies. Trusts will appoint either a minority or majority of the governing body. If the trust will appoint a minority of the governing body, it will be a minimum of two governors. If the trust will appoint a majority of the governing body, the governing body must also establish a Parent Council to act in a consultative/advisory role.

Whether the trust will appoint a minority or majority of the governing body is determined as part of the statutory process when changing category of school.

What role does the trust have in the running of the school?

The governing body retains responsibility for the running of the school. The trust’s only influence is via its representatives on the school’s governing body.

Could the governing body remove the trust?

Yes, it is possible for a school to leave a trust and remove the trust’s support for the school. However, the school will remain a foundation school (albeit without a foundation) and cannot return, under current legislation, to being a community school.
Admissions

In foundation and trust schools the governing body, not the local authority, is the admissions authority. This means that the governing body is responsible for determining the school’s admissions arrangements, including oversubscription criteria and Published Admission Number (PAN). These arrangements must comply with the School Admissions Code. The school will still take part in the Local Authority’s co-ordinated admissions scheme.

Questions and Answers

What will being the admissions authority for the school involve?

The governing body will need to determine its admissions arrangements annually in line with the Code. This will include initial consultation and consultation when there is a proposed change to the admissions arrangements. This consultation must last at least eight weeks between November and March in what is known as the ‘determination year’. The governors must consult the Local Authority, all other admission authorities in Cornwall (i.e. the governing bodies of all other own admission authority schools or academies), the Admissions Forum, admission authorities in neighbouring local authority areas, relevant parents and other groups with an interest in the local area (e.g. community groups).

Does this mean that the school will handle all its admissions directly?

No, under the School Admissions Code the Local Authority is responsible for managing the co-ordinated admissions schemes for all publicly-funded schools. Under these schemes all applications for school places and all offers and refusals of places have to be made by the Local Authority. The school will, however, handle in-year admissions.

Foundation and trust schools are responsible, however, for ranking applications to the school in line with the school’s published oversubscription criteria and returning a ranked list to the Local Authority to allow offers to be made. Where foundation/trust schools have opted to have the same oversubscription criteria as the Local Authority this can be undertaken by the Authority on the school’s behalf.

What about admissions appeals?

As the admissions authority the governing body will also be responsible for ensuring appropriate appeal arrangements are in place and that appeals are carried out in accordance with their own published policies and the statutory requirements of the School Admissions and Appeals Codes.

The Appeals Code states that local authorities must allocate reasonable funds to the governing bodies of maintained schools which are admission authorities to meet admission and admission appeal costs. However, this does not apply if the school and Local Authority agree that the Local Authority will carry out the administration of these functions on the governing body’s behalf. In Cornwall, all schools, including the VA, trust and foundation schools, use the same independent appeal panel members and the Local Authority arranges and clerks all appeal hearings (VA church schools usually draft and present their own appeal cases because of the specialist religious criteria involved). As a result, it has been possible to retain centrally all funds relating to admissions and appeals. This creates an economy of scale and means that the expertise of experienced staff and panel members can be used across the County. It also creates consistency and fairness.

Would the governors be able to choose any oversubscription criteria they wanted to?

No. Arrangements have to comply with the requirements of the School Admission Code 2012 and School Admission Appeals Code 2012, which set out very clear restrictions on acceptable oversubscription criteria.
Employment matters

In foundation and trust schools, staff are employed by the governing body, rather than the local authority.

When a community or voluntary-controlled school transfers to foundation or trust status, staff transfer to the employment of the governing body under the provisions of the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 (as amended). These provide for all rights, powers, duties and liabilities relating to the contracts of employment of staff members to transfer from the LA to the governing body. Whilst TUPE does not technically apply, the circumstances relate to a ‘TUPE-like’ process.

When a school embarks on a process of conversion to a foundation or trust school, it is strongly recommended that the school contacts the Local Authority’s Schools’ Employee Relations team as early as possible, as it is important to consult with the staff on the changes to their employment arrangements (i.e. change of employer).

Questions and Answers

Can foundation/trust schools set their own pay and conditions for teaching staff?

No. The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 require the continued recognition of the nationally agreed terms and conditions of employment for teachers (ie: ‘the Blue Book’ and ‘the Burgundy Book’) in foundation or trust schools.

What about support staff?

The Regulations do not preserve recognition of the nationally agreed terms and conditions of employment for support staff in the same way as they do for teachers’ terms and conditions of employment. Therefore, as the employer, the governing body may set its own terms and conditions for support staff newly appointed to the foundation or trust school after the transfer should they wish to. However, existing staff whose employment transfers to the foundation or trust school from the Local Authority will have their existing terms and conditions of employment protected at the point of transfer by the above Regulations. The Regulations do not protect continued recognition of ‘the Green Book’, meaning that ‘post transfer’, the foundation or trust School could potentially make changes to terms and conditions of employment for pre-existing support staff where such changes are agreed. Changes to terms and conditions of employment cannot be made unilaterally and the process for making contractual changes will be subject to the current employment law and contract law frameworks that apply to variation of contractual terms.

What additional responsibilities do governing bodies of foundation/trust schools have in relation to the employment of staff compared to community and voluntary-controlled schools?

The governing body of foundation or trust schools will be the employer. As such, the governing body has the full range of employer responsibilities under employment law. This includes recruitment, staff training, management of employee disputes, conduct matters, capability, health and safety of staff at work etc.

Would the governing body still receive support from the Local Authority Human Resources team?

Yes, foundation or trust schools can continue to receive advice and guidance from the Local Authority Human Resources teams, Payroll, Legal, etc via the current Service Level Agreement arrangements.
**Who pays redundancy?**

The Schools Forum has agreed a dedicated budget to support the future redundancy costs incurred by maintained schools for the forthcoming financial year. The LA’s policy regarding the payment of redundancy costs for maintained schools will be reviewed annually by the Schools Forum. The LA will confirm any future changes in its position to all maintained schools.

**What would happen in a tribunal situation? Who would be responsible for compensation payouts?**

Provided that the Director of Children’s Services agrees on behalf of the Local Authority that the governing body has acted lawfully *and has followed professional advice*, the governing body will be fully supported in making its defence. This will be assessed on a case by case basis with advice from County Legal and Human Resources services.
Pensions

Local Government Pensions Scheme (LGPS)

Non-teaching school-based support staff in foundation and trust schools are, for the purposes of the LGPS, deemed to be employees of the Local Authority and therefore continue to have access to the LGPS. As the employer, the governing body will be required to pay the employers’ contributions, and these will be paid at the same employer contribution rate as Cornwall Council.

In order for these employees, and all future employees, to remain in the LGPS, the governing body must formally agree such a proposal and then provide written confirmation of the proposal to the Local Authority.

In accordance with the requirements of the LGPS Regulations, Cornwall Council has passed the necessary resolution that will allow non-teaching school support staff employed by foundation/trust schools to remain in the LGPS, providing the formal proposal referred to above is made by the relevant governing body.

Teachers’ Pension Scheme

Teaching staff employed by the governing body of a foundation/trust school continue to have access to the Teachers’ Pension Scheme and would not be subject to any change. The LA continues to be the responsible Authority for completing and signing off relevant documentation in relation to teachers’ pensions.

Premature retirement

The LA’s agreement must be sought before the governing body commit themselves to such a course of action. Premature retirement is potentially extremely expensive and as such the LA will only agree to such proposals in exceptional cases. The LA’s position on this will be reviewed from time to time in conjunction with Schools Forum.
Land and buildings

In a foundation school without a foundation, the legal interest (freehold or leasehold) in the land and buildings currently owned by the Local Authority will be transferred to the governing body.

In a foundation school that is supported by a foundation (i.e. a trust school), the legal interest (freehold or leasehold) in the land and buildings currently owned by the Local Authority will be transferred to the trust to be held ‘on trust’ for the duration of its relationship with the school.

How will land and buildings be transferred to the governing body or trust?

Transfer of ownership will be by way of a formal legal document to be agreed between the legal advisors acting for the Council and the school.

When a Community school or foundation school without a foundation acquires a trust (i.e. becomes a trust school), the school’s land and buildings will transfer to that trust to be held on trust for the duration of its relationship with the school. The trust does not have to pay for the land (including buildings). Special arrangements can be put in place where facilities are shared with another school or provider.

What happens to any existing leases on the site, such as to a pre-school for example?

The governing body or trust will replace the Council as the owner of the site, and so will “inherit” these leases, becoming the landlord in place of the Council. The responsibilities of landlord and tenant will not change.

Who is responsible for the maintenance of the land and buildings?

Governing bodies are responsible for those aspects of maintenance for which they have received funding delegated from the Local Authority (via LMS), in the same way as the governing bodies for other categories of local authority maintained school.

Where the Local Authority holds funding for capital investment in maintained schools, foundation and trust schools will be an equal part of the transparent investment policy.

What happens if there is a major buildings incident, such as a fire or roof failure?

Local Authority support would be available as for any other maintained school, but the governing body must have taken out proper insurance.

Does the trust itself have any responsibilities in respect to maintaining the land and buildings?

The responsibility of the trust to hold the land for the benefit of the school will be set out in its Memorandum and Articles of Association. The actions of the trust will be determined by these and by the requirements of trust and charity law. The trust does not have responsibility for the upkeep of the land or the buildings on it or for contracts for good or services which the governing body enters into.

Can the governing body or trust dispose of surplus land?

Yes – but if the trust (where one exists) wants to dispose of land they must consult the governing body of the school. If the governing body thinks that land should be disposed of they must refer this to the trust (where one exists) - in practice, as the governing body includes trust appointed governors, the trust’s agreement should be a fairly automatic process.
The governing body or trust must then inform the Local Authority of their plans to dispose of non-playing field land. Local authorities can object to proposals if they feel that they are not in the interest of the school in the long term, or would disadvantage the wider community. Local authorities will also be able to object to reinvestment proposals and to seek a share of the proceeds attributable to public investment in the land. Where local agreement cannot be reached, the matter will be referred to the Schools Adjudicator for resolution. Local authorities will not be able to force a governing body or trust to sell any surplus land to raise money.

Foundation and trust schools will be able to benefit directly from the disposal of land but all proceeds must be used for capital investment in educational assets in either the school itself or the maintained sector (according to the trust’s Memorandum and Articles), and the trust itself will not be able to profit from any such disposals.

There is no change to the rigorous procedure for any disposal of school playing fields, which will continue to require the consent of the Secretary of State under Section 77 of the School Standards and Framework Act 1998 as amended by Schedule 4 to the Education and Inspections Act 2006.

**What happens if a foundation or trust school closes?**

When a foundation (including foundation trust) or voluntary school is discontinued and closes there is a requirement in Schedule 22 of the 1998 School Standards and Framework Act for the governing body or trustees of the school to apply to the Secretary of State to determine what happens to any land which has been provided or enhanced at public expense. If the school land was previously provided by the Local Authority then the Secretary of State may order that the land is returned to them or to the governing body of a new school. If the trust wanted to retain the land for other purposes, then the Secretary of State may agree to this subject to the trust paying such compensation to the Local Authority as he determines.

If the school land was originally provided by the trust at its own expense then it can do what it likes with the land. However, if the trustees’ land has been enhanced in value at public expense then the Local Authority is able to claim a share of any sale proceeds relevant to the level of public investment.

**Can PFI schools become foundation or trust schools?**

There is no legal restriction on a PFI School becoming a foundation school. However, a PFI School will not be released from the Governors Agreement as a result of achieving foundation status and as such will still be bound by the PFI Project Agreement. This means that *inter alia* the Governing Body shall:

- still have to pay the Authority the Relevant Proportion and any other sums due under the Governors Agreement;
- not do anything which would cause the Authority to be in breach of the PFI Project Agreement, including compliance with the provisions relating to pupil numbers;
- continue to receive all services and works provided under the Project Agreement from the PFI Provider and may not procure these elsewhere;
- request any variations to the services or works to those currently provided (including any new build) from the PFI Provider, through the Authority, and will reimburse the Authority for any lump sum, lifecycles costs and increase in the Unitary Charge resulting thereof;
- permit the school to be used for third party use;
- not sell any property without issuing a formal variation and agreeing to reimburse the Authority for any costs thereof.

The Governing Body Agreement and the PFI Project Agreement (the “Agreements”) will need to be reviewed to ascertain what amendment is required as a result of a school becoming a foundation school. The Authority may seek to exclude land from the transfer of freehold provisions. However, if
the freehold of the school is transferred, amendment will be required to the Agreements to ensure that the PFI Provider can continue to provide the services and the Authority can continue to monitor the same. The Funders to the project will need to be consulted.

The Governing Body will be required, pursuant to the Governing Body Agreement, to reimburse the Authority for the cost of the variation to the PFI Project Agreement, including the costs of the PFI Provider pricing the amendment even if the transfer to foundation status does not occur. If the PFI Provider or the Senior Lenders are of the view that the change will materially and adversely affect the risk profile of the project they may reject the proposed amendment.

It is recommended that PFI Schools consult with the Authority at an early stage of the process in order to ascertain the restrictions and implications for that school.
Health, Safety and Wellbeing

Within Cornwall, the Local Authority currently provides Health, Safety and Wellbeing advice, guidance and support to all maintained schools (including foundation and trust schools) – and will continue to do so for the foreseeable future.

Responsibility for Health, Safety and Wellbeing in foundation and trust schools is as follows:

**Governing body**

**Roles**
- Is the employer and must ensure the school complies with health and safety legislation. (see HSE guide to legislation [http://www.hse.gov.uk/legislation/index.htm](http://www.hse.gov.uk/legislation/index.htm)).
- Has overall accountability for health, safety and welfare for the school workforce and pupils.
- Must provide health and safety policies and procedures.
- Must ensure through regular monitoring that health and safety policy and procedures are being adhered to.
- May own land and buildings (in a foundation school without a foundation), or these may be owned by a charitable foundation (e.g. a trust).

**Responsibilities**
- Ensure an active and proportionate approach to managing health, safety and welfare risks to the school workforce and pupils.
- Must prepare a written health and safety policy detailing the arrangements for managing specific risks, carrying out health and safety inspections, reporting and investigating accidents and identifying training needs.
- May adopt LA health and safety policies and procedures for use as a basis for own policy and procedures.
- Must ensure buildings are well maintained and improved when and where necessary. All work undertaken must be within the Asset Management Plan framework which identifies a schedule for recurring maintenance.
- May delegate day to day health and safety management tasks to the headteacher.

**Local Authority**

**Roles**
- May intervene if there is evidence of a significant risk to pupils’ safety.
- May offer advice on health and safety issues to governing body.
- May offer governing body the chance to buy into LA services.

**Responsibility**
- Has responsibility for safety of pupils in all maintained schools in area (ref section 60(2)(c) of Education and Inspections Act 2006).

**Headteacher**

**Roles**
- Day to day management of all health and safety matters in the school in accordance with the governing body’s health and safety policy and procedures.
- Provide leadership to the whole school.

**Responsibilities**
- Must comply with the governing body’s health and safety policy.
- Must ensure effective management arrangements are in place for:
  - carrying out regular inspections, implementing actions and submitting inspection reports to GB
• ensuring health & safety information is provided to relevant people, including contractors
  • carrying out health & safety investigations
  • ensuring regular health & safety committee meetings take place
  • identifying staff health & safety training needs
• Must liaise with governing body on health and safety policy issues and provide evidence to confirm school is fulfilling health and safety statutory duties via regular reporting.
• Must co-operate with and provide information to trade union safety representatives/employee representatives.
• Must monitor purchasing and contracting procedures to ensure adherence to policy and procedures
• Carry out any other health and safety duties delegated by the governing body
• Accountable to governing body
• Supports other members of staff with delegated health and safety responsibilities.
• Liaises with and provides support and information to contractors charged with providing services and/or maintenance tasks.
• Liaises with and provides support and information to trade union/employee representatives
Insurance

Schools changing category should contact:

Amanda Hale – 01872 323231

Shirley Trebilcock – 01872 326430

Additional information is also available on the Cornwall Council website at:
www.cornwall.gov.uk/default.aspx?page=24062
Further Information

www.cornwall.gov.uk/collaboration

http://www.education.gov.uk/schools/leadership/schoolorganisation/a0075170/foundation-and-trust-proposals-changing-school-category-to-foundation

www.co-op.ac.uk

Contact

If you would like any more information on any of the matters addressed above, or can identify any additional questions that have not been answered, please contact the School Organisation Manager at schoolorganisation@cornwall.gov.uk in the first instance.
If you would like this information in another format please contact:

**Cornwall Council**  
County Hall  
Treyew Road  
Truro TR1 3AY

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