

Paper 5

GOVERNANCE AND ACCOUNTABILITY

Purpose

1. The purpose of this paper is to highlight in broad terms the governance and accountability framework that will apply in relation to the Education & Skills Authority and grant-aided schools. The paper also sets out the associated legislative provisions that will need to be sought to give effect to that framework.

Approach

2. The process of identifying appropriate accountability and governance structures has been informed by a careful study of good practice and lessons learned. In particular, there has been:

- examination of the existing structures and processes of the Department's Non-Departmental Public Bodies (NDPBs), particularly the Education and Library Boards (ELBs);
- consideration of lessons learned from existing practice, including recommendations from recent reviews such as the Jack Inquiry; the HELM report; the Planning and Accountability Review; and the Review of Remuneration of Members of ELBs;
- examination of existing good practice models from across the public sector and on supporting materials and policy statements provided by the Cabinet Office; the Office for the Commissioner for Public Appointments; DFP; the Northern Ireland Audit Office (NIAO) and others;
- consideration of the views of stakeholders and other Departments; and
- consultation with the Department's legal advisers.

3. In addition, the project has benefited from the advice and input of an "Assurance Panel" involving external representation, including from DFP, the NIAO, the Central Appointments Unit and the education partner bodies. The panel's role has been to provide advice and guidance and, importantly, a challenge function in relation to the development of initial policy proposals.

Key Principles

4. The key focus of this workstream has been to design a modern and responsive governance and accountability framework for the new Education and Skills Authority. In taking forward that work, we have worked to the following guiding principles:

- The ESA, as with any other non-departmental public body, will be subject to normal government accounting/accountability rules and a requirement to deliver its services effectively, efficiently and in a way that ensures value for money;
- There will be a clear focus on accountability and delivery, with strong links between inputs (financial and human resources) and outputs/outcomes (including educational standards);
- All grant-aided schools will receive their funding on a consistent and transparent basis from ESA and will be accountable through their Boards of Governors to ESA for that funding;
- The focus should be on subsidiarity and on self-governing schools, with decision-making on resources, school development planning etc delegated to the lowest sensible level and strong accountability mechanisms from school level through ESA to the Department.

Key Issues

5. The project's focus has been on the four main areas set out below. The following paragraphs highlight, for each, the progress made, the associated legislative requirements.

- ESA Board – Role, Remit and Constitution
- ESA Financial Management – Accountability
- ESA Financial Management – Planning, Funding and Control
- ESA Interface with Schools

ESA Board – Role, Remit and Constitution

6. The Board of ESA will have a significant role to play in providing leadership, vision and direction for the organisation, in the context of Ministerial priorities and available resources, and in overseeing the delivery of planned results. The Board will be accountable to its main funding departments (DE and DEL) and their respective Ministers for the performance of ESA.

7. In line with recommended good practice, the Board will consist of around 8-12 members, all appointed by the Minister on merit for the skills and experience they bring. The chair of ESA will be directly appointed by the Minister and not elected from within the board.

8. The term of office of members will be 3 or 4 years (the different terms allowing for continuity of membership) with 10 years being the maximum term allowed. Additionally, the chair and members will be remunerated in line with the normal arrangements in other public bodies and their performance will be assessed annually.

9. While the expectation is that the ESA Board should attract high-calibre candidates who will adhere closely to the Nolan Principles and the requirements in relation to probity, it is important that powers are retained to allow Ministers to take action to dismiss or disqualify Board members in certain circumstances. Where the Minister is of the opinion that it is not in the interests of, or conducive to the good management of, the Education and Skills Authority that the Chairman or a member should continue to hold office, the legislation should allow the Minister to remove that person from the office of chairman or member (as the case may be) by giving him notice in writing to that effect. Equally, we will be seeking legislative cover to provide for the disqualification of members in the following circumstances:

- If a person is convicted of an indictable offence;
- If a person is deemed unsuitable under current legislative arrangements from working with children in a regulated position; or
- If the member is absent from the meetings of the ESA for more than 6 months consecutively, except for an approved reason.

10. Bearing in mind the strategic role of the Board and its role as employer of all ESA staff, we are continuing to give consideration to the legitimacy of allowing those who are employees of the Authority, or have been dismissed, otherwise than by reason of redundancy, from any paid employment with the Authority to be considered for Board membership.

ESA Financial Management – Accountability

11. As noted above, ESA will be subject to the normal financial management and accountability rules that govern all public bodies. Existing legislative provisions relating to the requirement to comply with any accounts directions issued by DE; the arrangements for submitting and laying annual reports and accounts; and issues around external audit and access by the Comptroller & Auditor General to the files and accounts of existing public bodies for the purposes of external audit and value for money examination will therefore be rolled forward and applied to ESA along with powers that will allow ESA to give and receive grant aid and to delegate budgets to grant-aided schools.

12. Most of the out workings from this strand will be dealt with under a new financial memorandum and management statement which will adhere closely to government accounting (GANI) rules and to best practice as set out by the Cabinet Office, HMT and DFP. Issues to be covered under the financial memorandum and management statement will include:

- internal audit, fraud and risk management arrangements;
- insurance and banking arrangements;
- Cash drawdown;
- Format and nature of accounts;
- Disposal of assets
- Capital/business case approvals
- Efficiency requirements, including in the area of staffing

ESA Financial Management – Planning, Funding and Control

13. ESA will be required to produce a corporate plan and an annual business plan and the production of reports, returns etc in a format and timescale specified by the funding Departments. Planning documents will reflect ESA's statutory responsibilities and the priorities set by Ministers (for both education and FE/skills) and will include a strong link between inputs (primarily staff and resources) and outputs and outcomes (eg level of service delivered and impact on educational performance).

ESA Interface with Schools – school funding

14. ESA will inherit responsibilities from the Boards and DE for funding all grant-aided schools and, in funding terms, there will therefore only be one category of school, a grant-aided school. However, it will inherit very different arrangements. At the moment, all controlled and maintained schools are funded through ELBs which act as their bankers. Those schools do not have bank accounts for their LMS funds and their staff are employed either by the ELB (for non-teaching staff in all schools and teachers in controlled schools) or CCMS (for teachers in catholic maintained schools). Voluntary Grammar Schools (VGS) and Grant Maintained Integrated Schools (GMIS) enjoy much greater levels of autonomy – currently they make their own banking arrangements, employ their own staff and often run their own payroll systems.

15. A key challenge, therefore, has been in identifying how best to move forward in a system where inconsistency exists and in a way that is fair to all schools. The agreed approach, therefore, remains one of securing maximum delegation of financial and other responsibilities to schools. This will require a detailed set of financial requirements between ESA and individual schools and a close focus on risk management and internal control, supported by a financial management toolkit. The focus, however, is on giving schools maximum flexibility – any legislative provision on intervention will simply be as a safeguard in the event of management or other problems.

16. Other key issues that need to be resolved include the VAT position (which again is not consistent across the different school types) and insurance arrangements.

17. In relation to school funding, it is envisaged that DE will retain the responsibility for setting funding policy, in the context of Local Management of Schools arrangements and in a way that supports the principle of delegated decision-making by school leaders. DE will also continue to approve the factors that make up the LMS common funding formula and to determine the level of resource to be allocated via the formula.

18. Legislative requirements will include carrying forward the existing legislative provisions relating to the LMS common funding formula and introducing enabling provision in new legislation which (in a general way) allows DE and ESA to issue guidance and rules clarifying the financial relationship between ESA and schools. Legislation will also be required allowing ESA to delegate financial responsibilities to schools (in line with the principles of LMS). In exceptional cases, where there is clear evidence of poor management, there will need to be continued provision for delegation to be removed in part or in full. There will also need to be powers to allow ESA to grant aid schools and, in line with public expenditure requirements, to attach conditions to grant (for example in relation to financial reporting standards, submission of accounts etc).

ESA Interface with Schools – school governance

19. The existing arrangements for the governance and management of grant-aided schools have also been reviewed as part of this workstream with the intention of streamlining them to facilitate:

- The change in funding and accountability arrangements that comes with the creation of ESA;
- More effective governance arrangements; and
- Equality between schools of differing ownership type, ethos, identity or management arrangements.

20. Currently there are 11 different management compositions of school Boards of Governors prescribed in legislation. This provides very limited flexibility for innovation, for example through appointment of additional governors with specific expertise. It also creates problems if vacancies in certain categories cannot be filled. An early focus therefore has been on the scope for streamlining the various categories of school governor but in a way that does not change radically the make up of individual Boards of Governors. Our proposals to date therefore involve standardisation on the basis of 4 governor categories:

- **Foundation governors** (school owners or former owners or their representatives) who would hold the largest proportion of seats but (with the exception of schools in receipt of 85% capital grant) not majority management control. They would normally represent the character and ethos of the school;
- **Community governors**, appointed by ESA for the skills and expertise they bring and drawn (ideally) from the locality/community which the school serves but also from the local business community;
- **Staff governors** (with this category extended to remove the ban on part-time teachers serving on Boards of Governors in this category and to allow for the appointment of non-teaching as well as teaching staff; and
- **Parent governors** (elected from among the parents of pupils currently attending the school).

21. In addition, DE intends to determine a code of practice for the appointment of governors in all categories which would cover all categories and cover the following areas:

- Appointment (and reappointment) procedures, including term of office;
- Eligibility;
- Disqualification provisions;
- Gender and community balances;
- Vetting;
- Training and Support.

22. The actual appointment of governors across all categories would be handled by ESA in the context of this code of practice, with the appointment of community governors made by ESA and appointments in the other categories processed by the authority. In cases where additional support is needed (for example if there are no governors with adequate financial skills) we intend to give ESA the power to appoint support governors to an individual school and/or to provide support in a particular area of governance across a number of schools at the request of a school or schools or if such an intervention is considered necessary for the purposes of promoting good governance and management.

23. Discussions are still underway on the various issues raised by the Transferor Churches regarding their representation and nomination rights in the controlled sector. Any changes which may be brought forward to address legal and practical issues will not of course affect schools that were transferred and their direct successors.

24. We recognise the wide range of skills and expertise that governors bring, in a voluntary capacity, and the significant commitment they demonstrate to school management and school improvement. However, we also know that, very occasionally, there may be a need for interventions designed to safeguard the educational and wider interests of children and young people. For that reason, we are likely to require powers to remove and arrange for the replacement of any members of the Board of Governors including the Chair in the following situations:

- where an ETI report states that a school is failing to provide an acceptable standard of education for its pupils and that failure can be demonstrated to be due in whole or in part to the management of the school by the Board of Governors;
- where there is evidence of risks to the health and safety of pupils while in attendance at or under the control of staff at the school due in whole or in part to negligence or poor performance on the part of the Board of Governors in its management of the school;
- where there is a failure to discharge properly the employer role;

- where there is evidence of inappropriate use of resources due in whole or in part to the poor performance on the part of the Board of Governors in its management of the school;
- **and** the appointment of support governors has proved to be insufficient to resolve the management difficulties.

Intervention to this degree would, of course, only be proposed by ESA if lower level interventions had been tried and failed to produce the necessary improvements.

25. Additional powers will also be required in order to remove governors in the event that they are deemed unsuitable under current legislative arrangements from working with children in a regulated position.

26. In summary, therefore, school governance arrangements will include the following features:

- ESA assumes responsibility for processing all governor appointments and for overseeing the appointment of community governors;
- Controlled schools are renamed (the term “controlled” will no longer be appropriate);
- ESA has a support role in relation to recruitment and training of all categories of governors in all schools;
- ESA has a power to appoint support governors to individual schools or for particular services (eg if a school badly needs HR or finance expertise);
- The constitution of all school BoGs provides for foundation governors; community governors; staff governors; and elected parent governors.

Conclusion

27. The governance and accountability framework has been designed, in the context of public accountability requirements, to ensure maximum flexibility for both ESA and schools to take operational decisions at local level. It notes that, with that flexibility comes accountability and a responsibility for performance management at all levels. It allows for limited powers of intervention in circumstances where there is a clear risk either to educational standards or to public funds, but sets this in a

context where accountability rests in the first instance at governor level (in the case of schools) and at Board level (for ESA).

Resource Allocation Division

28th November 2006

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