

GOVERNING BODY RECONSTITUTION

(Maintained, Voluntary Aided, Voluntary Controlled and Foundation Schools only)

1. INTRODUCTION

- 1.1 This guidance outlines the requirement of all governing bodies of maintained schools to be constituted under the School Governance (Constitution) (England) Regulations 2012 or the School Governance (Federations) (England) Regulations 2012, and the School Governance (Constitution & Federations) (England) (amendment) Regulations 2014 as appropriate, by **1 September 2015**.
- 1.2 A number of schools in Sheffield have already reconstituted under the 2012 regulations, as recorded in their instrument of government, therefore the requirement to reconstitute does not apply. The requirement however, to look at the skills required by the governing body should a vacancy arise does apply to all schools, and therefore undertaking a skills audit is recommended. The requirement to reconstitute does not apply to academies.

2. MAIN POINTS

- 2.1 It is recommended that governing bodies are no bigger than they need to be to have all the skills necessary to carry out their functions. The size and structure of the governing body should be designed so that every member actively contributes relevant skills and experience. 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 these purposes. In addition, under the School Governance (Collaboration) (England) Regulations 2003, the committee may be established as a joint committee with another governing body to enable it to include governors from another school.
- 2.2 All governing bodies should review their effectiveness on a regular basis. This should include reflecting on the merits of their constitution and the additional benefits that may be gained from forming a federation.
- 2.3 Filling a vacancy on the governing body provides a specific opportunity to fill any skills gaps. The first priority filling a vacancy on the governing body should therefore be to do what is in their power to secure a new governor with the ability and experience they require – or, if this is not possible, the capacity and willingness to develop relevant knowledge and skills.
- 2.4 A skills audit, such as that produced by the National Governors' Association, should be used to identify the skills, knowledge and experience of current governors and any additional specific skills or experience that the governing body ideally requires. The outcome of the audit will help the governing body or other appointing persons to formulate their opinion as to whether prospective governors have the skills to contribute to effective governance and the success of the school, and will also help to inform governor elections.
- 2.5 Governing bodies and local authorities should take steps to inform governor elections so that the electorate understands the extent to which nominated candidates possess the skills the governing body ideally requires. It is therefore for governing bodies and other appointing persons to determine in their own opinion, what these skills are and be satisfied that the governors they appoint have them. They may interpret the word skills to include personal attributes, qualities and capabilities, such as the ability and willingness to learn and develop new skills.

- 2.6 Before being nominated for election or appointment, all prospective governors should be helped to understand the role of a governor and the governing bodies' code of conduct. It is the governing bodies' responsibility to identify and secure the induction and other ongoing training and development the governors need. It is recommended that governing bodies should set aside a budget for this purpose. Further, the advice is that governing bodies have a code of conduct that sets an ethos of professionalism and high expectations of the governors' role; including an expectation that they undertake training or development activity that is needed to fill any gaps in the skills they have to contribute to effective governance.
- 2.7 Foundation governors have a particular purpose to safeguard the character of the school and ensure it is conducted in accordance with any founding documents, but otherwise every governor's role is to govern the school in the best interest of pupils, not to represent the interests of the Founding body from which they were elected or appointed.
- 2.8 Meaningful and effective engagement with parents, staff and the wider community is vital. However, governing bodies do not need to provide this through their membership. They do however need to assure themselves that specific arrangements are in place for this purpose.
- 2.9 All governing bodies must be constituted under the 2012 Constitution Regulations or 2012 Federations Regulations as appropriate, by 1 September 2015. The Government's aim is to create consistency across the country under a single more flexible regulatory framework. Governing bodies may reconstitute on any date up to 1 September 2015 and are invited to consider the most effective and suitable date for reconstitution. Where governing bodies expect to follow the regulatory procedure for removing surplus governors, they will want to ensure that the date of their reconstitution falls before the end of the term of office of their most effective governors.
- 2.10 Governors remaining within the new structure in their current category will continue to serve out their term of office where the structure can accommodate them. For those newly appointed or re-appointed to a different category, a new term of office will start and it is likely to be appropriate to hold new elections for a chair and vice-chair of governors. Any change to the number of foundation governors will need to be first negotiated and agreed with the relevant appointing body.
- 2.11 The intention of the regulations is that all governors have the skills to support the effective governance of the school. The amended regulations, have been written in such a way however, that the skills criteria for removal of governors does not take effect until 1 September 2015, which means that the juniority rule in respect of surplus governors still applies until this time. We have been advised by the DfE that this will be amended as soon as possible so that any decisions will be made on the basis of skills as intended. At the time of writing this briefing note, the regulations have not been adjusted so the juniority rule applies. Please discuss with your clerk in the autumn term meeting whether the amended regulations have been passed.

3. ATTACHMENTS

ANNEX A	The 2012 Constitution Regulations Explained
ANNEX B	A summary of Maintained School Governing Body Constitution
ANNEX C	A model Instrument of Government
ANNEX D	Suggested Process for Reconstitution
ANNEX E	NGA Skills Audit
ANNEX F	Governing Body Combined Skills Audit

4. ACTION REQUIRED BY GOVERNING BODIES

- 4.1 Please review the attached reconstitution regulations.
- 4.2 Complete the NGA skills audit prior to the autumn term meeting to enable a collective governing body view of all the skills currently held.
- 4.3 Consider the most effective size of your governing body during the autumn term meeting.
- 4.4 Discuss and agree a date for the reconstitution to take effect at the meeting.
- 4.5 Agree your proposed Instrument of Government to be submitted to the local authority.
- 4.6 Agree a meeting as soon as possible on or after the revised instrument takes effect to appoint the co-opted governors, and to elect the chair and vice chair.

5. USEFUL WEBSITES

The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2014 -

<http://www.legislation.gov.uk/ukxi/2014/1257/contents/made>

Statutory guidance for governing bodies of maintained schools and local authorities in England -

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/311411/Constitution_of_Governing_Bodies_of_Maintained_Schools_Stat_Guidance.pdf

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ANNEX A

Section 1: The 2012 Constitution Regulations Explained

This section explains how the governing body of every maintained school must be constituted. The table at **Annex B** summarises the constitution of governing bodies by type of school.

1.1 **Requirements for all maintained schools (regulation 13)**

The governing body must not be smaller than seven members and must include:

- at least two parent governors;
- the head teacher unless the head teacher resigns as a governor;
- one, and only one, staff governor;
- one, and only one, local authority governor; and
- the governing body may appoint as many additional co-opted governors as they consider necessary. However, the number of co-opted governors who are eligible to be elected or appointed as **staff governors** under Schedule 2 **must not**, when counted with the one staff governor and the head teacher, **exceed one-third** of the total membership of the governing body.

There is no upper limit but governing bodies should have regard to this statutory guidance in deciding their size.

1.2 **Additional requirements for voluntary schools (regulation 14)**

In addition to the requirements imposed by regulation 13, voluntary schools are required to have foundation governors as follows:

- voluntary aided schools must have two more foundation governors than all other governors; and
- voluntary controlled schools must have at least two foundation governors, but no more than $\frac{1}{4}$ of the total number of governing body members.

1.3 **Surplus governors (regulation 15)**

A school may have more governors in a particular category than is provided for in its new Instrument of Government if a governing body reconstitutes and reduces in size. If sufficient resignations are not forthcoming for the remaining members to fit within the new structure governing bodies, and chairs of governors in particular, should make every effort to achieve any restructuring or downsizing amicably. This should be done through sensitive and honest negotiation about which governors are best placed to contribute to effective governance and the success of the school.

Where negotiations and the result of a skills audit do not result in sufficient resignations and there remains a surplus of governors (see briefing note bullet 2.11):

- Any surplus in the number of foundation governors must be resolved by the person responsible for appointing foundation governors. They should decide who may continue to hold office on the basis of which foundation governors are best skilled to contribute to the effective governance and success of the school, and to secure the purposes for which they were appointed as a foundation governor.
- Any surplus in any other category of governor must be resolved by a separate vote of the governing body on each category in which there is a surplus. This vote must be specified as an item on the agenda issued seven days in advance of the meeting. Governors are not permitted to vote on their own category. The chair has a casting vote if necessary. Governors declared surplus do not cease to hold office until votes are cast on all categories in which there is a surplus.

1.4 **Term of office (regulation 18)**

The term of office for all categories of governor is a fixed period of four years, but:

- the instrument of government may specify a shorter term of office (being at least a year) for a particular category of governor;
- a head teacher or an ex officio foundation governor stops being a governor when the position which entitles them to be a governor comes to an end;
- an additional governor appointed under Part 4 of the Education and Inspections Act 2006 holds office for such period as the appointer determines up to a maximum of four years; and
- a governor may be elected or appointed for a further term.

Associate members are appointed for a period of between one and four years, as determined by the governing body on appointment, and may be reappointed.

Any governor may at any time resign by giving written notice to the clerk.

Governors remaining within their current category (eg. staff governor; foundation governor) when the new Instrument of Government is drawn up will continue to serve out their term of office. For those governors who are newly appointed, or re-appointed to a different category, a new term of office will commence when the new Instrument of Government comes into effect.

Those remaining within their current category must formally appoint those moving to a different category at a full governing body meeting held on, or shortly after, the date that the new Instrument of Government comes into effect. Particularly where there has been significant change, it is likely to be appropriate to **hold new elections** for a chair and vice chair of governors.

Section 2: The Instrument of Government (Part 5 regulations 26 - 31)

- 2.1 Section 20 of the Education Act 2002 requires all maintained schools to have an Instrument of Government which records the constitution of the governing body and other matters relating to the school. A model Instrument of Government is shown at **Annex C**. The governing body is responsible for preparing the draft Instrument of Government, supported by the clerk and submitting it to the local authority for formal approval at cabinet.
- 2.2 Where a school has foundation governors, the governing body must not submit the draft unless it has been approved by the foundation governors; the trustees of any foundation relating to the school; the appropriate diocesan authority; and in the case of any other school designated as having a religious character, the appropriate religious body.

Section 3: Categories of governor (part 2 and schedules 1 - 3 of the regulations)

This section relates to the appointment / election of the various categories of governor, and summarises the provision made in the Regulations for each. The categories applicable to each type of school are summarised at **Annex B**.

3.1 **Parent governors (regulation 6 and Schedule 1)**

Parent governors are elected by other parents at the school. Any parent or person with parental responsibility, or carer of a registered pupil at the school at the time of election is eligible to stand for election as a parent governor. Parent governors may continue to hold office until the end of their term of office even if their child leaves the school.

Schools must make every reasonable effort to fill parent governor vacancies through elections. However, the Regulations make provision for the governing body to appoint parent governors where:

- not enough parents stand for election,
- at least 50% of the registered pupils at the school are boarders and it is not reasonably practicable to elect, or
- in the case of a community special or foundation special school established in a hospital, it would be impractical for there to be an election of parent governors.

Elected parent governors cannot be removed from office – even if it becomes apparent that they are unable to develop the skills to contribute to effective governance or behave in a manner befitting the role. Every effort should therefore be made upfront to avoid potential difficulties later by informing prospective candidates of the nature of the role and securing their agreement to a clear set of expectations for behaviour and conduct – as set out in a code of conduct.

3.2 **Staff governors (regulation 7 and Schedule 2)**

Teaching and support staff who, at the time of election, are employed by either the governing body or the local authority to work at the school under a contract of employment are eligible to be staff governors. Staff governors are elected by the school staff. They cease to hold office when they cease to work at the school.

It is important that prospective staff governors understand the nature of the role of a governor – and specifically that their role will not be to represent staff, nor to stand alongside the head teacher in being held to account by the governing body, but to operate as part of the governing body to provide strategic leadership and to hold the head teacher to account.

As with elected parent governors, **staff governors cannot be removed** from office. Clear expectations of the role and conduct should therefore be communicated and agreed upfront. If no candidates are forthcoming, the position on the governing body remains vacant and an election should be held as soon as an eligible candidate is identified.

3.3 **The head teacher (regulation 13)**

The head teacher is a member of the governing body by virtue of their office. The head teacher may at any time resign as a governor, and withdraw their resignation, in both cases by notifying the clerk in writing.

3.4 **Local authority governor (regulation 8)**

There is one place for a governor nominated by the local authority. The governing body may detail and publish the skills that it requires of such a governor before an appointment is made. If it does not consider that the person nominated by the local authority has the skills to contribute to the effective governance and success of the school, it can refuse to appoint the person. The local authority has the right then to nominate other people for consideration by the governing body. Members of staff cannot be appointed as local authority governors.

3.5 **Co-opted governors (regulation 11)**

The term “community governor” has been replaced by “co-opted governor”. The governing body can appoint as many co-opted governors as it wishes. Some may be members of the school’s staff (in addition to the elected staff governor – see 3.2). They are people who in the opinion of the governing body have the skills required to contribute to the effective governance and success of the school.

3.6 **Foundation and partnership governors (regulation 9)**

Foundation governors are either appointed or take the role by virtue of an office that they hold. Where appointed, the appointment is made by the person identified in the Instrument of Government (usually the school’s founding body, church or other organisation). A foundation governor is someone who, in the opinion of the person entitled to appoint them, has the skills to contribute to the effective governance and success of the school, and who is appointed for the purpose of securing:

- in all cases, that the school’s character (including religious character where it has one) is preserved and developed; and
- that the school is conducted in accordance with the foundation’s governing documents.
- In appointing a foundation governor, the person entitled to make the appointment should seek to understand and take into account the skills and experience the governing body identifies that they need.
- If an ex-officio foundation governor is unwilling or unable to act as a governor or has been removed from office under regulation 21(1) then a substitute governor can be appointed.

3.7 **Associate members (regulation 12)**

Associate members are appointed by the governing body to serve on one or more governing body committees. They may also attend full governing body meetings. They are not governors and therefore do not have a vote in governing body decisions, but may be given a vote on decisions made by committees to which they are appointed. A committee may exclude an associate member from any part of its meeting where the business under consideration concerns an individual member of staff or pupil

ANNEX B Summary of Maintained School Governing Body Constitution under the 2012 Constitution Regulations

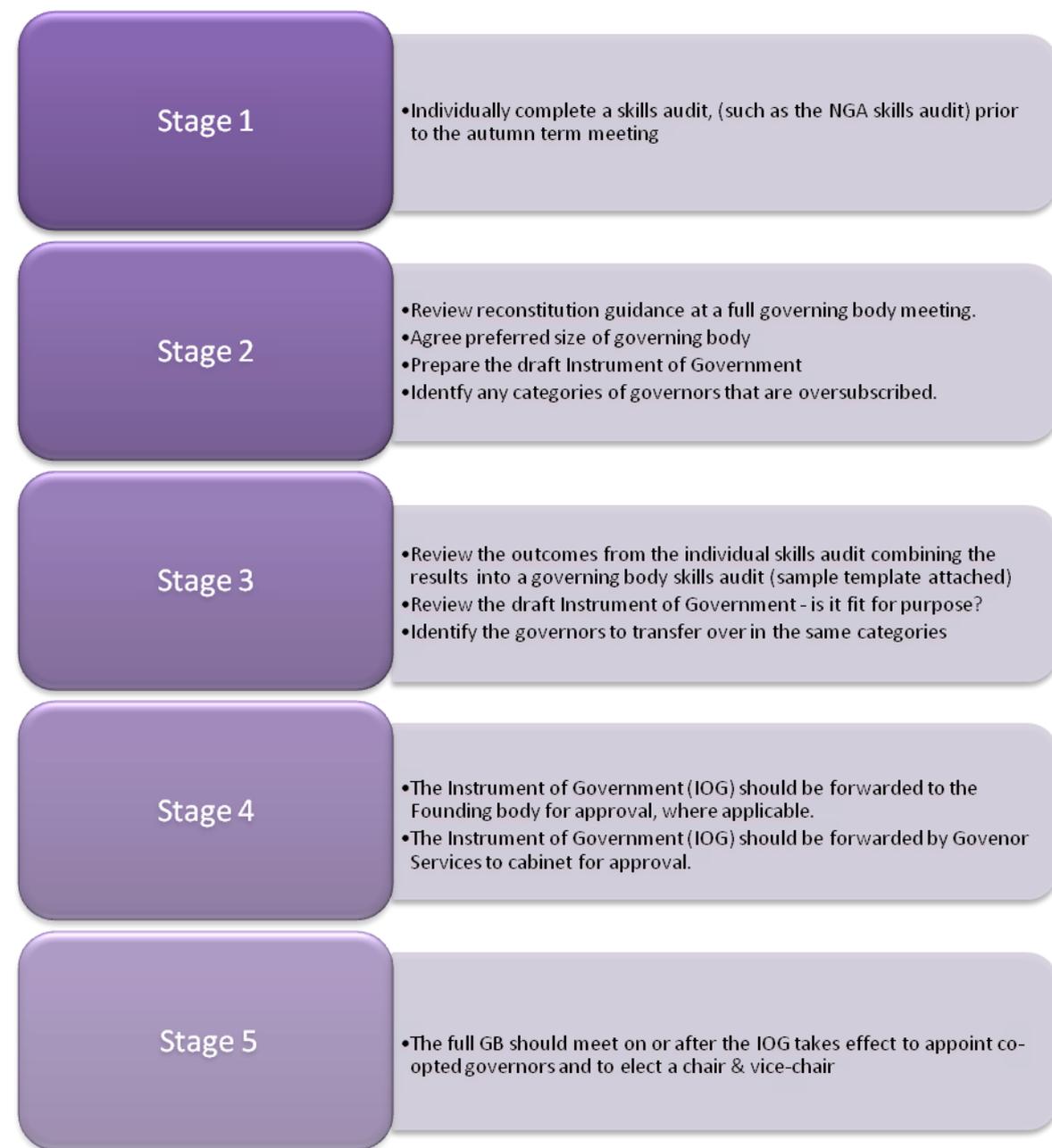
School Type	Foundation/Trust governors	Partnership governors	Parent governors	Staff governors (including head teacher)	Local authority governors	Co-opted Governors
Community	N/A	N/A	At least 2	head teacher + 1	1	As determined by the governing body. However, the number of co-opted governors who are eligible to be appointed as staff governors must be no more than 1/3 when counted with the staff governor and head teacher
Voluntary controlled	At least 2 but must not exceed 1/4 of the total governing body membership					
Voluntary aided	Overall control of GB Majority of two over other categories of governors combined					
Foundation with no foundation	N/A	At least 2 but must not exceed 1/4 of the total governing body membership				
Foundation with a foundation that appoints a minority of the GB	At least 2 but no more than 45% of total governors	N/A				
Qualifying Foundation	Overall control of GB A majority of two over other categories of governors combined	N/A				

ANNEX C - Model Instrument of Government

Instrument of Government

1. The name of the school is Halfway Nursery Infant School
2. The school is a non-denominational, Community school.
3. The name of the governing body is "The governing body of Halfway Nursery Infant School"
4. The governing body shall consist of :
 - a. Three parent governors
 - b. One LA governor
 - c. One staff governor
 - d. One head teacher
 - e. Four co-opted governors
5. Total number of governors = 10
6. This instrument of government comes into effect on 2 July 2015
- 7 This instrument was made by order of Sheffield Local Authority on 2 July 2015
- 8 A copy of the instrument must be supplied to every member of the governor body.

ANNEX D - Reconstitution Process



ANNEX E - NGA Governing Body Skills Audit

Available online at:

<http://www.nga.org.uk/Can-we-help/Free-governance-resources/Governance-tools/Skills-audit-and-matrix.aspx>

National Governors' Association

The National Governors' Association aims to improve the wellbeing of children and young people by promoting high standards in all our schools and improving the effectiveness of their governing bodies. NGA represents governors and trustees across England in both LA maintained schools and academies.

The NGA is a membership organisation: governing bodies can join at a standard (£75 for 2013/14) or GOLD rate (£260). To join NGA and receive regular updates, contact us:

Website: **www.nga.org.uk** · Telephone: **0121 237 3780** · Email: **membership@nga.org.uk**

Introduction

This audit is a useful way of assessing the skills, knowledge and experience of your governing body. In the 2013 NGA/TES survey, 80% of respondents said their governing body uses a skills audit. Of these, 78% used it to identify training needs and 45% used it when recruiting new governors.

NGA would like to see more governing bodies using the results of the skills audit to help them identify any skills and knowledge they still need to deliver their functions – particularly their core functions – effectively.

No individual is going to have all the skills listed in the audit. The governing body is a team, and the purpose of the audit is to ensure that each of the skills below are covered by at least one of the governors around the table. Therefore, we have also produced a skills matrix in which governors' responses can be collated – this can be found on the [NGA website](#). If there are any gaps, these can be filled when recruiting new governors or training existing governors. The way in which this exercise is introduced is crucial – the intention is to enable all members of the governing body to set out their skills and experience whatever their backgrounds, and make clear that the essential and desirable skills for governance can be acquired through a range of life experiences. As such, the experience and skills below may come from either governors' professional or personal lives.

When considering the skills listed, it is important to understand that governance is a 'thinking' not a 'doing' role. This means that the skills and knowledge sought are those which enable governors to ask the right questions, analyse data and have focused discussions which create robust accountability for school leaders. For example, a governor might work in the construction industry, but it would not be appropriate for him/her to carry out a health and safety check at the school. Similarly, a lawyer should not be asked to give free legal advice. Governance is a strategic role and governors must not be tempted to do the staff's job: management must be left to the school leadership team.

Your Name	
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Experience, skills and other attributes	Level of experience/skill: rate on scale of 1 (none) to 5 (extensive) Do remember to think about all the situations in which you may have developed/used these skills				
	1	2	3	4	5
Essential for all governors/trustees					
Commitment to improving education for all pupils					
Ability to work in a professional manner as part of a team and take collective responsibility for decisions					
Willingness to learn					
Commitment to the school's vision and ethos					
Basic literacy and numeracy skills					
Basic IT skills (i.e. word processing and email)					
Should exist across the governing body					
Understanding and/or experience of governance					
Experience of being a board member in another sector or a governor/trustee in another school					
Experience of chairing a board/ governing body or committee					
Experience of professional leadership					
Vision and strategic planning					
Understanding and experience of strategic planning					
Ability to analyse and review complex issues objectively					
Problem solving skills					
Ability to propose and consider innovative solutions					
Change management (e.g. overseeing a merger or an organisational restructure, changing careers)					
Understanding of current education policy					
Holding the head to account					
Communication skills, including being able to discuss sensitive issues tactfully					
Ability to analyse data					
Ability to question and challenge					
Experience of project management					
Performance management/appraisal of someone else					
Experience of being performance managed/appraised yourself					

Experience, skills and other attributes	Level of experience/skill: rate on scale of 1 (none) to 5 (extensive) Do remember to think about all the situations in which you may have developed/used these skills				
	1	2	3	4	5
Financial oversight					
Financial planning/management (e.g. as part of your job)					
Experience of procurement/purchasing					
Experience of premises and facilities management					
Knowing your school and community					
Links with the community					
Links with local businesses					
Knowledge of the local/regional economy					
Working or volunteering with young people (e.g. teaching/social work/youth work/sports coaching/health services for young people)					
Understanding of special educational needs					

Existing governors only

What contribution do you feel you have made to the governing body over the past year?

Please give brief details of courses you have undertaken in the past year - include governor training, work based training/development and/or any other development/training activities.

Are there any additional areas of the governing body's responsibilities to which you would like to contribute in the future?

ANNEX F - Governing Body Skills Audit

Full excel workbook available online at:

<http://www.nga.org.uk/Can-we-help/Free-governance-resources/Governance-tools/Skills-audit-and-matrix.aspx>

Skills Audit - xx Governing Body <date>

Level of experience/skill: 1 =none, 5 = extensive

<i>A 'D' denotes a skill that is desirable to have in the governing body, and an 'E' denotes a skill that is essential within the governing body.</i>	Desirable or essential?	OVERALL		Gov A	Gov B	Gov C	Gov D	Gov E	Gov F	Gov G	Gov H	Gov I	Gov J	Gov K	Gov L	Gov M	Gov O	Gov P	Gov Q
Essential for all governors/trustees																			
Commitment to improving education for all pupils	E	-																	
Ability to work in a team and take collective responsibility for decisions	E	-																	
Willingness to learn	E	-																	
Commitment to the school's vision and ethos	E	-																	
Basic literacy and numeracy skills	E	-																	
Basic IT skills (i.e. word processing and email)	E	-																	
Should exist across the governing body																			
Understanding/experience of governance																			
Experience of being a board member in another sector or a governor/trustee in another school	D	-																	
Experience of chairing a board/ governing body or committee	D	-																	
Experience of professional leadership	D	-																	
Vision and strategic planning																			
Understanding and experience of strategic planning	E	-																	
Ability to analyse and review complex issues objectively	E	-																	
Problem solving skills	E	-																	

Ability to propose and consider innovative solutions	E	-																
Change management (e.g. overseeing a merger or an organisational restructure, changing careers)	D	-																
Understanding of current education policy	E	-																
Holding the head to account																		
Communication skills, including being able to discuss sensitive issues tactfully	E	-																
Ability to analyse data	E	-																
Ability to question and challenge	E	-																
Experience of project management	D	-																
Performance management/ appraisal of someone else	E	-																
Experience of being performance managed/appraised yourself	D	-																
Financial oversight																		
Financial planning/management (e.g. as part of your job)	E	-																
Experience of procurement/purchasing	D	-																
Experience of premises and facilities management	D	-																
Knowing your school and community																		
Links with the community	D	-																
Links with local businesses	D	-																
Knowledge of the local/regional economy	E	-																
Working or volunteering with young people (e.g. teaching/social work/youth work/sports coaching/health services for young people)	D	-																
Understanding of special educational needs	E	-																