



House of Commons Education Committee

The Role of School Governing Bodies: Government Response to the Committee's Second Report of Session 2013–14

First Special Report of Session 2013–14

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The Education Committee

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First Special Report

On 4 July 2013 we published our Second Report of this Session, *The Role of School Governing Bodies*.¹ The response from the Government was received on 3 September 2013 and is published as an Appendix to this report.

Appendix

Government response

Recruitment and retention of governors

Impact of the 2012 composition regulations on the profile of governing bodies

1. Less prescription as to how governing bodies are constituted should help governing bodies to recruit suitable individuals and address vacancies. This should include a balance of parents, staff and other groups as appropriate. We support the Government's decision to make the 2012 composition regulations permissive. We are also pleased that the Minister has agreed to remove the "juniority principle" from the same regulations. (Paragraph 24)

The Committee is right to recognise that the 2012 constitution regulations give governing bodies more freedom to decide their own composition so that they can recruit governors with the right skills and experience. Our Model Articles of Association give academy trusts even greater freedom.

It is for schools to determine the appropriate balance of parents, staff and other groups. We take the view that skills should be the primary consideration when appointing governors.

We will keep under review whether reconstituting under the 2012 regulations should remain optional. Repealing the 2007 regulations would simplify the overall regulatory framework and encourage governing bodies to review their composition and reconstitute under a single more permissive framework.

We have begun a targeted consultation with our key partners on changes to the 2012 constitution regulations for maintained schools, including removal of the 'juniority principle'. Initial feedback shows widespread support for this change.

¹ Education Committee, Second Report of Session 2013-14, *The Role of School Governing Bodies*, HC 365-I

Impact of the 2012 composition regulations on the size of governing bodies

2. Despite the DfE's clear preference for smaller governing bodies, there is no evidence base to prove that smaller governing bodies are more effective than larger ones. (Paragraph 30)

Whilst we have no intention of imposing smaller governing bodies, we do think that smaller governing bodies are more likely to be cohesive and dynamic, and able to act more decisively. This is particularly true when things go wrong, as illustrated by the contrast between the impact of small tightly focused Interim Executive Boards, and the often large and unfocused governing bodies that many academy sponsors report they need to reform.

Ofsted research has found that it is a core of highly committed and skilled governors that are responsible for the performance of many governing bodies. We share the view of the Charity Commission that governing bodies, like boards of trustees, should be no bigger than they need to be to have all the skills necessary to carry out their functions. It is the role of the chair to ensure that every governor is actively contributing relevant skills and experience, and to have honest conversations where governors are not pulling their weight.

We think that all governing bodies should review their effectiveness on a regular basis. Increasingly, weaker governing bodies will be encouraged to do so with external support following a recommendation from Ofsted. One of the things any review should consider is whether the governor body is the right size to fulfil its duties effectively.

Improving recruitment and retention

3. Business is potentially an important source of capable school governors. We are pleased that the Government has agreed to do more to increase uptake of the School Governors One Stop Shop's (SGOSS) services in schools across the country. We are also supportive of the Government's agreement to accept help from the Confederation of British Industry in promoting school governance opportunities to businesses and recommend that the Government report back to us with details as to how this will be done. (Paragraph 39)

As highlighted by the Heseltine Review, businesses are a very important source of volunteers with transferable skills to become capable schools governors and effective members of Interim Executive Boards able to effect transformation.

We have committed funding to SGOSS, the governor recruitment charity, to the end of this Parliament to provide the security the organisation needs to pursue ambitious growth targets—in terms of both the number of schools and businesses with which it works. We have also granted SGOSS an exemption from government restrictions on marketing expenditure to enable it to use some of our funding to promote its work to more businesses and schools. Lord Nash will attend a SGOSS roundtable discussion

with key business leaders in September to discuss how best to engage more employers. We will take every opportunity to promote the work of SGOSS, including through Ministerial speeches and our website.

We are also working to increase the number of businesses and business people sponsoring academies and supporting the governance of academy chains. High quality governance is particularly important in academies because of their autonomy and their financial responsibilities as set out in the Academies Financial Handbook. To help do this we are recruiting a select group of leading business people to act as Academies Ambassadors, who will drive greater involvement in academies in the business community. They will work on a voluntary basis and encourage more business people to sponsor academies and aim to create a pool of highly experienced business people to serve on the boards of academy trusts.

Going forward, we will seek to work more closely with organisations such as the Confederation of British Industry, the Institute of Directors, Business in the Community, the Employers Taskforce and the British Chambers of Commerce, to promote through their membership opportunities to volunteer as governors. This will also help us raise the profile of SGOSS across the business community.

Incentives for business volunteers

4. Any potential barriers to the recruitment of effective school governors should be removed. We recommend that the Government review the current incentives for, and requirements on, businesses that release their staff for governor duties. We also recommend that the legal requirement to give time off for governors of maintained schools be extended to academies. (Paragraph 43)

We agree with the Committee that any barriers to the recruitment of effective schools governors should be removed. That is why we have given governing bodies more freedom over their constitution so they can focus on recruiting people with the right skills; and why we have cut red tape and raised our expectations of the strategic nature of the role to make it more attractive to the kind of people governing bodies need. We are also working with SGOSS to promote to employers the benefits that they and their employees gain from employees developing their skills as governors.

We are considering the extent to which the lack of a legal requirement for governors of academies to have time off work is causing a barrier to governor recruitment. We will explore the option of amending primary legislation (Employment Rights Act 1996) to extent the right to time off work for maintained school governors to academy governors.

Raising the profile of governors

5. We welcome the Government's commitment to raising the profile of governors and we look forward to seeing the details of how it intends to attract more good quality governors. (Paragraph 47)

We are seeking to raise the profile of governors and attract more good quality governors in four ways.

First, we are making clear the importance of governors' role. We have defined governing bodies' core strategic functions in legislation and the Governors' Handbook; we have explained clearly the central role of governors in the Academies' Financial Handbook; and we have a much stronger focus on governance in the Ofsted inspection framework, particularly through the introduction of external reviews of governance.

Secondly, we are aiming to make the role more attractive. Our reforms aim to remove unnecessary rules and regulations and give governing bodies more discretion and responsibility.

Thirdly, we are supporting recruitment, training, and models of good practice. We have committed funding to SGOSS to the end of this Parliament; and expanded significantly work on governance by the National College for Teaching and Leadership.

Finally, we are ensuring public recognition. We have provided guidance to our key partners to encourage and support higher quality honours nominations so that more individuals might be recognised nationally for the impact they have had as a governor.

Pay for governors

6. While not advocating payment to governors in general, we can see that there is a case for remuneration in some circumstances—for example, when governors deploy their skills to improve governance in other schools. We recommend that Government give further consideration to the circumstances in which payment could be appropriate and make necessary regulatory provisions. (Paragraph 51)

We have recently reviewed our position on payment of governors and published a short note² which confirms our commitment to the principle of voluntary trusteeship.

Powers are already in place to pay members of Interim Executive Boards (IEBs), but thus far the Secretary of State has not needed to use them to recruit high quality IEB members.

The National Leaders of Governance (NLG) programme is enabling some of our best chairs of governors to share their skills with others. NLGs are not paid, but their school receives a small grant to fund NLGs' expenses. We do not have any evidence to suggest

² <http://education.gov.uk/schools/leadership/governance/a00224750/governor-payments>

that the lack of payment is a barrier to the recruitment of sufficient numbers of NLGs, however we are keeping this under review as we expand the National Leaders of Governance programme to up to 535 NLGs by 2015.

Where a governing body requires support over and above that which can be provided free of charge through the NLG programme, there is nothing preventing them paying an NLG or other experienced governor from another school for the provision of consultancy or advice services.

Subject to appropriate safeguards against conflicts of interest, it is legal for governing bodies to purchase professional services from individuals serving as governors, for example accounting, legal or construction services.

Governor effectiveness

Training

7. Too many governors have not had suitable training. The Government says this can be encouraged through Ofsted. Ofsted should report back in due course whether their intervention is effective. If it is not, mandatory training should be considered again. The Government should require schools to offer training to every new governor. We welcome the Minister's assurance that Ofsted will be resourced adequately in order to undertake its increased role in helping to ensure effective governance in schools. Further explanation is required as to how this will be achieved. (Paragraph 61)

Good schools don't need government to mandate training. Universal mandatory training risks being inappropriate for some and a barrier to recruiting others. Governing bodies are best placed to identify their skill gaps and seek appropriate training. It is the responsibility of the chair of governors to make sure that the governing body functions effectively—including through accessing induction and continuing training where necessary. We will keep the position under review.

Ofsted's strong and helpful focus on school governance is an integral part of the inspection framework and hence factored in fully to how Ofsted is resourced to operate. The inspection framework provides a powerful incentive on governing bodies to audit their skills and identify their training needs. The new Inspection Handbook (published July 2013), states that in making their judgement on the effectiveness of governance, inspectors will look at how well governing bodies develop the skills of their members. Ofsted will want to know that the governing body takes seriously their training needs and ensures that every governor who needs training receives training of a high quality. Governing bodies who do not invest in improving their effectiveness by taking up training are making a false economy.

8. We are concerned at suggestions that few quality alternatives are emerging to the training traditionally provided by local authorities. We recommend that Ofsted and the DfE monitor the availability and quality of governor training in the light of greater academisation of schools and reduction of local authority services. (Paragraph 62)

We agree with the Committee about the need for a market of high quality training alternatives for governing bodies. We expect the strong focus on governance within the Ofsted inspection framework, the recommendation by inspectors of external reviews of governance, and the strong and growing emphasis from Ofsted and DfE on governors' skills to all stimulate expansion of this market.

To address a market failure in the provision of training for clerks and to ensure there is a high quality benchmark in the market for governor training, we have doubled the investment we make in governance through NCTL. By 2015, this funding will enable NCTL to:

- Build on the early success of the leadership development programme to expand it to reach over 6,500 chairs, vice-chairs and aspiring chairs;
- Designate up to a total of 535 high quality chairs as National Leaders of Governance;
- Develop and roll out a programme of training for 2,000 clerks to governing bodies; and
- Develop and publish training resources and deliver high quality training for governors on specific key policy priorities including: understanding performance data, driving financial efficiency in schools, and developing new performance related pay arrangements for teachers.

Inspection, self-assessment and peer challenge

9. Poor performance by governing bodies should be challenged at the earliest opportunity. We support the obligation placed on schools that “require improvement” to undertake an external review of governance. (Paragraph 69)

In all Category 3 schools where leadership and management is weak, we expect Ofsted to recommend that the governing body commission an external review of their governance arrangements.

NCTL has published resources on its website to support schools to do this based on the pilots it undertook to test the concept of external reviews between September 2012 and February 2013. The most common recommendation from 62 reviews conducted was that governing bodies should review their roles and responsibilities, and consider re-constitution or re-structuring following a skills audit.

We believe inspectors have a crucial role to play, including through their monitoring visits, in setting demanding standards for evidence of the action and change that has

resulted from these reviews—including the training that has been accessed to address any skills gaps. We have asked Ofsted to identify and share with us evidence of the impact that reviews are having on the quality of school governance.

The Department’s statutory guidance on schools causing concern³ is clear that local authorities should intervene early and robustly when there has been a serious breakdown in the way a maintained school is governed. The Department takes the same approach with academies causing concern.

10. We recommend that governing bodies be strongly encouraged in guidance from DfE, Ofsted and the National College to participate in peer-to-peer governance reviews and to undertake self-assessment and skills audits, using tools such as the All-Party Parliamentary Group on Education Governance and Leadership’s 20 questions and other resources identified in the new Governors’ Handbook. (Paragraph 70)

We agree that all governing bodies should evaluate their own effectiveness on a regular basis, including undertaking peer to peer reviews, self-assessment and skills audits. The Governors’ Handbook and guidance already set out this expectation as do materials produced by NCTL. Departmental Advice on new Roles, Procedures and Allowances regulations will further emphasise this.

A wide range of resources are available to assist governing bodies in self-evaluation, which is good practice for all schools, not just those requiring improvement.

Ofsted’s Data Dashboard

11. The importance of good data in user-friendly formats for governing bodies cannot be overstated. We welcome Ofsted’s Data Dashboard and support the DfE’s work to develop questions that governing bodies can use to interrogate data effectively. The generic questions in the new Governors’ Handbook are helpful, but will not in themselves provide sufficient assistance to governing bodies in interrogating complex data. We look forward to DfE publishing further questions. (Paragraph 78)

In order to hold the headteacher to account for the performance of the school, governing bodies need access to robust, objective data which they can use to ask challenging questions. Governors need information that helps them compare their school to other schools.

Ofsted’s high level dashboard is a valuable resource to help governors understand how well their school is doing in broad terms, but governors need to go into more detail to do their job well. Whilst all the information is available through RAISE online, we share concerns that it is not especially easy to understand. We are working with Ofsted to

³ <http://www.education.gov.uk/aboutdfe/statutory/g00192418/scc/scc1>

make this easier for governors, and for data released this autumn, there will be a streamlined Summary Report and clearer signposting to the most important sections.

NCTL provided training workshops on RAISE online in early 2013. These workshops will be refreshed and re-launched later this year, so many more governors will be able to benefit.

In the longer term, we will make sure governors' needs for information are at the heart of the new data warehouse and portal that will replace RAISE online from 2015.

The Governors' Handbook provided illustrative questions to indicate the broad range of issues on which governors may need to ask questions of their headteacher and other senior leaders. We welcome work by the National Governors' Association (NGA) to identify and publish a first draft of a more detailed list of possible questions. Ultimately, it is for governing bodies to decide and prioritise the precise questions that need to be asked.

Information, advice and guidance for governing bodies and the role of the clerk

12. An effective clerk is vital to the success of a governing body. The evidence clearly indicates that this should be a professional role—similar to a company secretary. We recommend that the Government act upon the findings of the project by the National Governors' Association and the Society of Local Authority Chief Executives relating to clerks. (Paragraph 83)

To be effective, all school governing bodies need the support of a professional clerk to advise them on their duties and how best to fulfil them. The new Roles, Procedures and Allowances regulations for maintained schools reflect this in a duty on the governing body to appoint a clerk to ensure it functions efficiently and to have regard to the advice of the clerk on the nature of its functions. The board of governors in an academy is required to appoint a clerk by its articles of association.

To support the professionalisation of clerking, we have recently announced an extension to the work of NCTL to develop and deliver a training programme for clerks. By 2015, NCTL will have trained 2,000 highly-skilled professional clerks.

We look forward to receiving any recommendations arising from the discussions taking place between the National Governors' Association and the Society of Local Authority Chief Executives and will consider these in due course.

13. The School Governors' One Stop Shop (SGOSS) has been funded for a further two years to recruit governors. We believe that SGOSS may be ideally placed to take on a role in recruiting clerks and we recommend that the Government consider how to facilitate this. (Paragraph 84)

We do not think SGOSS is ideally placed to recruit clerks. Our funding to SGOSS is to deliver the crucial task of recruiting skilled governors from business and placing them in

schools that need governors with those skills. We have no plans to provide additional funding to SGOSS to enable them to focus on recruiting clerks, which would be a very different role recruiting from an almost entirely separate constituency.

We understand that SGOSS itself has no current plans to focus on the recruitment of clerks. If it should decide to do so in future, it would need to fund this work from a source, other than the Department and provide assurance to us that the additional work would not detract from its capacity to deliver its core grant-funded business of recruiting and placing skilled governors.

The National Governors' Association has recently indicated publicly that it is considering piloting its own brokerage service between schools and clerks.

14. Our inquiry has shown the importance of high quality information and guidance for governing bodies—particularly for clerks. We share the concern of the National Governors' Association that the new Governors' Handbook appears to be aimed only at new governors. The new Handbook has lost much of what was valuable to experienced governors and clerks in the predecessor guide. The Government should work with the NGA to rectify this. (Paragraph 89)

The Governors' Handbook sets out the essential information that governors need to know about their roles and responsibilities. It signposts rather than duplicates material available in other places. It is designed to be used by all governors, whatever their experience. The National Governors' Association and the many other organisations represented on our Advisory Group on Governance were consulted on the development of the Governors' Handbook. We will keep the design and content of the new Handbook under review through this advisory group.

Our role is to make sure governors understand their role and have access to information on all their legal duties. The Handbook therefore provides three levels of information:

- Section 1 outlines the core role and functions of school governing bodies. All governors should read this section.
- Sections 2 to 8 of the Handbook summarise all the specific legal duties on governing bodies, providing a first point of reference for those with a specific area of interest.
- Further reading is signposted from within each section for those who would like more detailed information. Links are provided to relevant regulations, guidance and resources.

NCTL's training programme for clerks will ensure that clerks have all necessary information and materials to deliver a professional service and advice to governing bodies. There is an open license on the content of the archived Governors' Guide to the Law. This means that any content that remains of value to clerks can be used not only by NCTL but by any other organisation that may to develop guidance or training programmes for clerks.

Arrangements for tackling underperformance and failure of governing bodies

15. Urgency in implementing Interim Executive Boards is critical to address serious failings of governance in schools. Given that urgency, the absence of time limits for the implementation of IEBs is indefensible and should be rectified forthwith. We recommend that if, after an inspection, Ofsted considers that a governing body should be replaced by an IEB, Ofsted should use its power and responsibility to say so explicitly. (Paragraph 92)

Where a school is failing, an IEB is one of a number of options available to secure the necessary improvement. We do not agree that there is a need for a new role for Ofsted here as the recommendation would appear to imply that an IEB is always the most effective way to secure improvement. If an IEB is required, it should be implemented quickly. However, in some cases the governing body will seek a sponsored academy solution itself and appointing an IEB in such cases would merely add avoidable delay.

The role of Ofsted is to inspect and report on a school, including the effectiveness and capacity of the leadership team and governing body. The priority then is to secure improvement as quickly as possible, using IEBs where appropriate. Having Ofsted make specific recommendations on the proposed solution could blur the boundary of responsibilities between the Chief Inspector, the local authority and the Secretary of State.

16. We recommend that the Government investigate the reasons why so many local authorities, and the Secretary of State, have historically been reluctant to use their powers of intervention where school governance has become a concern. Any unnecessary restrictions on the use of these powers should be lifted so that they can be used more effectively. (Paragraph 100)

We do not accept that the Secretary of State is reluctant to intervene in underperforming schools, and this is demonstrated by the rapid transformation of many poorly performing schools into sponsored academies. The Secretary of State has also imposed IEBs directly on seven occasions to date. The changes to the Ofsted inspection regime mean that the Secretary of State is now more explicitly made aware of issues with school governance. We are keeping under review how the intervention framework could be improved to allow the Secretary of State to intervene more quickly.

We agree that many local authorities do not make enough use of their formal intervention powers. The number of IEBs issued by local authorities is growing, but still far too slowly. In 2012-13 local authorities put in place 74 IEBs; a small number compared with the number of schools with declining or poor performance. Sixty local authorities have never put an IEB in place. We think it is unlikely that this reluctance is due to legislative restrictions, as the circumstances whereby a local authority can issue a warning notice appear broad. Our understanding to date has been that local authorities prefer to avoid taking action under the legislation because they feel it undermines their

relationship with the school. They would rather bring about improvements through persuasion and co-operation. We consider that they should take a co-operative approach for a more limited time period before using their formal intervention powers.

17. Local authorities continue to have an important role in the monitoring and challenge of school performance between Ofsted inspections. Ofsted’s inspections of local authority school improvement functions will be an important gauge of how feasible it is for local authorities to continue to undertake this role. There is a need for greater clarity on the role of local authorities in school improvement within the new school landscape and in the context of reductions to budgets. We recommend that this be addressed by the DfE as a matter of urgency. (Paragraph 101)

We recognise the concerns of the Committee on this matter. We plan to consult later this year with local authorities, schools and other partners to consider how the planned reductions to the Education Services Grant (ESG) can be implemented through realising efficiencies and enabling local authorities to focus on their core role in relation to schools. This will be preceded by a period of field work with local authorities, schools and academies to gather evidence about how the ESG is currently being used.

The relationship between the governing body and headteacher

Division of responsibilities

18. We recommend that the Government review existing regulations and legislative requirements regarding the respective roles and responsibilities of governors and headteachers to ensure clarity regarding the proper division of strategic and operational functions in school leadership. (Paragraph 107)

The Committee is right to draw attention to the important distinction between the role of the governing body and the role of the headteacher.

The new Roles, Procedures and Allowances regulations from 1 September 2013 make it clear that the governing body is responsible for setting strategic direction, holding the headteacher to account for the educational performance of the school, and making sure that best use is made of the school’s financial resources. The regulations make it clear that the internal organisation and management of the school is the responsibility of the headteacher, and that the headteacher must undertake any reasonable request of the governing body. These principles are set out in the Governors’ Handbook and are equally relevant to the governing bodies and principals of academies.

Training for headteachers and chairs of governors

19. There is a compelling case for headteachers to undergo training on governance. We strongly support training for headteachers and chairs of governing bodies to assist with mutual understanding of each other's roles and responsibilities. (Paragraph 112)

We agree that it is important for headteachers and governing bodies to understand each other's roles. NCTL is looking at all training programmes for headteachers to ensure adequate coverage of governance.

Leaders undertaking the previous format of NPQH could choose to undertake a module on governance. In its review of NPQH, NCTL recognised there was insufficient emphasis on the importance of governance and the revised NPQH programme now has a consistent message about the vital importance of the role of strong governance in school improvement and the significance of the relationship between the headteacher and the chair of governors.

Appointment and terms of office of governors

20. In order to ensure that every governing body has an effective chair, the appointment process for chairs needs to be robust and accompanied by clear procedures for removing poorly performing chairs from office. We recommend that DfE review current procedures relating to the appointment, and the terms of office, of chairs of governors. We also recommend that governing bodies be given the power to remove poorly performing governors. (Paragraph 117)

We agree that the process needs to be clear. The new Roles, Procedures, and Allowances regulations from 1 September set out the procedures for maintained school governing bodies to elect the chair and removing the chair from office. The advice note to accompany the regulations will make it clear that governing bodies can look externally to find a highly skilled chair, rather than always looking to appoint from within their existing cohort of governors. Having found a suitable person they would then need to appoint them to a vacant position on the governing body before electing them as chair.

We have no plans to give governing bodies more power to remove governors. It is right that governors are accountable to the body that appointed them, and the power to remove them rests with this body. We should not, therefore, as matter of principle, allow governing bodies to remove those that are elected.

In practice, it is the responsibility of the chair of governors to ensure the effectiveness of the governing body and the performance of individual governors. It is for the chair to have honest conversations, as necessary, if governors are not pulling their weight. This doesn't need further government regulation.

New models of governance

Accountability of academy governance

21. Academies differ in their governance structures. We recommend that the Government clarify the roles of governors in the different types of academy. The Government should also clarify how relevant local groups (including pupils, parents and staff) should be given a voice in the business of the governing body. (Paragraph 125)

We have published new guidance on our website about governance in academies, including content about the difference between the trust's overall Board of Governors and any local governing bodies of a multi-academy trust, and on the difference between the role of governors in academies and maintained schools. We will keep this content under review.

We believe that conversion to academy status is an ideal opportunity to review and reform as necessary the constitution and structure of a governing body to ensure it is fit for purpose.

As with all types of school, our priority for academy governance is to ensure that governors have the skills to achieve the best for pupils in their school. There are many ways for governing bodies to engage with parents, staff and students and feed these into their decision making.

22. Given the independence of academies' governance structures, parents should be provided with clarity as to how decisions are made in academies, along with detail on where to turn in the event of concerns arising. (Paragraph 130)

Academies are already required to publish their funding agreement and articles of association which set out their governance arrangements.

As companies, and through their funding agreement, academies are also required to produce and publish externally audited accounts. These accounts must include a governance statement that covers the role and function of the board of governors and its sub-committees.

Academies' articles of association require them to make the minutes of governing body meetings available to anybody who asks.

Academies are required to have a procedure in place for dealing with complaints by parents of pupils. The procedure needs to be published on the academy website or made available upon request. Any parent with a complaint about governance at an academy, who is unable to resolve it locally, can contact the Education Funding Agency.

Alternative models of governance

23. Given the NGA’s concern that it will be difficult to find sufficient excellent candidates to provide an effective governing body for every school in the country, we recommend that the Government study the effectiveness of governing bodies governing groups of schools—for example federations and multi-academy trusts. The Government should look at the optimum size of federation that can be governed effectively, and consider how local school autonomy can be retained in federated arrangements. (Paragraph 139)

We agree that governing bodies governing groups of schools can be highly effective. We are working with NCTL, NGA and other stakeholders to produce documents that clearly explain governance in federations and multi-academy trusts (MATs). The guidance documents will aim to clarify legislation and terminology; explain the principles of federations and MATs and help school leaders and governors to think about these as possible structures for their schools. The documents will also include a number of case studies that provide examples of how the governance of federations and MATs works in practice and the journeys taken by school leaders and governors. These will be available in autumn 2013.

September 2013