

## BRIEFING NOTE – REMOVAL OF GOVERNORS

Removing governors as a result of their conduct, inability to carry out duties competently, disputes, etc.

### **Eligibility and Disqualification**

There are a number of rules concerning eligibility which apply to all governors and a number of specific situations where any governor can be disqualified from holding office. For some categories of governor it is also possible for a governor to be removed from office by the appointing body. These are summarised below:

- disqualification will occur as a result of criminal conviction or bankruptcy
- a term of office will end as a result of failure to attend meetings
- bodies responsible for appointing governors can stipulate certain conditions concerning eligibility prior to appointment
- new rules concerning eligibility can be adopted by appointing bodies – this may lead to some governors becoming disqualified.

## Removal of Governors

**Elected Governors:** In county and voluntary aided schools, elected parent and teacher governors (whether elected or appointed) cannot be removed from office by either the governing body, LEA, Diocese or Secretary of State. Governors on county school governing bodies cannot be removed.

**Appointed and Co-opted Governors:** For appointed governors (i.e. those nominated by and appointed by the LEA; those co-opted by the governing body or those chosen and appointed by the trustees as foundation governors in voluntary aided schools), the situation is more complex. Foundation parent governors are not elected and for the purposes of this note are treated the same as those appointed by the trustees.

**In Attempting to Remove a Governor, the Appointed Body Must Follow the Rules of Natural Justice:** The governor concerned must be informed by the appointing body of the proposed removal and the reasons for it, and should be given the opportunity to reply in writing to the complaint made against him/her.

In *R v Brent LBC ex p Assagai*, LEA governor was removed for acting in an unreasonable, turbulent and threatening manner. The removal of this governor was quashed, not on the grounds that the removal was unreasonable, but that an opportunity to reply to the complaint in writing had not been given as no notice of the intended resolution to remove him had been given.

On this basis it would be possible for the LEA to remove one of its appointed governors for unreasonable conduct. This assumes there is a workable definition of what unreasonable conduct (see new regulations). It is likely that any action to remove a governor in this way would follow a process:

- complaint
- investigation by the LEA/Diocese/others
- governor given the opportunity of a reply
- notice of intention to remove
- decision to remove taken by ..... (the appointing body)

## **CURRENT MECHANISMS FOR INTERVENTION TO REMOVE A GOVERNOR**

Conflict and disruption leading to a question of removal generally arises in cases where a governor:

- fails to recognise and observe the collective nature of the authority of the governing body
- fails to observe the rules and sometimes as important, the protocol, of confidentiality and the personal/professional relationship between governors and staff/parents in terms of their conduct
- behaves in an outrageous or unreasonable manner, in an aggressive or confrontational way, or who may appear to be mentally unbalanced
- may have acted in a corrupt or deceitful manner falling short of an offence that would carry a criminal conviction
- may have acted inappropriately towards another governor or member of staff

Most complaints about the behaviour of an individual governor are likely to relate to a combination of poor interpersonal skills combined with a lack of understanding about the role of the governing body and more usually, the role of an individual governor.

In addition to the existing formal processes referred to the above, the LEA currently tries to prevent difficult situations arising in a number of ways:

- through induction training (concentrating on avoiding difficult situations)
- providing detailed guidance on confidentiality, dealing with difficult issues and visiting schools (as part of induction)
- the same guidelines would be used if difficulties arise at a later stage and work would normally
- be undertaken with individual governing bodies to clarify what is appropriate behaviour and what is not in specific circumstances.

If a governor behaves badly on the school premises, for example against the Head or member of staff, then the Headteacher has the authority to ban that person from the premises (except when they are attending a meeting of the governing body).

On the few occasions when the chair of governors or headteacher has asked the LEA to pursue a complaint against a member of a governing body we have advised that a formal complaint be made to the Chair and that the Chair ask the LEA to undertake an investigation and report back to the Chair. The threat of the result of such an investigation being made known to the governing body has resulted in the governor standing down voluntarily.

### **Conclusion**

Where the governor is an appointed governor, complaints of bad behaviour can currently be dealt with by reference to the appointing body whether it is the LEA or Diocese/others. There is a possibility of removal though there aren't any established standards or processes. Where the complaint is about an elected or co-opted governor the chair of the governing body can ask for the involvement of the LEA or Diocese, but in practice this is not the responsibility of the governing body.

## **POSSIBILITIES**

Although relatively rare, a governor who does persistently behave badly, fails to observe the rules of confidentiality or operates outside the bounds of collective responsibility can have a very detrimental affect on the effective working of the governing body or the relationship between the governing body and management of the school.

Given the role of the LEA and their powers in relation to withdrawal of delegation etc, it make sense for the LEA to use its capacity to intervene in circumstances which may lead to the removal of a governor on grounds of their ability to govern the school effectively.

## **MEDIATION**

The possibility of mediation already exists and is used to good effect in many situations. However, this does not overcome the reliance on the governors approaching the LEA or the lack of any effective sanction.

# GOVERNORS COMPETENCY

## Introduction

Similar to the situation with regard to intervening where governors are considered to be behaving badly – the same rules apply in situations where individual governors or the governing body is considered to be incompetent and not doing their job properly.

## Individual Governors

The situation where an individual governor is considered to be weak or incompetent will be very similar to that for misconduct except that there would be a greater role for the LEA or Diocese in terms of offering support and training and less, if any, justification for taking action to remove such a governor. It would technically be possible for appointing bodies to remove their governors if they felt they were not competent, but there does not seem to be a precedent for this.

There are no formal standards of competency for an individual governor and it is unlikely that any proposal to establish them would meet with agreement given the representative nature of governors.

It would be extremely difficult for any body to monitor or identify weak or incompetent individual governors. The governing body itself and the headteacher are in a position to exert pressure on such a governor but providing they attend there is little more that can be done. This LEA is in a slightly unusual situation with having a regular consistent presence at governing body meetings and at meetings of the finance committee. For this reason it is possible for the LEA to monitor and comment on the effectiveness of the governing body as a whole and the Chair. This is done through the LEA's annual report to the governing body on targets.

## The Governing Body

The role of the Chair and Headteacher is crucial in determining how strong and effective a governing body is. It is largely as a result of their leadership, collective clarity about the role of the governing body and the ability to organise and delegate business that a governing body operates effectively.

Considerable support and intervention is provided concerning the role of the governing body through central training, strategic planning with governing bodies and the support of the Clerk. Training for Chairs is provided, though there is probably scope for more training for headteachers on managing the governing body, particularly where the Chair may not be effective.

## Support

The provision of support and training is the most obvious form of intervention where a governing body is considered weak or incompetent. There is a need to distinguish between weak management and a weak governing body as a governing body relies heavily on information and judgements provided by management.

Beyond that, given the importance of the Chair in the effectiveness of the governing body, there are possibilities for further intervention where the LEA has concerns. There is a formal process for a governing body to remove its Chair. This is not generally used as the matter is resolved more informally or not resolved at all given the difficulty of operating the procedure. Further possibilities for support:

- easier mechanism for removal of the Chair
- itemising a discussion on governing bodies agenda concerning the role and expectations of the Chair and Vice Chair at the end of each academic year (prior to elections in autumn)