SURREY
COUNTY COUNCIL

Children and Education Select Committee
27 November 2014
School Governance Task Group –
Interim Report

Purpose of the report: Policy Development

This report sets out the interim findings of the School Governance Task Group. It focuses on the appointment and role of Local Authority Governors and lists proposed recommendations for the Committee's consideration.

Further findings will be detailed in the final report.

Introduction

1. The Children and Education Select Committee established a School Governance Task Group on 10 July 2014[1]. The scoping document was approved by the Council Overview and Scrutiny Committee on 11 September 2014[2].

2. The membership of the Task Group comprises of: Dr Zully Grant-Duff (Chairman), Denis Fuller, Colin Kemp, Mary Lewis, and Chris Townsend. Ann Heather Nash, Surrey Governors' Association (SGA) is a co-opted member of the Task Group.

Why this is a scrutiny item

3. Both Ofsted and the Department for Education have identified that school governance can be a key factor in school improvement.

4. In addition, the Department for Education published statutory guidance informing all maintained schools of a requirement to reconstitute their governing body under the 2012 Regulations by September 2015. A briefing note on this guidance is attached as **annex 1**.

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[1] Children and Education Select Committee. "School Governance - Proposal for a Task Group." 10 July 2014.
[2] Council Overview and Scrutiny Select Committee. "School Governance Task Group - Scoping Document." 11 September 2014.

5. In an increasingly complex landscape for Education provisions, it is important to develop an understanding of best practice, and how the Council and key stakeholders can work with all Surrey schools to ensure the best opportunities and outcomes for Surrey's students.

6. The Task Group aims to identify areas of best practice in school governance across Surrey, and gain an understanding of how the Local Authority can contribute towards good governance for Surrey schools.

Methodology

7. The Task Group has held three witness sessions to date. The list of witnesses is attached as **annex 2** of this report.

8. In addition to witness sessions, additional research was undertaken by the Task Group, supported by Democratic Services.

9. The focus of this interim report is the information and findings relevant to the appointment and role of Local Authority (LA) governors, with a particular emphasis on the impact of the re-constitution of governing bodies under the 2012 regulations. Information around the wider matter of school governance, recruitment and identified areas of best practice will be covered in the final report to Committee on 26 January 2015. This is in order that the Task Group can take into account the views of those yet to be interviewed.

The changing role of school governing bodies

10. The Education Act, 1986 established a school governance model based on stakeholder representation. This accounts for the different governor types currently in use within the maintained schools sector. However, in recent years the Department for Education has placed a greater emphasis on a skill-based model of appointment and election:

"Meaningful and effective engagement with parents, staff and the wider community is vital, but not guaranteed by the presence of the various categories of governor on the governing body. The membership of the governing body should focus on skills, with stakeholder engagement as an important but distinct activity for which governing bodies will need to assure themselves that appropriate structures and arrangements in place."[3]

11. The composition of the stakeholder model was also subject to change under the 2012 regulations, with the number of LA governors permitted on a governing body being reduced to one.[4]

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[3] Department for Education. "The constitution of governing bodies of maintained schools." May 2014. P6
[4] Department for Education. "Governors' handbook: For governors in maintained schools, academies and free schools." May 2014. P29-30

12. The Task Group was informed that revised Ofsted frameworks and Department for Education guidance had placed a greater emphasis on strong leadership in recent years. Consequently, the responsibilities and expectations placed on governing bodies had increased. Witnesses' perception was that the regulator was unlikely to rate a school "good" if it had identified poor governance. The Ofsted Inspection Handbook sets out that a school will be judged to have "inadequate" leadership and management if: "Governors are not sufficiently diligent in holding the school to account for pupils' achievement, the quality of teaching and the effective and efficient deployment of resources."[5]

13. The Task Group was also informed that under the new statutory guidance from the Department for Education, governing bodies are expected to undertake a skills audit to identify possible skills gaps. The guidance places an emphasis on smaller, skills-based governing bodies.

14. Witnesses expressed the view that the model of smaller governing bodies suited expedient decision-making. However, it was also noted that reducing the number on the governing body meant less capacity to set up sub-groups to manage the work, therefore placing more responsibility and resource demands on a limited number of individuals. The Department for Education does comment:

"The need for governing bodies to establish committees, including for exclusions or disciplinary matters, does not in itself necessitate a large governing body. Committees of the governing body can be established specifically for the purposes to which new associate members may be appointed and/or the committee may be established as a joint committee under the Collaboration Regulations to enable the committee to include governors from another school."[6]

15. Witnesses discussed the role of local governing bodies in instances where schools were part of a multi-academy trust. Multi-academy trusts have a board of trustees with responsibility for all the academies within that trust, and may delegate certain governance functions to a local governing body. Witnesses commented that in such instances a smaller local governing body was considered the favourable option.

16. The Task Group was informed that the Council had not taken an explicit policy position in relation to the size of governing bodies. It was noted that legislation in recent years made individual governing bodies more accountable, while the powers a local authority held to direct them had diminished.

17. The Task Group was informed that reductions in the education services grant by central Government had impacted on how local authorities engaged with and supported schools. The Task Group was informed the Council maintained positive relationships with Surrey schools, and had done so through taking the decision to retain expert staff to provide high quality advice and support.

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[5] Ofsted. *School Inspection Handbook.* September 2014.p51
[6] Department for Education. "Governors' handbook: For governors in maintained schools, academies and free schools." May 2014. P24

The appointment or nomination of Local Authority governors

18. The Council's constitution names the Assistant Director for Schools and Learning as the officer delegated with the specific power: "To make, in consultation with the Cabinet Member, local education authority appointments to governing bodies of schools, further and higher education establishments and independent schools."[7] However, the current process for appointing Local Authority governors in Surrey places the responsibility with the relevant local Member.

19. It has not been possible to trace when the decision was made to re-delegate this power to the local Member. However, the Council's Executive considered a report on a revision to the already existing process on 22 November 2005.[8] This report highlighted problems with the process at the time: "The whole process can be very protracted and is not always successful in the appointment of an appropriate LA governor and can leave schools with outstanding vacancies for a considerable length of time."[9] It is believed that custom and practice have built up over time, and this has become, in effect, policy.

20. The Task Group has learned that the current arrangement of the local Member making the appointment was not typical of how local authorities across the UK manage the appointment process, and the Department for Education had commented that this appointment process was unorthodox. It was also highlighted that the local Member could self-appoint into the role. It is apparent how a self-appointment could be problematic, for example in instances where the individual concerned had been judged to be in breach of a code of conduct, failing to perform their duties, or had failed to attend for more than six months.

21. The Task Group noted that under the 2012 regulations for re-constituted governing bodies, the governing body retains the power to appoint or remove individual governors. Therefore the LA will no longer make appointments, it will only nominate candidates. This process has already been followed in relation to LA governors in governing bodies that have re-constituted under the 2012 regulations.

22. For schools whose governing bodies are not yet reconstituted, the first appointment request is sent to the local Member asking that they approve the appointment within 20 working days. If the Member has not responded within 20 days they are sent a reminder and provided with a 15 working day extension. If there is no response after this time, the Cabinet Member is asked to approve the appointment. The present process can lead to a 45 working day delay before an appointment or nomination is made. Babcock 4S,

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[7] Surrey County Council, Constitution, Part 3 – Responsibility for functions and Scheme of Delegation, p66
[8] Surrey County Council Executive, 'Guidelines for the appointment of LA Governors' 22 November 2005
[9] Surrey County Council Executive, 'Guidelines for the appointment of LA Governors' 22 November 2005

as SCC's current commissioned provider of School Support Services, are responsible for administering this process[10].

23. Babcock 4S have made 192 LA governor appointments or nominations between September 2013 and August 2014 (this is inclusive of new appointments and re-nominations). This number is liable to increase as more schools re-constitute before September 2015.

24. Witnesses commented that although this process was clear, it was dependent on the engagement and involvement of local Members. It was highlighted that this had led to significant delays on occasion. Witnesses commented that the re-constitution of maintained schools under the 2012 regulations presented an opportunity to review this process in order to make it more timely and effective.

25. Witnesses supported a view that LA governors were generally identified and initially proposed by governing bodies.

26. The Task Group discussed a range of proposals concerning a change in the process for nominating LA governors. This included a proposal from Babcock 4S for the establishment of a nomination panel, comprised of:

- Cabinet Member for Schools and Learning
- Head of Governance Consultancy, Babcock 4S
- Surrey Governors' Association Representative

This panel would meet on a six week basis to make any necessary nominations.

27. The Task Group observed that many local Members took an active role in the appointment of LA governors, and that any new process should make arrangements to foster their involvement and to ensure they were given the opportunity to provide a view.

28. The participation of Local Committees was considered. However, the nature of LA governor appointments meant that vacancies came up through the course of the year, and unless dealt with regularly, unnecessary vacancy periods would be created. The Task Group further considered the difficulties in ensuring a consistent approach to nominations across all Local Committees, and the potential for further delays. It was outlined that this proposal would create a considerable time and resource pressure for Babcock 4S and Surrey County Council.

Proposed Recommendation

That the Cabinet Member for Schools and Learning, in conjunction with the Assistant Director for Schools and Learning, develops a new LA governor nomination process.

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[10] More information at www.babcock-education.co.uk/4s

That the new process operates under the following principles:

- Candidates to be a considered by a nomination panel set up with a clear delegation of responsibilities;
- That the LA governor nominee's skills match the required skills of the individual governing body, in order to maximise their effectiveness;
- That appropriate checks are made as to the suitability of a candidate;
- That the local Member is informed of any LA governor vacancy, and then invited to put forward a candidate for consideration and join the nomination panel;
- That a nomination is made within 20 working days of the Council receiving formal notification of a vacancy or a re-nomination request, in order to ensure vacancy rates and the costs of administering the process are kept to a minimum.

The Role of Local Authority Governors

29. The Task Group explored the roles and responsibilities of LA governors with witnesses.

30. It was highlighted that the vast majority of governors were supported in their role through the training provided by Babcock 4S.

31. It was outlined that LA governors were not expected to act as a delegate for the local authority; there is no explicit provision set out in the legislative or regulatory framework concerning the relationship between the Local Authority and the LA governor, beyond the Local Authority's power to nominate. As consequence, there is no tailored training or information supplied specifically for those undertaking the LA governor role, beyond the general governor training and support offer from Babcock 4S. This is also the case in other Local Authorities.

32. The Task Group was informed that the Local Authority should not be responsible for monitoring the performance of individual LA governors, except where there were serious concerns. It was highlighted by witnesses that the chair of the governing body, the governing body, and the clerk to the governing body all have a role in monitoring the effectiveness of individual governors.

33. Some witnesses commented that their experience had demonstrated that LA governors could bring an understanding of local networks, and that this understanding was often advantageous to governing bodies.

34. The Task Group was informed that academies had the option to retain LA governors. As of September 2014 only three academies have retained their LA governor, although this may change as more schools become academies.

35. Generally, there are limitations on the degree to which local authorities can be involved in the governance of academies, as the Department for Education states:

"Academy Trusts must...ensure that they are not LA influenced. A company is deemed to have influenced status if 20% or more of its members or trustees are 'associated persons'. Associated persons are current council members (councillors), current council officers, or anyone who has been a council member within the past 4 years...The Academy trust must ensure that the LA does not have more than 19.9% of the voting rights or seats on the board of trustees."[11]

36. The Task Group considered there should be regular communication of the LA's priorities to all LA governors. A range of options were explored, including a one-off event and regular meetings through the Surrey Governors Association.

37. The Task Group was informed the Cabinet Member for Schools and Learning attended the Chair of Governors meetings organised by Babcock 4S twice a term, in order to share the Council's priorities with governing bodies. These meetings regularly have 200 governors in attendance.

Proposed Recommendation:

That the Cabinet Member for Schools and Learning and the Children, Schools and Families Directorate makes arrangements for a regular forum for all Local Authority governors to discuss the responsibilities and priorities of the Council.

Governing bodies, public engagement and open meetings

38. A key role of the governing body is to ensure that the school is engaging effectively with parents, carers and, as necessary, other stakeholders. As previously noted, the Department for Education states that stakeholder engagement is: "an important but distinct activity for which governing bodies will need to assure themselves that appropriate structures and arrangements are in place"[12] It was also highlighted that all state schools, including academies and free schools, were expected to have a community focus.

39. The Ofsted Inspection Handbook sets out that a school is considered "outstanding" if: "[t]he school has highly successful strategies for engaging with parents to the benefit of pupils, including those who find working with the school difficult."[13] Therefore, the expectation would be that governing bodies would seek assurances to this effect in their scrutiny role.

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[11] Department for Education. "Governors' handbook: For governors in maintained schools, academies and free schools." May 2014.P27
[12] Department for Education. "Governors' handbook: For governors in maintained schools, academies and free schools." May 2014. P24
[13] Ofsted. *School Inspection Handbook.* September 2014.P49

40. The Task Group was informed that governing bodies are supplied a model agenda by Babcock 4S, and that Council policy was to encourage governing bodies to make part or all of their meetings open to the public as appropriate. This is in accordance with the "Nolan Principles"[14]. It was clarified that it was recommended good practice that governing bodies set out a protocol for the conduct of the meetings they held. It was commented that schools should have a regular parent forum, also open to all governors.

41. The Task Group discussed ways in which local Members and Local Committees could interact with school governing bodies. There was a recognition that the relationship with the local Member varied according to local need, interests and priorities and that such approach worked well. As for Local Committees they are already supported by Area Education Officers in their engagement with local schools.

42. A number of witnesses commented that the governing body should be engaged with as a whole, as it held a corporate and collective accountability rather than acting as a group of delegates. The role of the clerk to governors and the chair was highlighted as being of particular importance in this regard.

Proposed Recommendation

That the Cabinet Member for Schools and Learning and the Assistant Director for Schools and Learning encourage all Surrey maintained schools to hold open governors' meetings, to be conducted according to an engagement protocol as agreed by the governing body.

Next Steps

43. The Task Group has recently begun the next phase of its witness sessions. It has identified the role of the Council's Internal Audit Team as being of significant value in the matter of risk management, and intends to further explore how governing bodies can be supported in understanding and mitigating risk.

44. The Task Group will continue its enquiries focussing on the following areas:

- The services Surrey County Council and stakeholders provide to support school governance.
- The role of the governing body in improving school performance.

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[14] The "Nolan Principles" (Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership) were established in the "First Report of the Committee on Standards in Public Life" (May 1995) and are considered the guiding set of principles for all holders of public office. Further information can be found here: https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2

- The role of the governing body as 'critical friend', in particular in relation to accountability and risk management.
- How do school governance arrangements work in relation to multi-academy trusts?
- How do school governing bodies ensure that they have the relevant breadth of skills and expertise?

45. A final report will be considered by the Children and Education Select Committee on 26 January 2014.

Summary of proposed recommendations

a) That the Cabinet Member for Schools and Learning, in conjunction with the Assistant Director for Schools and Learning, develops a new LA governor nomination process.

That the new process operates under the following principles:

- Candidates to be a considered by a nomination panel set up with a clear delegation of responsibilities;
- That the LA governor nominee's skills match the required skills of the individual governing body, in order to maximise their effectiveness;
- That appropriate checks are made as to the suitability of a candidate;
- That the local Member is informed of any LA governor vacancy, and then invited to put forward a candidate for consideration and join the nomination panel;
- That a nomination is made within 20 working days of the Council receiving formal notification of a vacancy or a re-nomination request, in order to ensure vacancy rates and the costs of administering the process are kept to a minimum

b) That the Cabinet Member for Schools and Learning and the Children, Schools and Families Directorate makes arrangements for a regular forum for all Local Authority governors to discuss the responsibilities and priorities of the Council.

c) That the Cabinet Member for Schools and Learning and the Assistant Director for Schools and Learning encourage all Surrey maintained schools to hold open governors' meetings, to be conducted according to an engagement protocol as agreed by the governing body.

Report contact: Andrew Spragg, Scrutiny Officer, Democratic Services
Contact details: andrew.spragg@surreycc.gov.uk   020 8213 2673

Sources/background papers:

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11