

Questions and Answers raised in initial consultation with parents and staff

THE BASICS

Q. What is a Foundation school?

A. A Foundation school is a self-governing school that owns its assets, employs its staff and is its own admissions authority. It is a maintained school as its funding comes via the local authority.

Q. How does a school acquire Foundation status?

This involves a decision by the Governing body following a period of consultation with parents, the Local Authority, and other community stakeholders, and the publication of statutory notices.

Q. Would it change what children learn?

A. Like all maintained schools, Foundation schools teach the National Curriculum and would still be inspected by OfSTED.

Q. What would change if our school became a Foundation school?

A. The school would change category to a Foundation school under the provisions of the Education & Inspections Act 2006. This means that the school would take on new areas of responsibility:

- 1. The Governing body would be the employer of staff rather than the Local Authority*
- 2. The Governing body would be responsible for setting admissions arrangements in accordance with the law and the Department for Education Admissions code.*
- 3. The Governing body would have day-to-day control of the school's land, buildings and assets.*

Q. How is a Foundation school different from a maintained school?

A. It isn't. Foundation schools are part of the family of Local Authority maintained schools.

Q. Isn't this the same as the old Grant Maintained schools or Academies?

A. No.

Foundation schools remain part of the Local Authority family, whereas Grant Maintained schools opted out and were funded directly. Grant Maintained schools were allowed to select pupils by ability, whereas Foundations schools would have to act in accordance with the Department for Education Admissions Code and would not be able to introduce selection by ability.

Academies are different as they are funded directly from the Department for Education and are not part of the local authority family of schools. Academies do not necessarily have day to day control of the school's land, building or assets.

Q. How would the school be funded?

A. Foundation schools are funded on the same basis as other maintained schools, according to the Local Authority's funding formula. They would be allocated their own capital money on the same basis as other schools.

Q. Can the school land be sold off?

A. If a Governing body wished to dispose of land (both playing field and non-playing field) , it must inform the Local Authority of its plans to dispose of such land. There are strict national guidelines restricting the sale of school land which would need to be met. Local Authorities can object to proposals if they deem they are not in the long-term interest of the school or would disadvantage the wider community. Local Authorities can object to reinvestment proposals and claim a share of the proceeds attributable to public investment in the land. Where local agreement cannot be reached, the matter is referred to the Schools' Adjudicator for resolution.

If Foundation status is acquired by a school, Local Authorities cannot sell surplus school land for housing or to raise money, nor can they force a Foundation school to do so. Proceeds from the disposal of land would have to be used for capital investment in educational assets in the school itself or the maintained sector.

Disposal of school playing fields or land would continue to require the consent of the Secretary of State.

GOVERNANCE

Q. Would there be a change of governors?

A. The make-up of the Governing body would still include elected parent and staff governors and others appointed by the Local Authority and co-opted from the community. There would be no fewer parent governors: as with all maintained schools' current arrangements, one-third of the governors would be parents.

Q. How is the Governing body of a Foundation school made up? What is the legal requirement in the composition of the Governing body?

A. In May 2014, new statutory guidance was published setting out the arrangements for the constitution of school governing bodies.

Requirements for all maintained schools - the governing body must not be smaller than seven members, and must include:

- at least two parent governors;
- the headteacher unless the headteacher resigns as a governor;
- one, and only one, staff governor;

- one, and only one, local authority governor;
- the governing body may appoint as many additional co-opted governors as they consider necessary. However, the number of co-opted governors who are eligible to be elected or appointed as staff governors must not, when counted with the one staff governor and the headteacher, exceed one-third of the total membership of the governing body.

There is no upper limit but governing bodies should be aware of the statutory guidance in deciding their size.

Additional requirements for foundation schools -

- *foundation schools without a foundation must have at least two partnership governors*

What are partnership governors?

Partnership governors are appointed by the governing body. Individuals are only eligible to be nominated as a partnership governor if the person nominating them believes that they have the skills needed to contribute to the effective governance and success of the school. Likewise the governing body may only appoint a person as a partnership governor if they believe that they have the skills needed to contribute to the effective governance and success of the school.

The governing body must first try to appoint partnership governors from those nominated by the parents of registered pupils at the school and such others in the community as they consider appropriate (for example, staff, community organisations and other local bodies).

Where the governing body cannot fill all the vacant posts from among the nominees, either because there were not enough or because they rejected some of the nominees as ineligible, then the governing body can fill those posts from among persons nominated by governors

MONEY, LAND AND ASSETS

Q. Who owns the land and assets of Foundation schools?

A. Foundation schools own their own land and assets. There is a transfer of ownership from the Local Authority to the school Governing body. The Secretary of State has the power to issue a direction in the event of any dispute in respect of such a transfer.

Q. Who controls the use of the premises of Foundation schools?

A. The Governing body controls the use of the premises during and outside school hours. Governing bodies are expected to be sympathetic to the needs of the local community when deciding out-of-hours use.

The Local Authority still has a duty to maintain the school and to provide (and fund) new premises if, for example, a Foundation school was to be destroyed or substantially damaged by a fire. As such it retains an 'insurable interest' in Foundation schools.

Q. Does all a Foundation school's land transfer to school governors?

A. Regulations set out what land should transfer. In the case of a community school becoming a Foundation school, all land held and used by the Local Authority for the purpose of the school would transfer and be vested in the school's Governing body.

Q. What powers does a Foundation school have to dispose of its land?

A. See answer above. Foundation schools are entitled to seek to dispose of their land, but in most cases the permission of the Secretary of State is required. It is open to the Secretary of State to decide that the Local Authority should have a share of the funds raised if they are not required for reinvestment in the school.

Q. How are Foundation schools funded?

A. Foundation schools are funded through the same formula as other maintained community schools. There are two factors within the formula that are particularly relevant: Foundation schools receive additional funding through the admissions factor in the formula to recognise the additional costs of managing the admissions process, including appeals. The schools receive a reduced allocation through the premises factor to reflect reduced VAT on energy for schools that have charitable status.

Q. Do Foundation schools pay reduced rates?

A. Foundation schools have charitable status and rates are reduced by 80%. Non Foundation School maintained schools rates are paid at actual costs so this reduction is helpful to the overall budget for school funding rather than being of direct benefit to an individual school.

Q. Do Foundation schools have different freedoms in managing their budget?

A. **There is no change.** All maintained schools are subject to the local authority's requirements for financial management in schools, under which, for example, they are required to provide budget information. Where there are grounds for serious concern, the Local Authority may suspend delegation of the budget for any school.

Q. Who is responsible if there is a problem with a building at a Foundation school?

A. Governing bodies are only responsible for those things for which they have received funding delegated from the Local Authority. It would be necessary to ensure the assets are properly insured. Where there is an emergency, Local Authority support would be available as for any other maintained school.

STAFFING

Q. What does Foundation status mean for staff?

A. Staff would be employed by the Governing body. For community schools, when they acquire Foundation status, existing staff would transfer to a new employer – i.e. from the Local Authority to the Governing body - under **TUPE** which protects their existing conditions of service. Existing and new teaching staff would continue to work under the terms of the School Teachers' Pay and Conditions Document. The school would set out the terms and conditions for new support staff.

Q What is TUPE?

The **Transfer of Undertakings (Protection of Employment) Regulations 2006** is known as TUPE. These are the United Kingdom's implementation of the [European Union](#) Business Transfers Directive. It is an important part of UK labour law, protecting employees whose business is being transferred to another business. The regulations' main aims are to ensure that, in connection with the transfer, employment is protected:

- employees are not dismissed
- employees' most important terms and conditions of contracts are not worsened
- affected employees are informed and consulted through representatives

Q. Who is responsible for employing staff in Foundation schools?

A. The school Governing body is the employer. Therefore it has the full range of employer responsibilities under employment law. The Governing body usually delegates responsibility for day-to-day staffing matters to the headteacher, as is the normal practice in Community schools.

Q. Who appoints the headteacher at Foundation schools?

A. The school Governing body is responsible for setting up a selection panel of at least three governors. The Governing body may grant 'advisory rights' to the Local Authority or to a representative of the Local Authority, who would then be entitled to attend meetings of the selection panel and offer professional advice, but would not be able to vote. Where the Governing body has not agreed advisory rights with the Local Authority, the Secretary of State may determine that such rights should be granted. The Governing body has to provide the Local Authority with details of the candidates selected for interview and must consider any views the Local Authority may have on the unsuitability of any particular candidate.

Q. What about the appointment of other teaching staff?

A. The school Governing body is again responsible for such appointments. The Local Authority or a representative would have the right to attend selection meetings to offer advice if that has been agreed by the Governing body or determined by the Secretary of State.

Q. What liabilities may attach to the Governing body in respect of employment matters?

A. The Governing body may, as employer, in some circumstances have to appear at an Employment Tribunal to defend their decision if, for example, candidates for a post at the school complain that a decision or procedure discriminated against them or if an employee complains that they had been dismissed unfairly. In cases of dismissal, the Local Authority has to pay any compensation or legal costs awarded by an Employment Tribunal unless they can show that they have good reason to charge the school's delegated budget – for example, if the Local Authority had previously advised the Governing body that an Employment Tribunal was likely to decide a dismissal was unfair.

Q. Who is responsible for the cost of premature retirements and compensation for redundancy?

A. The Governing body, as the employer, can grant premature retirement to the staff either for reasons of redundancy or as termination of employment in the interest of the efficient discharge of their employer function. The Governing body also decides on the level of compensation to grant any member of staff they may make redundant. The Local Authority, as the 'compensating authority', has to pay 'mandatory compensation' towards a teacher's annual pension and retirement lump sum if they are granted premature retirement by the Governing body. However the Local Authority has the power to take the costs of premature retirement from a school's delegated budget if the Authority has not agreed to the premature retirement. Similarly, the Authority is empowered to take the costs of discretionary compensation for redundancy from a school's delegated budget if they have good reason to do so (an example might be if the Local Authority thought the discretionary payment in a particular case was too high in relation to its own policy).

Q. How are the pensions of teaching and non-teaching staff affected by a school acquiring Foundation status?

Teaching staff stay in the Teachers' Pension Scheme and are not subject to any change. The Local Authority continues to be responsible for completing and signing off all the relevant documentation in relation to individual staff pensions.

Non-teaching staff are allowed to continue to be in the Local Government Pension Scheme if the Local Authority, with the consent of the school Governing body, has by a statutory resolution specified them to be eligible to belong to the scheme. Otherwise the non-teaching staff would no longer be members of the LGPS and it would be for them and the school Governing body to make alternative pension arrangements. *The Governing body of Charles Dickens Primary School has resolved to ensure continuity of pension arrangements for support staff through the Local Authority Pension Scheme.*

Q. What legal and personnel advice or support is available to Foundation schools from the Local Authority?

A. **There is no change.** Foundation schools, like all other schools maintained by the Local Authority, are able to purchase a range of legal and personnel services from the Local Authority as offered. No additional legal or personnel services are available from the Local Authority. Schools are not restricted to purchasing these services from the Local Authority. The school budget may have to stand certain costs, for example compensation or legal costs awarded by an employment tribunal if the Governing body makes an employment decision that has not been supported or advised by the Local Authority. *The school currently buys its HR services from Southwark and payroll and financial accounting from external providers.*

ADMISSIONS

Q. What would happen to admissions?

A. The school would set its own admissions arrangements. The admissions authority for community schools is the Local Authority but with the acquisition of Foundation status this power transfers to the Governing body. They must operate within the same legal framework as all other maintained schools: they must act in accordance with the DfE School Admissions Code and may not introduce selection by ability.

The Governing body is also responsible for managing the admissions appeal process with an independent panel.

Q. What statutory framework governs the admissions process?

A. All admission authorities must have regard to the statutory guidance within the Schools Admissions Code of Practice and the School Admission Appeal Code of Practice. The Admissions code provides guidance on acceptable oversubscription criteria. Foundation schools are included in the co-ordinated admissions process and must consult other admissions authorities on their admission arrangements before determining them. The co-ordinated process ensures admission details are published according to a common timetable.

Q. How are admissions difficulties resolved?

A. Local authorities must each establish an Admissions Forum to enable discussion of existing and proposed admission arrangements and to promote agreement on any difficult admissions issues in the area. School Adjudicators, appointed by the Secretary of State, determine school admissions issues where local agreement has not been possible.

Q. Can Foundation schools select pupils?

A. No

Q. Can the Local Authority direct admissions to a Foundation school?

A. **There is no change.** Under Section 96 of the School Standards & framework Act 1998, and in accordance with the statutory code of practice on school admissions, the Local Authority may direct the admission of a child refused admission or permanently excluded from schools within a reasonable distance if no other local school is available. The Governing body may appeal to the Secretary of State within 15 days.

A Foundation school may be named in a child's statement of SEND and the school would be legally required to admit the child in such circumstances.

Q. Are there special arrangements to allow Foundation schools to expand?

A. No. **There is no change.**

RELATIONSHIP WITH THE LOCAL AUTHORITY

Q. Would becoming a Foundation school give us more freedom from the Local Authority?

A. Foundation schools manage their own assets, employ their own staff and set their own admissions arrangements. This amounts to more freedom for community schools that acquire Foundation status. The school would remain part of the family of Local Authority maintained schools. It would still be funded by the Local Authority on the same basis as other schools; it would have to act in accordance with the Admissions Code and would be entitled to be represented on the Local Admissions Forum and would take part in co-ordinated admissions arrangements. The Local Authority would be able to intervene if the school is failing or underperforming. The Local Authority would be able to publish proposals to close the school.

Q. Does the Local Authority have powers of intervention in Foundation schools?

A. **There is no change.** Statutory guidance from the Department of Education makes it clear that all schools causing concern should receive 'support' from their Local Authority. Local Authorities and the Secretary of State have powers of intervention to tackle problems of schools requiring special measures or having serious weaknesses.

Local authorities also have powers to intervene in schools that have been the subject of a formal warning and where the Governing body has not complied with that formal warning. The Local Authority is able in such circumstances to appoint extra governors and/or suspend the school's Governing body. The Local Authority may also seek approval from the Secretary of State to replace the Governing body by an interim executive board where the use of other intervention powers has failed or would in their view be likely to fail.

EXTENDED SCHOOLS (e.g. Breakfast and After School Club)

Q. What powers does the Governing body of a Foundation school have in relation to extended schools?

A. **There is no change.** The Governing body has the same power to provide, or enter into contracts to provide, any facilities or services that would further any 'charitable purpose' for the benefit of pupils at their school, families of pupils, and people who live and work in the local community. 'Charitable purpose' in this context

means services and activities such as childcare, adult and family learning, parenting support, coordinated health and social services etc.

Q. What limitations are there on such activities?

A. There is no change. A Governing body of a community or Foundation school cannot engage in any activity that might interfere with its legal duty to conduct the school with a view to promoting high standards of educational achievement at the school. The Governing body's powers in this respect are also limited by any restrictions contained in the school's instrument of government and/or to any directions issued by the Local Authority regarding the control of school premises.

WIDER PARTNERSHIPS

Q. How does Foundation status fit with federation?

Schools can federate with or without Foundation status. Foundation schools can also work with other schools in the same way as they did before acquiring Foundation status.

HEALTH & SAFETY

Q. Who is responsible for health & Safety issues at a Foundation school?

A. Statutory health & safety responsibilities fall to the Governing body as the employer and on the headteacher and staff as employees. Under the Health & Safety at Work act and related regulations, the Governing body has a range of legal responsibilities as employer, including devising and implementing a health & safety policy for the school, allocating adequate resources, carrying out accident reporting and investigation, ensuring access to a 'competent person' to assist with the

management of health & safety, implementing various monitoring procedures and keeping up-to-date with changes in the health and safety legislation. The Governing body of a community school would have the remit to monitor health and safety in the school and to set related policies.

LIABILITIES

Q. Does Foundation status confer any additional liabilities on the school Governing body?

A. The Governing body has additional liabilities related to its responsibilities as the employer of staff, the owner of the school land, buildings and assets, and as its own admissions authority. The Governing body would need, therefore, to take out adequate insurance to cover its potential liability for negligence in carrying out these responsibilities. This can be either arranged by the Governing body or through the Local Authority. If a Governing body makes its own arrangements then the Local Authority is entitled to check that those arrangements are adequate and can charge the cost of additional insurance to the school's delegated budget if they deem the arrangements to be unsatisfactory.

Q. Are individual governors personally liable for the Governing body's decisions and actions?

A. Because the Governing body is a corporate body, individual members are generally protected from personal liability in such circumstances. Provided that they act honestly, reasonably and in good faith, and as mandated by a minuted resolution of the Governing body or its committees, any liability would normally fall on the

Governing body as a whole rather than on individual members.

Q. What responsibilities to Foundation schools have for children with SEN?

A. **There is no change.** All schools must take account of the statutory code of practice on Special Educational Needs. As with all schools, the Governing body must admit any pupil with special educational needs whose statement issued by the Local Authority names their school. Before naming a school in a statement, the

Local Authority must consult the school Governing body. The Governing body is responsible, with the headteacher, for deciding the school's general policy and approach to meeting children's special educational needs and disabilities, stated or otherwise.

The Governing body has a legal duty to make every effort to ensure that the necessary special arrangements are made for any pupil who has special educational needs. Governing bodies do not have the right of appeal to the SEN & Disability Tribunal over issues concerning the statutory assessment and statementing procedures for children with special educational needs.

Q. How does the Disability and Discrimination Act affect Foundation schools?

A. **There is no change.** There is a duty on all schools, including Foundation schools, not to discriminate against pupils or prospective pupils on the grounds of disability. Schools, and Local Authorities, are under a statutory duty to plan to increase access to education for disabled pupils over time.

SCHOOL ATTENDANCE

Q. Who is responsible for enforcing the attendance of pupils of compulsory school age attending Foundation schools?

A. **There is no change.** The Local Authority has the legal duty to enforce school attendance in all types of maintained school. The school Governing body, for its part, has a legal duty to assist the Local Authority by keeping an admissions and attendance register in the statutory format and for telling the Local Authority about any pupils who do not attend regularly or who are absent for long periods.

EXCLUSIONS

Q. Who is responsible for exercising the power to exclude a pupil from a Foundation school?

A. **There is no change.** Like all other maintained schools, only the headteacher (or acting headteacher) has the power to exclude a pupil for a fixed term or permanently.

Q. What is the Governing body's role in exclusions?

A. **There is no change.** As in all maintained schools, the governors' role is to review the headteacher's decision to exclude permanently or for certain fixed term exclusions. They can direct reinstatement of the pupil in certain circumstances if they so resolve. The governors of all types of maintained school must have regard to DfE guidance in reviewing exclusions.

Q. Who deals with appeals against decisions of Foundation school governors to uphold a permanent exclusion?

A. **There is no change.** As with all types of maintained school, such appeals are heard by an appeal panel established by the Local Authority.

WHAT IF SOMETHING GOES WRONG?

This section summarises the accountability and intervention regime that covers all Local Authority maintained schools and explains what would happen if there were problems with a Foundation school.

School Standards

Like all maintained schools, Foundation schools would be subject to the OfSTED self-assessment and inspection arrangements. The Local Authority and Secretary of State have powers of intervention if a maintained school is failing or underperforming.

Keeping Children Safe

The Governing body is responsible for establishing child protection procedures and for health and safety within the school and on school trips. The Governing body must ensure that child protection and health & safety requirements would be met if external partners come into school, and must keep a central register of all Identity and DBS checks. This is the case for all maintained schools.

Finance

The school would continue to be funded by the Local Authority through the Governing body. Foundation schools would follow the financial reporting procedures laid down by the Local Authority, which would be able to suspend the right to a delegated budget if there are serious problems.

Employment

As the employer, the Governing body is responsible for all staffing issues. Teachers would continue to be covered by the School Teachers' Pay & Conditions document and the pay and conditions of all staff being transferred would be protected by TUPE regulations.