

Chapter 3

Grant-maintained Schools

Background

117. Significant changes in the governance and management of primary and secondary schools have taken place since the Education Reform Act (ERA) in 1988. The Act gave a county or voluntary school the choice to opt out of local authority control, provided the Secretary of State agreed. Control of the school then passed to its governing body. The Act gave the governing body or a quorum of parents the opportunity to seek a ballot of registered parents on the question of whether grant-maintained status should be sought. The 1988 Act also saw the introduction of Local Management of Schools (LMS) whereby a high proportion of budget and all management responsibility was delegated by local education authorities to governing bodies of schools for which they are still responsible.

118. The Education Act 1993 introduced some changes to the opt-out procedure. An Order made under the Act requires a governing body to consider, at least once in every school year, whether to hold a ballot of parents on the question of grant-maintained status. The Act also made it possible to create a grant-maintained school, subject to approval by the Secretary of State, by opening a new school or by an existing independent school opting-in. Until 1 April 1994 grant-maintained schools in England received funding directly by grants from the Department for Education. The 1993 Act established the Funding Agency for Schools (FAS) which took over responsibility for calculation and payment of grants to grant-maintained schools in England and for monitoring expenditure. In Wales funding and oversight remain the responsibility of the Welsh Office.

119. In Scotland only two schools to date have opted for self-governance under the Self-Governing Schools etc (Scotland) Act 1989, and they remain the responsibility of the Scottish Office. We have not considered them as part of this study.

120. The 1988 and 1993 Acts transferred powers under grant-maintained status to governing bodies and gave them responsibility for budgets, staff appointments, pay and the ability to shape the overall aims and policy of the school. These powers and responsibilities, which were previously vested in representatives of local authorities have therefore been given to voluntary governors, whether appointed or elected, of individual schools. This is also true, though to a lesser extent, for the governing bodies of local education authority schools under local management.

'Grant-maintained schools are intended to be self-governing, accounting to local communities for their performance, but with the greatest possible discretion to decide for themselves how they organise their affairs.' Department for Education and Employment

'We have always taken the view that this is a great experiment in participatory public service by ordinary citizens.' Walter Ulrich, Information Officer of the National Association of Governors' and Managers

Financial aspects

121. Total public expenditure on grant-maintained schools in 1995/96 is expected to be about £1.7bn. Expenditure on individual schools is likely to range between £130,000 and £5.6m. At 1 April 1996 there were just over 1,100 grant-maintained schools (1,112 in England and 16 in Wales). The number of schools which have so far opted out of LEA control represents only a very small minority — less than 5% — of the 25,000 schools in the sector. However in terms of pupils, although this represents only 2.7% of a primary population of 4.3 million, it represents 19.1%, almost one fifth, of the total secondary population of 3 million. Some 700,000 pupils attend grant-maintained schools out of a total school population of 7.4 million.

122. There is no doubt that grant-maintained schools have welcomed their independent status, with the management flexibility, the increased responsibility, and the shorter and more focused decision-making chain that it provides them with. Those from the grant-maintained sector to whom we talked were convinced that the schools were providing an improved service, and morale was generally good, although there were occasionally local difficulties.

123. A large number of organisations are associated with the grant-maintained movement. Some, like the Grant Maintained Schools Foundation (GMSF) and the Grant Maintained Schools Advisory Committee (GMSAC), which receive grant-in-aid from government. The GMSF was set up primarily to provide advice and information to schools considering grant-maintained status and the GMSAC advises and represents grant-maintained schools. The Association of Heads of Grant Maintained Schools (AHGMS), the Association of Grant Maintained and Aided Schools (AGMAS), the National Association of Grant Maintained Primary Schools (NAGMPS) and the Grant Maintained Bursars Association (GMBA), each represents a specific part of the grant-maintained sector or a particular type of school. Several bodies also represent grant-maintained schools within their membership — the teaching unions and the various bodies representing school governors.

124. FAS also has what might be seen as an advocacy role, through its objective of supporting and where appropriate encouraging the establishment of new grant-maintained schools by promoters, as well as its primary responsibility for funding grant-maintained schools and the provision of sufficient school places in certain LEAs. Proposals for the establishment of new schools are subject to the usual planning permission and where necessary the approval of the Secretary of State. We doubt whether it is appropriate for a funding body to have an advocacy role: advocacy is better carried out by representative bodies. It is important, therefore, that action in support of this objective should be limited to situations where FAS is pursuing its specific duty to secure the provision of sufficient school places in a particular area, and to drawing attention to the general performance of the sector in relation to expenditure, management and effectiveness.

Propriety

125. We are not concerned with the overall philosophy of grant-maintained schools. Our interest in them arises because they spend, as a whole, large sums of public money and they are new bodies which are being asked to be accountable in new ways. There have been cases where serious problems have arisen in grant-maintained schools, but on the

evidence put to us, these appear to be isolated incidents. As the Secondary Heads Association said to us: 'we wish to emphasise the serious, honest commitment of the great majority of governors despite increased workload and responsibility.' However it is clear that the few cases where problems have come to light in the grant-maintained sector have received the full glare of media publicity and that has had some effect on public confidence. It is important that there should be systems in place which minimise the risk of problems arising and enable the swift resolution of those which do occur.

126. One way of achieving this is to ensure that the adoption of best practice is extended throughout the sector. This is not to be achieved through cumbersome and bureaucratic rules which might deter people from giving public service without financial reward. Over-regulation would be detrimental to both schools and pupils, and we have no wish to see procedures applied which would be inappropriate to smaller schools. It is much better that regulators, funders and the professional and representative bodies should vigorously promote good practice, within a broad centrally determined framework; that schools themselves should be responsible for following best practice; and that this should be subject to audit.

R12. The regulators, funders and professional and representative bodies should produce and promote a model code of best practice on governance and model standing orders.

Regulation and funding arrangements

FAS and OFSTED

127. The Funding Agency for Schools (FAS), an executive non-departmental public body whose members are appointed by the Secretary of State for Education and Employment, is the only government agency which deals exclusively with grant-maintained schools. The main functions of FAS are 'the calculation and payment of recurrent and capital grants to grant-maintained schools, the financial monitoring of grant-maintained schools including value for money studies, and the provision of sufficient school places in certain local education authority areas'. FAS agrees a financial memorandum with each grant-maintained school, and must act within the powers conveyed under the Education Act 1993 if it finds evidence that the school's financial affairs are not being properly conducted. Further guidance and information on the requirements are contained in the *Rainbow Pack*¹ which is circulated to all grant-maintained schools.

128. FAS normally scrutinises schools' compliance with its requirements and conditions through quarterly returns. In some cases monthly returns are needed when a school either has no financial track record (for example, a newly incorporated school) or needs more frequent financial scrutiny. Some 5% of grant-maintained schools currently submit monthly returns to FAS. FAS also receives copies of the annual audited accounts, the external auditor's management letter and the governing body's response. The *Rainbow Pack* states that the management letter should highlight any weaknesses identified in the course of the audit in the structure and operation of accounting and internal control systems; inappropriate accounting policies and practices; and non-compliance with legislation or other regulations.

129. FAS is not responsible for inspecting educational standards in schools. This function lies with a separate government agency, OFSTED (Office for Standards in Education), whose responsibilities are cross-sectoral, covering grant-maintained, independent and local authority schools. OFSTED's remit does not extend to Wales, where similar functions are undertaken by the Office of Her Majesty's Chief Inspector (OHMCI) for Schools in Wales.

130. The main functions of OFSTED are to inspect, report on and secure the improvement of standards of achievement and quality of education through regular independent inspection, public reporting and informed advice. One of OFSTED's main tasks has been the establishment, monitoring and regulation of the new independent system of school inspection defined by the Education (Schools) Act 1992. This provides for inspection of all state schools in England every four years. There are four key elements defined in the Act, which sets out the independent inspection system. They require OFSTED to report on:

- educational standards achieved by pupils
- the quality of education provided by the school (particularly the quality of teaching)
- the spiritual, moral, social and cultural development of pupils
- whether the financial resources of the school are managed efficiently.

131. Following an inspection, a report and summary is written by the inspectors and is sent to OFSTED, the governing body, the Secretary of State and the person who appoints the foundation governors. The governing body must draw up an action plan which sets out the key issues mentioned in the report and the date it must be completed by. Copies of the action plan must be sent to OFSTED, the Secretary of State, those who appoint the foundation governors and all the school's employees. Copies of the inspection summary and action plan are sent to parents and it is widely publicised through local libraries and the media.

132. The FAS has established a small School Improvement Unit to provide advice and guidance to grant-maintained schools that are subject to special measures or have been deemed by OFSTED to have serious weaknesses, and to assist FAS in making funding decisions in relation to such schools. The Unit was created to ensure that the resources of such schools are deployed as effectively as possible in addressing the weaknesses that have been identified, as well as considering whether any additional resources (by way of special purpose grant, particularly for staff deployment and staff restructuring costs) need to be provided to the school. The Unit supports the school in developing an appropriate action plan and then during the implementation phases, until special measures are removed or OFSTED's concerns about serious weaknesses are no longer applicable.

133. OFSTED, which has no direct responsibility for governance, is expected to publish occasional reports on key educational issues, of which governance is one. During an inspection, OFSTED must consider the management and efficiency of a school and thus has a remit to report on the effectiveness with which a governing body fulfils its role. OFSTED has therefore prepared a joint paper² with the Audit Commission to suggest ways in which school governing bodies can work more effectively. (See Appendix 3).

Local Government Ombudsman

134. Grant-maintained schools all have appeal committees, whose decisions are within the jurisdiction of the Local Government Ombudsman. But the way governors set their admission limits and criteria, and the way they reach decisions prior to the appeal stage, are outside his jurisdiction. The 1994/95 annual report of the Local Government Ombudsman³ noted this anomaly, and went on to say 'this is an anomaly which appears to have no adequate justification'. We agree. There is no good reason why such procedures should not be subject to external review: on the contrary, the absence of a mechanism for external review contravenes the principles set out in our first report, which the government has endorsed.

R13. The powers of the local government ombudsman in respect of grant-maintained schools should be extended to cover complaints about maladministration in setting admissions criteria.

The Secretary of State

135. The Secretary of State maintains a separate and direct role in respect of governance in grant-maintained schools. If the governing body of a grant-maintained school is believed to be failing to discharge its duties, or to be acting unreasonably, the Secretary of State may issue a direction to it. The Secretary of State also has the power to remove and replace any or all of the first governors, but not foundation or elected governors, and to appoint up to two additional governors to a governing body:

- when the governing body fails to carry out the duties required of it by law;
- when an inspection report says that special measures are needed; or
- when the Secretary of State considers that the governing body has acted or is proposing to act in a way prejudicial to the provision of good education at the school.

136. Where the Secretary of State has appointed additional governors, the governing body may also appoint up to two additional governors of its own choosing. FAS has no formal role in this process but is consulted by the Secretary of State when additional governors are appointed. The chain of responsibility goes directly from the individual school to the Secretary of State, except where financial management is involved. Action by the Secretary of State can also be triggered by an OFSTED report: OFSTED has a duty in its inspections to consider whether the financial resources of the school are managed efficiently and that the governing body fulfils its role.

137. In our view the arrangements for regulating grant-maintained schools are not satisfactory. Difficulties arise because three organisations are involved.

138. FAS is responsible for oversight of financial management, and has its own reporting systems. The Secretary of State is responsible for the oversight of governance, and for the removal and appointment of governors. OFSTED, in carrying out its inspections, examines governance and finance matters, and issues advice on governance.

139. The involvement of three bodies creates a risk of confusion, and makes it more difficult to take action if problems arise. It also makes it less likely that any action on some types of problem will be taken swiftly, so that they may worsen and be more difficult to solve. We are concerned that delays in decision making caused by the need for co-ordination could have an adverse effect on the reputation of a school or the morale of its staff, parents and pupils.

140. We also consider that the present arrangements tend to bring issues too quickly to Whitehall, with the result that the Secretary of State and Ministers are too likely to be involved in what are issues of local management rather than policy. There is something faintly ludicrous in the idea that only the Secretary of State in London can intervene if the governance of a village school in Cumbria breaks down, while the additional media attention which can arise from Ministerial involvement is unlikely to help a school.

141. We believe that there would be great merit in devolving oversight of all matters of governance in grant-maintained schools to FAS. We have noted elsewhere the advantages of having a single body acting as funder and regulator. While it is possible for a grant-maintained school to fail in one area and not another, in our judgement the signals which warn of a failing institution tend to come across the board. Problems of governance such as lack of clarity in divisions of responsibility, and failure to have and to follow clear standing orders, tend to be linked with weaknesses in financial management, and problems in performance may be symptoms of either.

142. If this was done, then FAS could broaden its monitoring and reporting requirements, and its supervision of audit arrangements, to cover management and financial standards. We would draw attention to the performance standards approach adopted by the Housing Corporation, which provides a useful model.

143. We would also note that although the Secretary of State is formally responsible for governance matters in the further education sector, in practice FEFCE exercises supervision across all aspects of the sector's performance, and the Secretary of State is effectively dependent on FEFCE to investigate and pursue all aspects of governance, so that the Department comes into play only in the most serious matters and when formal action is required.

144. Such an approach would also clarify the responsibility for taking action when problems are identified. FAS would have its own reporting chain across the board. When an OFSTED report raised matters of governance or finance, it would clearly be FAS's responsibility to monitor the school's response. It would be a particular advantage that if anyone wished to draw attention to suspicions of impropriety or mismanagement, or if a school wanted advice or guidance on emerging problems, there would be a single body responsible.

145. In our view such an arrangement could be made by administrative action, without removing the Secretary of State's formal responsibility for governance matters. As in the further education sector the Secretary of State could remain responsible for appointing and dismissing governors when necessary, and act as ultimate court of appeal in serious cases. The Secretary of State's overall responsibility for setting the framework of governance policy across all school sectors need not be undermined.

146. At the very least, we believe it is essential for as much casework as possible in this area to be delegated to FAS, for clear written procedures to exist covering the exchange of information between the bodies concerned, and for there to be a clear understanding of who takes the lead when the nature of problems overlaps between the respective responsibilities of FAS and the Department.

R14. While retaining ultimate authority in governance matters affecting grant-maintained schools, as far as possible the Secretary of State should delegate operational responsibility to FAS.

147. We have commented elsewhere about the issues of conflict of interest which can arise when practitioners are on the boards of regulatory and funding bodies, and the need for very rigorous procedures to ensure that such conflicts are resolved. We note that the membership of FAS includes not only practitioners but others with interests in the grant-maintained school sector, which means that an unusually large proportion of the membership must be affected by obligations to declare and withdraw when allocation matters are being discussed.

148. There are various ways in which such conflicts can be addressed through committee structures. We suggest that in the case of FAS, which supervises a large and growing number of institutions, a regional committee structure would be a particularly effective way of addressing the problem. Committees with responsibilities divided by region would enable capital grants and other discretionary funding issues to be considered by practitioners who were not interested parties. If FAS is given the expanded casework role in governance matters which we recommend, such committees would also help meet our concern that these issues should be addressed as far as possible at local rather than national level.

R15. FAS should consider setting up regional committees to deal with discretionary funding and governance questions.

The Governing Body

149. Members of a governing body of a grant-maintained school must include the following:

- five elected parent governors in a secondary school (three to five in a primary school);
- one but not more than two elected teacher governors;
- the headteacher (ex-officio);
- first governors (ex-County schools) or foundation governors (ex-Voluntary schools). First governors are not elected, but are appointed by the governing body itself. They must outnumber by at least one all other governors (except sponsor governors). Foundation governors are appointed by the church or other body which is responsible for a former voluntary school. They must

outnumber all other governors (including sponsor governors). In a secondary school, up to four sponsor governors may be appointed to represent the school's sponsor or sponsors. Sponsor governors are considered in greater detail in paragraphs 165–166.

150. The 1993 Act states that 'initial' first governors must be chosen by the governing body of the school as it exists when it submits its proposals to the Secretary of State to become grant-maintained. The kind of person who may be appointed as a first governor is required by the Act to be 'a person appearing, to the governing body, to be a member of the local community who is committed to the good government and continuing viability of the school'. First governors must always include at least two parents of pupils at the school, at least two members of the local community, and members of the local business community. These communities are not defined in the Act.

151. The Act states that foundation governors should initially be appointed by the people who were entitled to appoint foundation governors before the school became grant-maintained — usually the diocesan board or a Church body, but not the local education authority. It requires at least two foundation governors to be parents of pupils at the school.

152. Elected governors serve for four years, and appointed and sponsor governors serve for between five and seven years.

Legal responsibilities

153. Governing bodies are set up by law as corporate bodies. The governing body is legally responsible for:

- deciding how the budget is spent
- producing externally audited accounts
- the appointment of external auditors
- arranging finance for repairs and alterations
- determining the school's admissions policy
- ensuring proper procedures are in place for appointing, promoting, supporting; and
- disciplining staff; and providing information to the Secretary of State and parents. The legal responsibilities are set out in the DfEE publication *School Governors: A Guide to the Law*⁴.

154. The Articles of Government for each school set out the powers and duties of governing bodies and the Instruments of Government set out the governing body's composition and working practices. They equate to a company's Memorandum and Articles of Association. There are two types of Articles and Instrument of Government in grant-maintained schools. Schools incorporated under the Education Reform Act 1988 were provided with model Instruments and Articles, individually approved by the Secretary of State, while schools incorporated under the Education Act 1993 operate with standard Instruments and Articles which are laid down in Regulations by the Secretary of State.

Appointments to governing bodies

155. At present four interests are represented on a governing body. These are parents, teachers, the local community, and the local business community. The evidence put to us by the National Association of Governors and Managers suggested that some governing bodies went out of their way to recruit particular aptitudes, experience and background, or professional skills in, for example, accountancy, law or banking. NAHT told us that governing bodies should undertake a “skills audit” to pinpoint gaps which needed to be filled. On the other hand evidence put to us by GMSAC suggested that a formal nominations process would be inappropriate and ‘frighten off [both] the senior executive and the carpet-fitter’.

‘There is no place for “placemen” on governing bodies.’ John Edwards, Honorary Secretary of the Association of Grant Maintained and Aided Schools

‘The key point about membership is that they [governors] are personally committed to the school and advancement of that school.’ Lawrence Upton, Chair of Governors of Katherine’s School, Harlow

‘... the argument for special expertise on the part of individual members or governors is directly anti-democratic and spurious.’ National Association of Councillors

‘... the fact that first and foundation governors outnumber the elected governors is a clear demonstration of lack of direct accountability to any particular body of people through the democratic process.’ Local Schools Information

156. We believe that the same principles should apply for appointments to grant-maintained school governing bodies as we have laid down in our first report and which Ministers have accepted. These are that selection should be made on merit, taking account of the need to appoint boards which include a balance of skills and backgrounds. The skills or key qualities sought should be outlined in the job description and “person specification”. We believe that the fears voiced over the introduction of a nominations process would be outweighed by the benefits accruing from a greater openness in appointments procedures — a view which was expressed in a number of submissions and in oral evidence.

157. We received some evidence which highlighted concerns over the statutory requirement that appointed representatives (first or foundation governors) had a statutory majority over elected representatives. The DfEE say that first governors are appointed to provide an element of continuity on the governing body and to give a longer term view in terms of policy and decision making. A foundation governor’s role is to make sure that the school retains its character (and where appropriate its religious principles), and that the school is run according to any trust deed or charitable scheme which defines its character.

158. We appreciate that there would be difficulties over giving parents full authority over the governance of the school. There is inevitably a risk that their actions will be coloured by a wish to see the school flourish in the short-term to the neglect of longer term strategy. We would however welcome any move to encourage parents to become actively involved

in collective discussion and, ultimately, the decision making process, without giving parent governors control of the governing body.

159. As matters stand at present, however, control of the governing body can be exercised exclusively by a united group of first governors. Not only do they constitute a simple majority of the governing body, they are sufficient in number to provide a quorum (one-third) to take major policy decisions. This is a curious position when a governing body contains members elected by the parents whose legitimate interest in decision-making is equally clear. A simple change in the present arrangements would answer this point.

R16. Steps should be taken to ensure that key decisions, such as budget making, major capital spending, and the appointment or dismissal of the Head, cannot be made without the support of a broad consensus of governors, including elected governors.

Representation

160. Neither the 1988 nor the 1993 Acts defines the terms 'local community' and 'local business community' although the Acts make provision for the appointment of at least two first governors who are members of the local community and require that the first governors, and here we quote the Act, must 'include persons appearing to them to be members of the local business community'. What is clear, however, is the nature of the local community varies from school to school — from rural village primary to inner-city comprehensive.

161. We have considered in that light the argument put forward by some witnesses for representative governors who would voice the concerns of specific constituencies, whether these are local authorities, non-teaching staff, nominees from voluntary organisations, or pupils. Others, like FAS, believe 'further prescription of membership reduces flexibility, potentially at the expense of attracting available local talent'. Clearly the board members elected at present by teachers are in a sense representative — it would be difficult otherwise for them to be effective — but we are not persuaded that a formalisation and extension of representation in schools is necessary for maintaining good conduct. In view of the special role of first governors, we believe there is a role for other 'community' governors from a wider range of backgrounds. While it is a minor presentational point, we believe that the title 'first governor' is misleading, and should be changed.

R17. The government should replace the term 'first governor' with 'community governor'. Such a change would not alter the status of first governors but would accurately reflect their role and the community from which they are drawn and to which they should be answerable.

162. It is important that the governing body does not take decisions in a vacuum. It can only benefit grant-maintained schools if they actively seek to include the views of other representatives of the community, such as prospective parents who may have a longer term view than parents of pupils who are about to leave the school. Schools might well consider ways of opening up annual parents meetings to these groups in various ways: by invitation, notices to local feeder institutions, advertisements in the local press, and dissemination through community groups to make the public at large aware that an 'open meeting' is taking place.

163. Teacher governors, as we have already explained, number one or two on the governing body and are elected by, and from, their number. There is no provision for non-teacher governors, although as Peter Acton, Chair of Governors at the Chetwood Primary School pointed out, 'we have more associate staff, as we prefer to call them, than teachers and we felt they should be represented'. Like Mr Acton, we found it difficult to understand why non-teaching staff are prevented from becoming first governors, although we recognise that they may be parent or foundation governors provided they meet the conditions. It seems strange that a member of the non-teaching staff in a County school can be a co-opted member of the governing body but that right is denied in grant-maintained schools (even in the same school if it becomes grant-maintained).

164. Large schools employ a wide-range of full and part-time non-teaching staff such as caretakers, cooks, secretaries, technicians and helpers who play an important role in the effective running of the school. We agree with the evidence we received that there are no good reasons for denying one group of people, who are directly employed by the governors and therefore directly affected by their decisions, representation on the governing body. We believe governing bodies should be free to include members of the non-teaching staff if they so choose.

R18. The government should remove the regulation which prohibits non-teaching members of staff from becoming first governors.

Sponsor Governors

165. The Education Act 1993 allows a secondary school's business sponsors or other sponsors to appoint up to four sponsor governors to the governing body. These are generally individuals from the business community, who serve terms of between five and seven years and may only be removed from office by those who appointed them. Only schools which receive Technology College or Language College status may also include up to four such governors, provided that each represents only one sponsor. It appears that grant-maintained schools have sponsor governors representing everything from large multi-national companies to small local businesses. Schools seeking Technology College and Language College status are required to raise £100,000 of private sponsorship as a condition of designation. In return the government gives £100,000 extra capital funding and extra annual funding of £100 per pupil to support implementation of their plans.

166. In answer to a Parliamentary Question from Stephen Byers MP about sponsor governors⁵, Robin Squire MP, Minister for Schools, said 'it would not be appropriate to publish the value of the sponsorship donated by each individual sponsor, since some sponsors may consider that to be confidential'. We are concerned about the propriety of a system which offers potential sponsors membership of the board of a publicly funded institution in exchange for payment, enabling sponsors to exercise disproportionate influence, and which effectively dilutes the elected representation. This category of governor represents another body and is accountable to it rather than the school's governing body. Only donations which do not seek to purchase influence can be permitted to be secret: we are surprised that any alternative arrangement could ever be thought proper for a public body.

R19. Any donation leading to the appointment of a sponsor governor must be reported in full in the annual report and accounts.

Term of office

167. The responsibilities of a school governor have increased greatly with the advent of grant-maintained status. We recognise that continuity and stability in the governing body is a matter of considerable importance, and believe that frequent changes in membership would seriously inhibit this and the governing body's ability to plan properly for the future. According to the DfEE, first governors have longer terms of office than elected members of the governing body for this reason.

168. We considered the need for the introduction of a maximum term of office, to address the situation where a potentially self-perpetuating group of first and foundation governors could reappoint themselves. A governor who was appointed, in the first instance, for seven years and reappointed twice more could serve for up to twenty one years.

'Having maximum terms of office would be a good defence against continued media/public criticism. But it would be wrong to lose valuable members just because of such a trigger.' The Funding Agency for Schools

'The introduction of regulation prescribing a maximum term of office makes no sense at all. Such a regulation could only lead to the loss to the education service of a significant number of experienced governors.' Brian Sherratt, Headteacher of Great Barr School

'... there needs to be stability in governing bodies.' GMSAC

169. We recognise that governing bodies need to balance experienced governors with novice governors and to maintain continuity and stability. We have concluded that it would be wrong to force experienced and able governors to stand down for no other reason than they had been re-appointed or re-elected for a second or subsequent term, but that this should be the exception rather than the rule. We also believe that the current regulations which allow first and foundation governors to be appointed for between five and seven years should be amended. It is out of line with generally accepted good practice, and is a particularly long time in the context of the life of a school and its pupils. Lengthy terms of office without the need for a review or reappointment are apt to lead to complacency and declining standards in any organisation.

R20. The government should reduce the term of office for first, foundation and sponsor governors to four years in line with the term of office for elected governors and make re-appointment or re-election for a third term the exception rather than the rule.

Removal of governors

170. The Secretary of State does not possess any powers to remove the elected governors and there is no provision for their removal unless they are disqualified under the provisions set out in the Instrument of Government. Only those who appoint foundation or sponsor governors are entitled to remove those categories of governor from office.

171. Mechanisms already exist for the removal of staff and pupils from schools. Governors, however, cannot be removed simply because they act contrary to the overall interests of the governing body or contrary to the interests of parents and the community. As David Hart, General Secretary of the National Association of Head Teachers, said '*they [the governing body] are stuck with that person whether they like it or not, and that individual, despite all the rhetoric about corporate responsibility, can cause mayhem within that governing body and within the community, and I find it [lack of power to remove] a rather strange omission.*' On the other hand, some evidence put to us reported instances whereby governing bodies had allegedly removed governors whose only failing was to oppose the views of the dominant group, or to raise difficult issues. As the Secondary Heads Association put it: 'a governor sensing a problem is advised by the DfEE to "put any information before the governing body"; that is the equivalent, in SHA's view, of inviting the den of lions to adjudicate on Daniel's future.'

172. We therefore believe that some form of mechanism is needed which enables the governing body to secure the removal of appointed governors but which provides an adequate right of appeal for individual governors to an outside body. The arrangements for FAS envisaged under recommendation R14 would give the Agency a greater involvement in casework and advising on complaints and the appointment and dismissal of governors. This expanded role might be further developed to provide conciliation and mediation as a means of avoiding and resolving disputes between governors and between heads and governors. However, our concern is that the independent arrangements which we consider valuable in all sectors should be developed in a way appropriate to the grant-maintained sector, and we should not wish to be prescriptive about how that should best be done.

R21. The Secretary of State should consider how best to promote conciliation and mediation arrangements in the grant-maintained school sector, perhaps along the lines proposed for universities.

Register of interests

173. We have noted that, in response to a recommendation contained in a PAC report on value for money in grant-maintained schools⁶, FAS has made mandatory the maintenance of a register of pecuniary interests linked to receipt of grant. Details of the register were included in the revised guidance on the financial arrangements between FAS and grant-maintained schools (the *Rainbow Pack*) which was published in October 1995. The *Rainbow Pack* requires members of the governing body and school staff with significant financial responsibilities to declare any business and personal interests in order to avoid any conflicts of interest. The register includes not only business interests such as directorships but shareholdings and other appointments of influence within a business or other organisation which may have dealings with the school. Disclosure extends to the business interests of relatives and other individuals who might exert influence. Sanctions exist for non-compliance.

174. The school's Instrument of Government sets out the circumstances where governors or others present at a meeting of the governing body may have to withdraw or take no further part in the discussion.

175. We welcome FAS's response to the PAC report. But following publication of the Government's consultation paper *Spending Public Money: Governance and Audit Issues*⁷, FAS should consider whether the current arrangements are in line with best practice set out there.

Clerk to the Governing Body

176. Each governing body must appoint a Clerk to act as its secretary and to ensure that its work is well organised. The Clerk is the principal adviser to the governing body on issues of propriety and regulation. He or she is also responsible for arranging meetings; and advising on how the Instrument and Articles of Government require the governing body to conduct its business. The law states that the Clerk cannot be a governor. Many schools appoint someone from the school's administrative or secretarial staff, such as the head's secretary or bursar.

177. While we recognise that, especially in smaller schools, it may well be appropriate for the head's secretary to act as Clerk, ideally the Clerk should be competent in, and knowledgeable about, the legal responsibilities of the governing body. The Clerk should be someone who can advise the governors and who is capable of resisting pressure from Governors where there is a risk of impropriety or maladministration occurring. We therefore consider it important that an inexperienced or junior clerk should be supported by a governor who is specifically given the task of taking an interest in legal requirements. We also believe that more advice and guidance needs to be available to Clerks. The recently published *Manual for Clerks and Governing Bodies*⁸, published by the Institute for School and College Governors, goes some way towards achieving this aim, and we welcome DFEE's plans to publish a handbook specifically for Clerks of grant-maintained schools. Training opportunities also need to be provided and taken up.

The Responsible Officer

178. The *Rainbow Pack* states that the role of the Responsible Officer is to ensure that the governing body discharges its duties under the Financial Memorandum by ensuring the efficient, economical and effective management of resources and expenditure including funds, assets, equipment and staff; that sound internal financial controls are in place; and that due account is taken of financial considerations in reaching decisions and in their execution. The Responsible Officer provides an independent check on the activities of the Principal Finance Officer (PFO), who is usually the head, and should not therefore become involved in the day to day operation of the financial systems.

179. The *Rainbow Pack* also says the Responsible Officer should not be a member of the school staff, nor the Chairman of governors. He or she may therefore be another member of the governing body or someone from outside the school. The *Rainbow Pack* goes on to say that the Responsible Officer should be a suitably qualified person to carry the function, and that the person selected 'must be able to show that the responsibilities being undertaken are fully understood and the importance of the role is fully recognised'.

180. We believe it is important that the Responsible Officer have unrestricted access to the external auditors and FAS. Larger schools may well feel that the Responsible Officer should have the support of an audit committee. We believe the Responsible Officer should have a formal role to play in alerting FAS to any misuse of public funds.

Guidance and Training

181. During the course of our study we were struck by the profusion of advice and guidance emanating from numerous organisations to grant-maintained schools. This is a growth industry within the education sector generally and the grant-maintained sector in particular with many organisations competing to sell their wares. There is at present, however, no compulsory training for governors. It is very much left to individual governing bodies to consider their own training needs and how these might be met either internally or externally. We believe it is important that governors undergo training which is appropriate to their role, taking account of their background, experience and the time they have available. We do not, however, believe that the extent and nature of such training can be prescribed centrally.

Powers of Chairman of the Governing Body to act in urgent cases

182. Decisions are normally only taken at meetings of the governing body, or by sub-committees whose decisions are later ratified by the full governing body. However, there are certain circumstances in which a decision is so urgent that a delay could seriously affect the interests of the school, pupils, parents, or employees of the school, and there is no time to call a meeting of the governing body. In such cases the Chairman or Vice-Chairman has the power to make the necessary decision without reference to the governing body.

183. Such action should be fully reported to the next full meeting of the governing body or at a specially convened meeting of the governing body called for the purpose. Some of the evidence put to us suggested that Chairman and Vice-Chairman were sometimes not accounting to the governing body for actions taken under these powers. Governors should ensure that any decisions taken in such circumstances are fully justified at the next full governors meeting and the action, with appropriate justification, minuted in the usual way.

Independent element in staff appeals procedure

184. A governing body may delegate functions and decision-making powers to sub-committees. However five statutory committees must be set up to oversee the delegated functions. Two of these committees are:

- the Staff Committee which has a minimum of three governor members (not including the head) and meets to consider disciplinary matters relating to school staff. The Committee has powers to suspend or dismiss staff
- the Staff Appeal Committee considers appeals against decisions to dismiss staff. It consists of an odd number of governor members but no fewer than five. The head, teacher governors and members of the Staff Committee cannot serve on this committee.

185. If a head or member of staff, for example, is dismissed and the staff appeal committee uphold the decision, the only remaining avenues open to an appellant are to the Secretary of State or to an Industrial Tribunal. We have been made aware of cases, both in evidence and from media reports, where suspension and dismissal of staff (especially headteachers) have given rise to concerns about the fairness of the decision. The only internal appeal is, in effect, to a further group of governors. Under these circumstances it may be difficult for one group of governors to overrule a decision taken by their close colleagues. Nigel Briars, headteacher of Calday Grange Grammar School felt that ‘at present pupils who are excluded from school have considerably more protection than staff’. We have also seen a recently reported case in which difficulties occurred in obtaining a quorum for an appeal. We are not convinced that governors who are not on the Staff Committee can always sufficiently detach themselves from the decisions taken by that committee. We therefore believe the arguments are strongly in favour of an independent element on staff appeal committees.

R22. Staff Appeal Committees should be strengthened by the inclusion of at least one independent person experienced in grant-maintained schools, or in the education or personnel field more generally, to serve in addition to the school’s own governors.

186. Our conclusions on grant-maintained schools should be applied insofar as the situation in Wales or Scotland, now or in the future, is comparable.