

Governor Services

Frequently Asked Questions – for Covid-19

What should Governing Boards concentrate on at this time?

In these unprecedented times the DfE has recommended that boards should suspend normal business and focus on two essential elements:

- **Business critical decisions**
- **School providing its Covid-19 purpose in accordance with DfE guidance**

Boards should prioritise providing support to their school leaders, and staff where needed, to allow them to get on with operational matters.

School leaders should stay in touch with the governing board in a proportionate way, and that includes providing information on the welfare of staff and pupils, so that you as boards can retain a strategic overview of the situation within school.

For a more in-depth overview of this, please see our [weekly round-up](#) presentation on GovernorHub.

What is “Chair’s action”?

It is best for all decisions to be taken collectively by the governing board. However, there may be circumstances where an *urgent decision* needs to be taken but it is not possible to convene a meeting of the governing board or hold a quorate meeting. In this instance, the Chair can make the decision on behalf of the board and report this back at the next full governing body meeting. However, there are restrictions to this, and you should seek advice from your clerk or Governor Services if in doubt.

Chair’s action for maintained school governing boards:

In cases of urgency where a delay would be likely to be seriously detrimental to the interests of the school, a pupil, a parent or member of staff, the maintained [School Governance \(Role, Procedures and Allowances\) Regulations](#) set out the provision in Regulation 8 for the delegation of functions to the chair or vice chair (if the chair is unable to act). These functions do not extend to approving the budget, the suspension of governors and excluding pupils, as set out in Regulation 19.

Chair’s action for academy trust boards:

Whether chairs and vice chairs of academy trusts and academy committees (LGBs) can be delegated functions in cases of urgency will depend on the provision made in schemes of delegation or by trustee resolution. If no such provision currently exists, then it may be advisable to call an urgent trustees meeting to approve the principle and circumstances in which decisions can be made by individuals in cases of urgency.

Can the budget be approved by Chair's action?

No, for **maintained schools** this is prohibited under Regulation 19 of the Roles, Procedures and Allowances Regulations. Regulation 8 allows the chair to act on behalf of the board where any function can be delegated to an individual. Regulation 19 does not allow the approval of the budget because the approval of the budget cannot be delegated to an individual.

However, for both **maintained schools** and **academies**, approval of the budget can be delegated to a committee, although for best practice we would recommend that the whole board have oversight of financial situation of the school.

Can policies be approved by Chair's action?

Yes, in cases of urgency some policies can be approved by Chair's action. This may be particularly necessary where there are updates to statutory documents such as [Keeping Children Safe in Education](#) and an updated Child Protection policy is required to be in place before the full governing board are able to meet. In this instance, the Chair can approve the policy and the board can then agree this approval at the next board meeting.

Can staff appointments be approved by Chair's action?

No. In general staff appointments are an operational duty and should be delegated to the senior leader of the school. For the appointment of a headteacher or deputy this should not be approved under Chair's action. The process should be delegated to a panel of governors with the support from the local authority and final decision of appointment of a candidate should be approved by the whole board at a full governing body meeting.

Can the governing body make decisions over email?

We do not recommend board undertake to make decision by email.

For maintained schools Regulation 14 of the Roles, Procedures and Allowances Regulations states *"the governing body may approve alternative arrangements for governors to participate or vote at meetings of the governing body including but not limited to by telephone or video conference."*

This should not be interpreted as boards having scope to undertake board business via email. The reason for this is that governors must be able to be identified in person and able to take part in the discussion/hear all the points raised; this is not necessarily the case with conversations over email or on GovernorHub. It should also be read in conjunction with Regulation 14.3: *"Every question to be decided at a meeting of the governing body is to be determined by a majority of the votes of the governors present and voting on the question."* This means live, dynamic participation, not a response to email which can have a time lag and also cannot guarantee the person emailing is the actual governor as they cannot be identify via any personal attributes (ie their voice/face); even if they have a

personal email address this does not guarantee that it is them sending the message and likely does not benefit from cross-discussions and input from other members of the board.

Can boards have virtual meetings?

Yes. **For maintained schools** this is covered under Regulation 14 of the Roles, Procedures and Allowances Regulations (see question above for more detail). The Regulations regarding quorum, membership and decision making remain the same as if the governors were meeting together physically:

- (1) The quorum for a meeting of the governing body and for any vote on any matter at such a meeting, is one half (rounded up to a whole number) of the membership of the governing body.*
- (2) For the purposes of paragraph (1) the membership of the governing body does not include vacant positions on the governing body.*
- (3) Every question to be decided at a meeting of the governing body is to be determined by a majority of the votes of the governors present and voting on the question.*

For Academies the articles of association should be consulted to see if this provision is available. The [DfE model articles of association](#) has provision under Article 126:

“Any Trustee shall be able to participate in meetings of the Trustees by telephone or video conference provided that:

- a. he has given notice of his intention to do so detailing the telephone number on which he can be reached and/or appropriate details of the video conference suite from which he shall be taking part at the time of the meeting at least 48 hours before the meeting; and*
- b. the Trustees have access to the appropriate equipment if after all reasonable efforts it does not prove possible for the person to participate by telephone or video conference the meeting may still proceed with its business provided it is otherwise quorate.”*

Virtual Governance should be in a governing board's Terms of Reference (ToR) and should be regularly reviewed. In the Circle and Committee ToR [Resources on GovernorHub](#), we have identified key points that need to be addressed in the Standing Order and these are as follows:

“The Board may agree to operate virtual governance at some or all of their meetings. Virtual governance can only take place by means of telephony or video conferencing. Decisions can only be made following governor attendance and informed discussion at a quorate meeting.

To enable virtual governance the following needs to be considered, approved, evidenced in the minutes and followed in practice:

- How to ensure integrity of confidentiality is upheld.
- How many governors may participate within a virtual meeting
- How to ensure the meeting will always remain quorate
- How to ensure all can participate within the meeting
- How to manage virtual voting – especially by secret ballot
- Technology required and capable of working within school intranet/internet system”

In practice the chair can make a chair's action to approve virtual governance, if the board do not already have terms of reference that allows this, the chair can approve this as a chair's action which can be ratified at the next full governing board meeting (ie the one they are going to do via Skype/or alternative virtual platform). There are many platforms that you can use. GovernorHub have some helpful videos to show how easy it is to use, and they are available on [GovernorHub in the help section](#).

Please consider carefully how your clerk will be expected to manage such situations, to include their physical situation, venue/location and access to equipment. We recommend that the vice chair takes notes as well as the clerk. If connection is lost due to IT issues, there an additional record what was said and discussed. This can then be collated with the minutes to make sure you have a fair record of that meeting.

Is an Associate Member a governor?

No. Some boards use the term “associate governor” but this is misleading as an associate member is not legally a governor. Associate members can be appointed to a board to assist with a specific element of governance or to bring their particular skill set to the board without having the legal responsibilities of a governor or having voting rights.

For maintained schools the [School Governance \(Constitution\) Regulations](#) sets out the definition of each category of governor. Part 2, section 12 states “‘associate member’ means a person who is appointed by the governing body as a member of any committee established by them but who is not a governor”.

The term of office for an associate member is set out in Regulation 18 of the Constitution Regulations:

“An associate member may hold office for a period of four years, or such shorter period (not being less than one year) as may be determined by the governing body at the dates of the appointment”

Regulation 24 of the School Governance (Roles, Procedures and Allowances) (England) Regulations gives an outline of how an associate member can function:

Associate members

24.— (1) *The membership of any committee may include associate members.*

(2) *Subject to paragraph (3), an associate member has such voting rights in a committee to which*

that person is appointed as are determined by the governing body.

(3) *An associate member may not vote on any business transacted by any committee unless the*

associate member is aged over 18.

(4) *An associate member may be removed from office by the governing body at any time.*

Associate members do not have any voting rights at full governing body meetings, only at committee level where the board has included this in their terms of reference.

For Academies: There are no provisions for the appointment of associates members to trust boards.

What happens if my term of office expires?

Under normal circumstances if a governor's term of office expires, they legally cease to be a governor.

We are in contact with the DfE and awaiting their decision regarding the possibility of an allowance to extend governors terms of office in these exceptional times, especially for Parent and Staff governors whose re-election would be extremely challenging at this time. Please watch out for more information on GovernorHub. In normal circumstances the information below would apply:

For maintained schools the School Governance Constitution Regulations states that “*a governor holds office for a fixed period of four years from the dates of that's governors' election or appointment*”.

This does not prevent a governor from resigning from office, being removed or disqualified, or being appointed and elected again within the four years. The exception to this is the ex-officio posts, such as the headteacher, or the local priest holding an ex-officio foundation governor office. In these cases, the person holds office for as long of they hold the position from which the governorship derives.

Should governors wish to continue to hold office for another term they should discuss this with the Chair of governors and Clerk to ensure that sufficient time to given for the appointment to be approved by the relevant body:

Category of Governor	Appointing body	How to be reappointed?
Foundation	Diocese or Trust	Clerk will send reappointment documentation to diocese or foundation trust. Give at least 6 months' notice before term ends. A letter from the diocese/foundation trust should be received to confirm appointment and this should be passed on the clerk for inclusion in minutes.
Parent	Elected by parental community	Stand for re-election Headteacher is usually the Returning Officer
Staff	Elected by staff community	Stand for re-election Headteacher is usually the Returning Officer
Co-opted	Appointed by board	Board approve re-appointment at full governing body meeting
Local Authority (LA)	Appointed by board <i>following</i> nomination and approval by Local Authority	Clerk to send re-nomination documents to LA for consideration. Give at least 1 month notice before term ends. A letter from the LA will be sent to the governor and this should be passed on the clerk for inclusion in minutes.

For Academies, please refer to your Articles of Association and Scheme of Delegation for specific information about your own Trust. The DfE model articles of association, Article 64 states *"The term of office for any Trustee shall be four years, save that this time limit shall not apply to any post which is held ex officio. Subject to remaining eligible to be a particular type of Trustee, any Trustee may be re-appointed or re-elected at [a General Meeting] [an Annual General Meeting]"*.

How should a board manage a conflict of interest?

Conflicts of interest should be managed in the same way as they would in ordinary circumstances.

The [Governance Handbook](#) 2.3.12 says *"In order to make credible decisions that are in the best interest of pupils it is essential that the board has an effective approach to conflicts of interest. All boards should prevent conflicts of interest from affecting their decisions by removing them or managing them as appropriate. For example, it is unlikely that the conflict of interest that would arise from a close family relationship existing between someone on the board and a senior executive leader could be managed fully, and hence in most circumstances this situation would be best avoided altogether"*.

The [NGA](#) advises: If you are a director of an academy trust or a governor of a voluntary aided, voluntary controlled or foundation school, you are a charity trustee. Conflicts of interest are common in charities – it doesn't mean you've done something wrong. However, you must prevent them from interfering with your ability to make a decision that is only in the

best interests of the charity. A trustee has a duty to act exclusively in the interests of the charity with no regard whatsoever to the interest of the body that may have appointed them.

What is a conflict of interest?

The term is used to include both conflicts of interest (usually a financial interest) and conflicts of loyalty (usually because of a duty to another body or a similar nonfinancial relationship). Either could (or could appear to) affect your decision making. For example, you would have a conflict of interest where:

- you could benefit financially or otherwise from your charity, either directly or indirectly through someone you're connected to
- your duty to your charity conflicts with an obligation you have to another organisation or person.

The duty on trustees is to prevent conflicts of interest from affecting a decision. So, if possible you should avoid the conflict, rather than just manage it. If your charity is a company, you have a duty as a director to avoid conflicts of interest.

"A trustee has a duty to act exclusively in the interests of the charity"

What should the conflicted trustee do?

In most cases, it's sufficient for the trustee to declare the interest and not take part in the discussions or decision. If it is only a conflict of loyalty the other trustees might decide that it would be helpful for the conflicted governor to take part in and inform the discussion.

The articles of a charitable company (such as an academy) might include a power for the non-conflicted trustees (directors) to authorise a conflict. However, in the Charity Commission's view, the articles should only allow directors to authorise a conflict where there is no direct or indirect benefit of any kind to a director or a connected person. This will only permit authorisation of conflicts of loyalty. Company directors must declare an interest in any proposed or actual transaction or arrangement with the company. Failure to do so may constitute a criminal offence.

If a conflict is more serious, for example it affects several trustees or repeatedly arises, the trustees should consider whether they should avoid the transaction altogether, or whether a trustee with an inherent conflict should resign.

When a conflict can arise

In this example, trustee A is appointed by external body B, perhaps the sponsor of an academy or a diocesan board, and B is contracting for services with the school. Trustee A will have a conflict of interest if the decision could affect them financially or personally, for example if they are an employee or shareholder in B. In any case, trustee A will have a conflict of loyalty.

Good practice

Keep a written record of all conflicts of interest and how the charity dealt with them in the minutes of trustee meetings. Explain:

- if any conflicts of interest were declared in advance
- what sort of conflict of interest it was
- which trustee or trustees were affected
- if anyone withdrew from the discussion
- an outline of the discussion
- how the trustees made the decision in the charity's best interests (including how the conflict did not influence the decision).

If you believe that another trustee has a conflict of interest you should say so. You are not calling their integrity into question. If something could (or could appear to) be a conflict of interest, try the 'tabloid test' – what would the public think about your handling of this if it was reported in the press tomorrow?

Please contact your Area Governance Officer if you have any questions not covered here, or to seek further clarity:

Area Governance Officers:

West, Senior AGO & **Clerking Service Lead: Julia Durcan** – 03000 410298

julia.durcan@theeducationpeople.org

North & Medway: **Jude Johnson** – 03000 410924

jude.johnson@theeducationpeople.org

South: **Tina Gimber** – 03000 415030

tina.gimber@theeducationpeople.org

East: **Lorraine Monkhouse** – 03000 414510

lorraine.monkhouse@theeducationpeople.org

Governor Services Admin Team – 03000 417979

Governorservices@theeducationpeople.org

Governor Services Manager – Suzanne Mayes

suzanne.mayes@theeducationpeople.org

Regular updates will be sent via [GovernorHub](#), please contact us for more information if you do not subscribe.