

Some background information on Foundation Schools (Our current status)

All community schools – primary, secondary and special - have the option to investigate foundation status. This leads to a change in governance of the school such that the governing body:

- Becomes the employer of the school staff
- Becomes the admissions authority for the school within the requirements of the school admissions code
- Takes on ownership of the school's land and assets

Foundation schools remain local authority maintained schools.

The process to become a foundation school takes a minimum of 14 weeks. [Download a flow diagram](#) of the process for an overview of the steps that must be taken.

Admissions

Facts about foundation status:

- The governing body in primary and secondary schools is the admission authority and has the right to determine an individual admission policy for the school and apply the criteria for entry. In special schools the LA remains the admission authority
- Foundation schools should be involved with the coordinated scheme which is administered on their behalf by the LA
- Foundation schools have the right to be members of LA forums including the schools' forum and the admission forum which plays an important part in producing a coordinated scheme and brokering agreement between schools
- Foundation schools can be influential in the outcome of coordinated schemes because all admission authorities within an LA have to agree the scheme
- Foundation schools should expect an additional delegated amount in their budgets to help offset the admissions responsibilities

Foundation schools must refer to:

- The Code of Practice for Admissions and the Admission Appeals Code of Practice. These are labelled statutory guidance. The admission authority must 'act in accordance with' the provisions of these codes
- The agreed LA coordination schemes

LA / foundation schools need to be aware of:

- Statutory consultation processes. Consultation on the admissions policy should be completed by 1 March and the arrangements determined by 15 April for admission in September of the following year

Any admission authority or school which was or should have been consulted, may object to your policy to the adjudicator. The new code extends the right of objection to an individual and also extends the right of the adjudicator to comment on any aspect of the admission policy

Owning the land and buildings

Facts:

- Foundation schools have more control over the use of school buildings, lettings and particularly the use of redundant buildings
- There are greater opportunities to explore initiatives such as extended schools and for the governing body and the school to take much more of a lead in developing this
- It is possible to sell surplus land subject to the Secretary of State's approval and cooperation of LA (foundation schools must adhere to published procedures on this matter)
- The school pays 20% of rates which may mean a slight addition to individual school budget depending on the LA funding formula. A requirement to submit accounts of private funds to the Charity Commission is the subject of recent legislation. There is a recognition by the Charities Commission that this should not be an additional reporting burden for schools. FASNA is involved in the current implementation discussions and will seek to ensure that there is no additional burden on schools
- It may be possible for Foundation schools to have a greater influence in any PFI contracts being negotiated with the LA as part of the Building Schools for the Future programme

LA / foundation schools need to know that:

- There is no change in the way in which a school receives capital funding. Schools still receive the formula capital amount depending on the size and type of school and retain access to funds for health and safety related work through the LA
- LAs have a statutory duty to treat all maintained schools equally regardless of the type of school. This means that all schools have access to funds retained by the LA for any capital projects over the LAs *de minimus* limit and be included in any PFI bid the LA is preparing
- If the governors decide to become a trust school, either by setting up your own trust or by joining an existing trust, the land and buildings transfer to the trust. Each individual school has the day to day management and financial responsibilities for it

Employer of staff

Facts:

- The governing body is the sole employer of all staff and for health and safety, they have legal responsibility as such
- Governors enjoy greater freedom to restructure and establish consistency particularly with regard to support staff as a single status employer

- The extended schools initiative and the introduction of Diplomas coupled with the recent workforce reform give individual schools an opportunity to restructure in a way that is suitable for their particular circumstances which may be easier to achieve as a foundation school
- The school is able to take decisions about the appointment of a new headteacher and deputy heads, subject to the implications of granting of LA advisory rights
- If advisory rights are granted the LA has the right to be present throughout the whole of the appointment process. See chapter 10 of the current Guide to the Law (pdf version)

LA / foundation schools need to be aware of:

- The need to comply with STPCD (School Teachers' Pay and Conditions Document) with regard to terms and conditions of teachers' employment
- The transfer of employment for all staff in a school now takes place under Education Regulations Paragraphs 29 to 32 of Schedule 1 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 rather than TUPE regulations. The effect of these provisions is still to protect an individual's employment rights on transfer. Any agreements entered into by the LA before this date, in respect of an individual's terms and contract of employment (including pension arrangements) must therefore be honoured by the new employer
- The need to ensure that the school has access to quality personnel advice either from the LA or an independent provider

Other matters

Additional information:

- Foundation schools can publish their own proposals to expand or make other alterations to the school
- Foundation schools should be represented on a number of statutory bodies eg the schools' forum. These often play a key role in determining LA policies and procedures. Membership of the schools' forum has to be determined by an election but this is not the case for the other bodies
- The school can determine term time dates
- Governing bodies can take more control over employing their clerk and the agenda for meetings
- Foundation schools must have at least one LA appointed governor
- Good financial practice is required and the benefits of an external audit even on an annual cycle may be a decision the governors take. The FMSiS accreditation remains applicable to all secondary schools and is desirable for others
- Membership of FASNA provides direct access to government and DCSF officials, providing the ability to all schools to help shape education policy and practice at the highest level

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Governors - FAQs (or myth busting)

Will there be lots of additional work for governors?

No. As much or as little as you wish to take on in the sense that most schools prioritise the areas they wish to review and deal with them in that order. Our experience is that governors take the opportunity of trust or foundation status to review their role in relation to their school and in particular appreciate the increased independence to determine the future direction of the school. Many governing bodies find that the impetus of becoming a foundation school enables them to and focus agendas and meetings more directly on to school improvement and strategic issues. The governing body can control its own workload more effectively as the need to respond to every LA directive is removed and there is no requirement to have a LA clerk which means that the governing body can determine the agenda.

Do community schools that adopt a trust become foundation schools in character?

Yes. A Trust school is a foundation school with a charitable foundation. A Trust school adopts what is known as incorporated charity status. Any community school can change character to a foundation school without becoming an incorporated charity and adopting trust status.

Will it have a negative impact on the local community?

It doesn't need to and can often free schools to better work with stakeholders. Our experience is that governors feel more comfortable with pursuing an active relationship with the local

community with regard to lettings for example, as the school is in a better position to respond to the needs of other groups.

As a primary governing body we haven't the capacity to take on any more initiatives

It is the governors of the school who make the decision to change the character of the school to either trust or foundation. The capacity of governors can be enhanced by using the Trust and Foundation Schools Partnership grant to buy in support to enable the change of character to take place. Once you have changed your character then it is possible to enter into arrangements with other primary schools and/or secondary/special schools to deliver initiatives and services together.

Will we need governors with different expertise?

It could be that the governors wish to harness local capacity and engage with their partners/local community in a way that builds the capacity of the governing body. It may also be the case that partners may learn from the expertise of your existing governors, leadership teams and colleagues. There are no specified skills or behaviours required for governance in a trust or foundation school that are different to those required for good governance in any school.

Are we required to set the same holiday dates as LA community schools?

No. A foundations school may set its own holiday dates though it may want to consider the dates of schools in the area so that families with children who attend different schools may have some consistency in respect of term time.

Will we be audited by the local authority?

Yes. Good financial practice is required and the benefits of an external audit even on an annual cycle may be a decision the governors take to supplement the audit programme of their LA. The FMSiS accreditation remains applicable to all secondary schools and is desirable for others.

"The school is able to take decisions about the appointment of a new headteacher and deputy heads." Is this true?

This is true but subject to the implications of granting the LA 'advisory rights'. If the governors agree to grant advisory rights to the LA then they have the right to be present throughout the whole of the appointment process. Further information about this can be found in the 'Governors guide to the law'. The requirement to publish advertisements for headteachers and deputy heads nationally still exists.

What is the position for non teaching staff in a trust and foundation school?

Trust and foundation status currently allows governors and leadership teams greater flexibility to determine the roles, responsibilities and salaries of none teaching staff. The trust

or foundation school adopts what is referred to as ‘single employer status’. The governors must therefore ensure that all staff employed by the school are paid according to a published structure that ensures equity within the single establishment (even if the trust school has other schools as its partners). Members of staff must be paid a similar salary for similar roles within the foundation school or within each constituent school in the trust, not across the entire trust or in line with local authority pay scales. This provides schools with greater flexibility to respond to their local circumstances and the nature of the local job market.

The governors of our school currently agree/approve the school budget. Do we still need to do that?

Yes. On the same calendar as a community school. The budget forecast for your school will continue to be published for your school according to the local authority timetable agreed by your schools forum. The schools forum will continue to be responsible for making decisions about budget allocations according to the locally agreed funding formula because you are still a maintained school. Each local authority will have its own timetable for devolving funding but as a trust or foundation schools it is possible to negotiate and agree alternative arrangements.

Can we sell our playing fields and use the money to build a new ICT suite?

It is possible to sell surplus land subject to Secretary of State’s approval and the cooperation of your LA. However foundation schools must adhere to published procedures on this matter.

What about building, are the governors responsible for the capital development of the school?

There is no change in the way in which a school receives capital funding. Schools still receive the formula capital amount depending on the size and type of school and retain access to funds for health and safety related work through the LA.

The local authority does have a statutory duty to treat all maintained schools equally regardless of the type of school. This means that all schools have access to funds retained by the LA for any capital projects over the authorities ‘de minimus’ limit and be included in any PFI bid the LA is preparing. This also means that foundation schools must be included in the development of the local asset management plan.

What does being our own admitting authority mean for the governors?

It means that the governors have the opportunity to determine the schools admission policy and arrange admission appeal panels. Special schools may be able to have a greater influence on their admission policy.

In any coordinated admission process your school must be kept fully informed and agree changes to the ranked order of admissions and waiting list movements if that is an LA responsibility in the coordinated scheme.

If you decide to organise your own admission appeal process you must still adhere to the Admissions Code of Practice but a school representative can present the school's case and may do this more effectively than an LA person.

It's true that there is some additional administrative work which needs to be done in school but you may decide that this is worth it. The information about potential entrants is very useful. Also, if the school is oversubscribed the governors admission committee must meet to agree the final list of offers but that this is not a burdensome meeting.

What about health and safety? Are we liable?

Yes. The governing body has the legal responsibility for health and safety issues.

Health and safety is about having good risk assessment strategies and management procedures for minimising risk. Governing bodies need to ensure that staff induction procedures include information about how health and safety matters are managed and what each individual's responsibility is. All schools, irrespective of the character have policies which relate to national guidelines where these exist, for example in the management of school visits. It is good practice to have a health and safety committee with representatives from all areas of the school community including governors, which reports to a committee of the governing body to raise awareness within the school and ensure that risks are identified and appropriately managed.

"If you become a trust school the land and assets are transferred to the trust so they look after them". Correct?

No. If you decide to become a trust school either by setting up your own trust or by joining an existing trust then it is true that the land and buildings transfer to the trust. However, as an individual school you still have the day to day management and financial responsibilities for them.

"If the governors are the employer we can determine the contracts of employment of all staff". Correct?

No. As the employer governors need to comply with STPCD (School Teachers' Pay and Conditions Document) with regard to terms and conditions of teachers' employment. The transfer of employment for all staff in a school now takes place under Education Regulations paragraphs 29 to 32 of Schedule 1 to the School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2007 rather than TUPE regulations. The effect of these provisions is still to protect an individual's employment rights on transfer. Any agreements entered into by the LA before this date, in respect of an individual's terms and contract of employment (including pension arrangements) must therefore be honored by the new employer.

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