

Protocol of:

Resource and Risk Committee (of the DBE)

Date Agreed: 17 January 2023

Review Date: September 2025

Review Due: January 2027

Protocol for the approval, appointment and removal of Foundation Governors in maintained schools, Foundation Members, Trustees (Directors) and Local Governors in Academy Trusts.

Note: Diocesan Corporate Member in a MAT.

This protocol does not apply to a person who has been appointed by the DBE to represent it as Diocesan Corporate Member in a MAT. The Corporate Member Representative role is specifically to represent the BWDBE Trust as Diocesan Corporate Member in meetings and does not appoint the individual as a Member in his or her own right. Such individuals may be replaced at any time and without notice because the role is not personal to them.

The representation of the DBE within the Members of a MAT is crucial and a central part of the relationship, and those individuals who undertake this representation are able to do so because of a close connection to the work of the DBE. If they are unable to attend a meeting, another individual may be asked to step in, and equally if there is an issue in the MAT which the DBE (acting through the DDE and the Education Department) would be best resolved by different representation then a new representative may be appointed for that purpose without any reflection on the individual stepping out of the role. Similarly, there is no term limit for a DCM Representative, because the role is purely to represent the DBE and there is no personal appointment in a governance role.

This protocol is driven by the requirements set out in section 8 of the DBE Terms of Reference (07.09.22):

- 8.1 The DBE shall devise, publish and implement protocols for the approval, appointment and removal of Foundation Governors in maintained schools, Foundation Members, Trustees (Directors) and Local Governors in Academy Trusts.
- 8.2 Such published protocol shall include the criteria for approval as having the requisite skills and experience to protect and develop the distinctive Christian characteristic of a Church School as well as confirming that the candidate has the other skills required by the School or Trust to which they are being appointed.

Criteria for approval as a Foundation Representative

The applicant is/has:

- The skills required by the School or Trust to which they are being appointed
- Willing to uphold the Christian distinctiveness of their church school
- An understanding of Governance or a willingness to learn
- An understanding of the distinctive Christian characteristic of a Church School or the willingness to learn.
- Willing to engage with the Diocese, the local clergy and local church to foster close church/school relations
- Willing to attend training and improve their skills. There is a requirement that all Foundation Representatives undertake Foundation Governance training in the first 12 months of taking up post
- Willing to attend at least one of the three relevant forums per year (Governors, Trustees, Members)

All renewals require a reference from the Chair in regard to their Foundation Representative role.

It should also be noted that:

- School staff cannot be appointed as Foundation Governors for the school in which they work.
- Spouses and partners cannot be appointed to the same governance board but can be considered for a neighbouring school if there are vacancies.
- Governors cannot be appointed without a conversation with a Diocesan Adviser to more than two governance boards at any one time. The conversation will seek reassurance that the candidate has the capacity to take on an additional foundation role. These will be assessed on a case-by-case basis.
- Unless their appointment is Ex-Officio, governors cannot serve more than three terms (12 years) on the same governing board. Substitute Ex-officio governors are also limited to three terms.

Foundation Representative Approval and Appointment Process

The following outlines who the appointing body is:

Maintained Schools

- Foundation governors of maintained church schools in the Diocese of Bath & Wells are **appointed** by the **Diocesan Board of Education** (DBE).

- Most maintained Church of England schools have an ex-officio Foundation Governor, either the Incumbent of the Parish or someone **appointed** in their place by the **Archdeacon**. An ex-officio appointment runs for as long as the person holds their office, so for an Incumbent the term will last for as long as they remain an Incumbent, unless they decide to step down or is instructed to do so by the Archdeacon/Diocese.

Multi Academy Trusts (“MATs”) – Academy Local Governors, Trustees and Members

- Foundation Trustees and Members are **appointed** by the **Diocesan Corporate Member** (which is the Bath & Wells DBE Trust, acting on behalf of and at the direction of the DBE). Information is also available in the MAT’s Articles of Association at 12, 15A and 50A. These appointments are made using the diocesan published process which is replicated in the Memorandum of Understanding (MoU) between the DBE and the MAT.
- Foundation representatives on local boards in academies are **appointed** by the **Trustees** of the Multi academy Trust, but may not be appointed unless they have been **approved** by the Diocesan Corporate Member (this approval is through the published diocesan application process). This is also stated in the MATs Articles of Association and the MoU.

Identification of need and recruitment:

- Vacancy for a Foundation Representative arises/is anticipated
- Clerk/Governance Professional informs the Diocese of the (anticipated) vacancy and the date it is due to start.
- The governing board should undertake its usual processes for filling a vacancy, including:
 - Undertaking a skills audit of the board; noting which skills the existing members provide and what it would be helpful to add to the board.
 - Considering what skills they require from a foundation governor? NB: This should not include voluntary work done in school in addition to the work on the governing body.
- The Clerk/Governance Professional checks the Instrument of Government/ Academy documents to confirm the nominating body and the approval and appointing body e.g. PCC, DBE, Trustees, Diocesan Corporate Member
- The Chair of the Board makes the PCC or other nominating body aware of the vacancy, the date the vacancy is expected to arise and the skills required. At this point they will:
 - discuss suitable potential candidates and whether they have the skills required
 - if no suitable candidates have the skills required agree how to advertise for a suitable candidate.

Appointment Process

The board should undertake their usual governance processes to interview and select a candidate, ensuring they take notice of their identified needs. If recommending a candidate for a foundation vacancy they should consider whether their candidate meets the criteria for a Foundation Representative as noted above.

Once the Governing Board is happy to recommend a Foundation candidate, the Clerk should initiate an application using our online platform 'Diosys'. When the application is complete, the application will be with the Education Administrator who then follows the process agreed by the DBE Governance Panel (DGP). The process will then be as follows:

- The application will be reviewed to ensure it includes the relevant information.
- The DGP can approve, reject or determine more information is needed.
- The DGP decision can include recommendations of training or conversations with Diocesan Advisors. The decision of the DGP is final; there is no right of appeal (although a candidate / school / MAT could submit a complaint to the DBE if they believe that the decision is unfair).
- The outcome of the DGP will be communicated to the Applicant and the Clerk/Governance Professional.
- Any approvals/appointments are subject to the candidate receiving a clear DBS check.
- Our MoU with each MAT in the Diocese includes a provision that if the DBE reasonably considers that a Foundation governor no longer meets the criteria, the governor shall either be removed or recategorised as non-Foundation and a vacancy will arise.
- A Foundation appointee may no longer be deemed to meet the criteria if, for example, they have failed to attend training during the previous term, or has acted in a way which is inconsistent with the tenets of the Church of England or with policy and guidance issued by the DBE from time to time.
- Renewals require chair reference to confirm that they have been effective in their first term office and they continue to bring the necessary skills to the role. If the person renewing is the Chair, a reference will be obtained from the Vice Chair, Chair of the Trust Board or suitable alternative.

Removal of Foundation Members, Trustees and Governors who have been appointed by the Bath & Wells Diocesan Board of Education and Removal of Foundation Governors of Academies

In certain circumstances it may be necessary to remove a Foundation Representative before the end of their term of office. Only the appointing body (see above) may remove someone from their position.

In a Multi Academy Trust:

A Foundation Member or Trustee may only be removed by the DBE (acting through the BWDBE Trust)

A Local Governor (or whatever local board members are called in the particular MAT) may only be removed by the MAT Board. If a Foundation local governor is deemed no longer to meet the Foundation criteria, then the DBE can require the MAT Board either to remove or recategorize them.

In a Maintained School

Either the DBE or the Archdeacon, depending on the type of Foundation Governor, may remove them.

Possible Reasons to request Removal

This list is not exhaustive, nor is it produced in any order of priority

- Working against, or not working for, the Christian character of the school
- Serious or persistent failure to discharge the responsibilities of a foundation governor
- Serious or persistent breach of policy (either school, DBE or other relevant policy) or of statutory obligation
- Damage or risk of damage to the reputation of the school, the church or the parish; this includes activity on social media
- Extreme breakdown in relationships
- Inappropriate personal conduct, whether public or personal which may adversely affect the school

Maintained Schools

The School Governance (Constitution) (England) Regulations 2012 state that foundation governors may be removed from office by the person or persons who appointed them (Reg: 20 & 25). The appointing person or persons must give written notice of the removal to the Clerk to the governors. This means that the DBE has the right to remove any foundation governor that it has appointed.

An ex-officio foundation governor can only be removed at the request of the person named in the *Instrument of Government* as the person entitled to make such a request. In Bath & Wells Diocese the person entitled to make this request is the Archdeacon for the parish in which the school is situated. (Reg: 21 & 25)

Multi-Academy Trusts

The Articles of Association from Article 65 to 80, 97 and 98 outline the circumstances in which a Trustee or Local Governor may be disqualified or removed. For Members reference should be made to Articles 13 – 16 which notes that the Diocesan Corporate Member (acting corporately in collaboration with the DBE Trust processes) is able to remove those that it appoints.

In making such a decision the DBE must of course act fairly, taking into account the effect that removal might have on the reputation of the individual concerned.

Schools, Trusts and their parishes are encouraged to seek to reach agreement with a Foundation Representative where reasonably practical.

Removal of a Maintained School Foundation Governor Process (Reg: 20 & 25)

Pre-process:

The DBE or Archdeacon will consider the removal of a Foundation Governor when requested by:

- the governing body,
- the head teacher or the
- Diocesan Education Department.

If the Foundation Governor in question is Ex-Officio or otherwise appointed by the Archdeacon, the Archdeacon will liaise with the DBE and adopt the procedure set out below. If the Foundation Governor in question was appointed by the DBE after nomination, the procedure set out below will be adopted

Process:

Initially the DBE Governance Panel will consider the request submitted and either:

- Appoint an individual or panel to investigate the allegation(s) in the request, if appropriate suspending the Foundation Governor. In the meantime,
- Request further information
- Decline the request as not having indicated any conduct or failure capable of resulting in a decision to remove.

If the governing body, head-teacher or Diocesan Education Department disagree with the decision of the DBE Governance Panel the DBE will constitute an appeal committee.

Suspension - Suspension may be appropriate where the alleged misconduct creates a risk of further significant harm if the foundation governor continues in post or where one or more person alleging or supporting the allegations is genuinely fearful of such significant harm.

Investigation - The DBE Governance Panel may appoint an officer from the Education Department, a DBE Member or other officer from the Diocese of Bath & Wells, Chair of Governors of another Church School, or Trustee of a Church Multi-Academy Trust - or other suitable person.

The Investigating officer shall determine who they wish to hear from during the investigation and shall collect such information and evidence as they consider appropriate.

The Investigating Officer shall seek to conclude the investigation as swiftly as circumstances will allow, particularly if the Foundation Governor in question is suspended pending the outcome.

A summary of the investigators report shall be provided to the foundation governor in question and to the individual who made the request.

Once the investigation is concluded the investigator will provide a written report to the DBE Governance Panel/Archdeacon for their consideration and they will make a decision to remove or not.

Appeal

A Foundation Governor/Trustee/Member may appeal against a decision to remove them, in writing, to the Chair of the DBE c/o the Diocesan Director of Education within 5 business days of being notified of the decision to remove. The DBE Chair will review the investigation report and consider further representations from the Foundation Governor/Trustee/Member before deciding whether to uphold or overturn the decision to remove.

During the appeal process, however, the individual is removed from office and should not, therefore, take part in governance.

Removal of a Foundation Governor on a Local Governing Body

If a Trust makes a decision to instigate the removal of, or not to reappoint for a second or third term, a Foundation Representative from a Local Governing Body the published process of the Trust must be used for the removal. As the Diocesan Corporate Member/DBE Committee is required to consent to the appointment, the recommendation is that the Multi-Academy Trust inform and consult with the Diocesan Director of Education at the earliest point.

This document will be reviewed annually or when there is a change in Regulations.

References:

- [The School Governance \(Constitution\) \(England\) Regulations 2012](#)
- Individual Trust Articles of Association ([DfE Model document](#))
- Memorandum of Understanding between the DBE and the Multi-Academy Trust (available on request)
- [Diocesan Published appointment process](#)

Definitions:

A **maintained school** is one that is funded through the Local Authority. A maintained school has a Full Governing Board (FGB) and may operate committees of this board.

A Multi-Academy Trust (MAT/Trust) have a **Trust Board** and all of our Trusts also operate **Local Governing Bodies (LGBs)**. A LGB is a committee of the Trust Board (Articles 100-102 and 104). Many Trusts call these LGBs by different names; however, all LGBs must have 2 parent elected members and in a church school the appropriate foundation representation based on their former status of being Voluntary Aided (VA) or Voluntary Controlled (VC)

The DBE Trust: The charity is the incorporated body of the Diocese Board of Education. The DBE Trust act as a member for all Church Schools within the Diocese of Bath & Wells, that have converted to Academies. The objects of the charity are to advance for the public benefit education in the Diocese of Bath & Wells. Establishing and maintaining Academies under the Diocesan Board of Education.