

## Governing in COVID-19 times: preparing for the next stages

Guidance for governing boards and clerks

Updated 19<sup>th</sup> June 2020





## National Governance Association

The National Governance Association (NGA) is the membership organisation for governors, trustees and clerks of state schools in England.

We are an independent, not-for-profit charity that aims to improve the educational standards and wellbeing of young people by increasing the effectiveness of governing boards and promoting high standards. We are expert leaders in school and trust governance, providing information, advice and guidance, professional development and e-learning.

We represent the views of governors, trustees and clerks at a national level and work closely with, and lobby, UK government and educational bodies.

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### Changes made to the previous update on 7<sup>th</sup> May 2020

Guidance has been retitled: from *Governing in challenging circumstances Business continuity and holding virtual meetings* to *Governing in COVID-19 times: preparing for the next stages*.

The introduction has been updated: *to include the value of effective clerking, further NGA resources and share your experience and good practice with us*.

The section titled priorities for governing boards has been updated: *with a section titled maintaining governance in COVID-19 times (page 3) that includes questions boards have been asking during this period and urgent decision making*.

A new section has been added titled “planning from September” (page 4).

The section on recruiting board members and managing membership has been updated: *with additional advice for boards on responding to elected governor/trustee vacancies*.

The section on the work of governing board panels has been updated: *to refer to HR and other organisational matters*.

There is a now single section on virtual meetings titled making virtual meetings work (page 8).

Appendix 2 some frequently asked questions has been removed and is available [here](#).



## Introduction

The Department for Education ([DfE](#)) [have advised](#) governing boards to retain a strategic overview of their school or trust during the period that schools have been closed to most pupils due to COVID-19. Chairs, clerks and school and trust leaders have worked together to ensure that governing boards function whilst schools are partially closed.

This guidance is relevant to all types of state school and multi academy trusts in England. It explains how governing boards can maintain good governance and business continuity when the current national guidance advises them against meeting in person, and to adopt alternative arrangements.

Whilst we urge governing boards to create an environment of care and due diligence within the constraints of the pandemic. We recognise there may be circumstances that make it impossible to take a decision or action abiding strictly by governance rules. In such circumstances doing the right thing by schools, pupils, staff and communities should come first. However, there should be a clear communication and audit trail that explains why it was necessary to take an alternative approach.

### **The value of effective clerking**

The support and advice provided by clerks and governance professionals is needed more than ever as governing boards are adjusting to different ways of working. Boards should recognise this by ensuring that their clerk/governance professional has the resources and time they need to do their job well. This may require a new or different routine for planning meetings with the chair and or school leader or help with setting up a virtual meeting. It is also crucial that the continuity of the clerking service is maintained, including timely payment for the work they undertake.

### **Further information and support**

[NGA information sheets](#) contain the latest key messages about how schools should respond to the implications of Coronavirus (COVID-19) to help school governors and trustees ensure their school or trust is keeping children safe.

We have the answers to [frequently asked questions](#) relating to governance in COVID-19 times.

Our GOLDline advice is to all governing boards (and not just NGA GOLD members) until the end of August. If your governing board has a questions about governance in COVID-19 times you can contact GOLDline by email to [gold@nga.org.uk](mailto:gold@nga.org.uk) or by calling 0121 237 3782.

GOLDline is supported by leading education law firm Browne Jacobson, the approved legal partner of NGA, who have also provided [answers to some of the most commonly asked questions.](#)

### **Share your experience and practice with us**

We want to celebrate how boards are adapting to these unprecedented circumstances. To share your experience and practice with us please email [gold@nga.org.uk](mailto:gold@nga.org.uk) or call 0121 237 3782.



## Maintaining good governance in COVID times

Governing boards have put their normal business on hold whilst schools have been closed to most pupils and instead have focused on:

1. Business critical decisions (e.g. budget approval) *amending levels of delegation as necessary to enable fewer governors/trustees to make business critical decisions*
2. Monitoring provision for children who are vulnerable, children with an Education, Health and Care (EHC) plan, the children of key workers
3. Monitoring actions taken by the school/trust to mitigate against impact on the outcomes achieved by disadvantaged pupils and widen the attainment gap
4. Safeguarding - Monitoring the wellbeing and welfare of pupils, staff and stakeholders
5. Any issues arising from how the building is currently being used and remote working for staff
6. Support being given to parents and carers to help them educate their children at home
7. [Testing the robustness](#) of the headteacher/CEO risk assessment of opening the school to more pupils in line with government's guidance

### Questions boards have been asking during this period:

- a. *What steps are being taken to encourage [vulnerable children](#) to attend school?*
- b. *What are we doing to ensure that vulnerable children who are attending school are not being placed at additional risk?*
- c. *Can you tell us about what our school is doing to meet the needs of [disadvantaged pupils](#) at this time?*
- d. *How have our safeguarding arrangements and policies been changed/updated to ensure that the school continues to be a safe place for all children?*
- e. *How are our staff coping – is support available to them and is there anything more that we can do?*
- f. *How are we supporting parents and carers to educate their children at home?*
- g. *How are our teachers maintaining contact with their pupils, supporting them in their work and managing issues relating to on-line learning?*
- h. *Is our current risk assessment for returning more pupils to school in line with the government guidance, local public health advice, feedback from stakeholders etc?*
- i. *How is the risk assessment being kept under review?*

### What happens when an urgent decision is required?

Clearly it is best for all decisions to be taken collectively by the governing board. In circumstances where an urgent decision needs to be taken but it is not possible to convene a virtual meeting, governing boards should refer to their clerk for advice. Maintained school governance [procedures regulations](#) (covered in the DfE's Governance Handbook para 4.3.39), set out the provision for the delegation of functions to the chair or vice chair (if the chair is unable to act) in cases of urgency where a delay in exercising the function would be likely to be seriously detrimental to the interests of the school, a pupil, parent or member of staff. Whether chairs and vice chairs of academy trusts and academy committees (LGBs) can be delegated functions in cases of urgency will depend on the provision made in schemes of delegation or by trustee resolution.



## Planning for September

From September when schools begin to welcome back all pupils and re-establish their normal routines, governing boards will also be returning to normal business and the checks and balances of governance.

It remains the case that the governing board's cycle of meetings, reports, monitoring and decision making are informed by high level strategic priorities for the school/trust. However, for the time being at least governing boards will be also be maintaining a strategic overview of their school/trust plans for ensuring that as many pupils as possible can return safely from September based on the government advice, which may or may not allow for all pupils to return safely in September.

### Monitoring the planning for reopening

School/trust leaders should continue to keep their governing boards updated on the planning for reopening. Governing boards should seek assurance that the plans provide continuity of education and are flexible enough to account for multiple scenarios (restricted numbers, off and on-site provision, full reopening etc.). Also, that they consider:

- local circumstances and advice;
- consultation with staff, their representatives and wider stakeholders on health and safety matters;
- the protective measures needed to reduce the risk of all/more pupils returning;
- prioritising provision for the pupils who need it most; and,
- blending classroom provision and remote education.

### The recovery strategy

NGA advises governing boards against overhauling their current strategy and creating multiple plans. This is more about "bottom up" strategy development that identifies priorities which ensure that COVID-19 does not create a damaging legacy for your school/trust vision. Priorities that cover:

- the assessment of what pupils have learned during lockdown.
- the particular support needed for vulnerable and [disadvantaged pupils](#);
- the assessment of the physical, mental health and wellbeing throughout the school;
- Building/maintaining powerful welfare and pastoral systems;
- engaging wider support where necessary, and
- collaboration with parents, carers and the wider community.

When assessing how COVID-18 is likely to affect strategic aims and key priorities for the coming year, governing boards and their senior executive leaders will consider:

- what the school/trust needs to put in place to deal with the issues created or exacerbated by COVID-19;
- the governance arrangements needed to support and monitor these things and achieving the vision for the school/trust;
- any changes to ensuring compliance with requirements, and
- maintaining the productivity, efficiency and effectiveness of the board.



## Virtual governance from September

Governing boards should also consider how the annual schedule of business will work in practice, if the national guidance, which advises against the governing board meeting in person, remains in place beyond September. We anticipate that governing boards will continue to hold virtual meetings and mix them with face to face meetings to aid efficiency. We also anticipate that they will use video conferencing in other ways such as recruiting senior leaders (see page 7) and new members of the board. This approach, as well as making attendance easier to manage, also helps to promote more sustainable ways of working.

## Reinstating local governance in multi academy trusts

Some MATs have made the decision to suspend their local governance arrangements during the pandemic in order both to both relieve operational pressures and to provide a more co-ordinated and decisive approach to decision making across the trust. NGA encourages these MATS to re-engage their local governance arrangements at the earliest available opportunity from September. The connection that those governing at academy level have with their schools and communities will be of vital importance over the coming months.

## Questions for governing boards to ask about planning their business from September

- a. *How do we maintain oversight of the school/trust plans and risk assessments for getting as many pupils as possible back into education from September?*
- b. *How are we defining the “recovery phase” – is this the next academic year?*
- c. *What are our priority actions for the “recovery phase”?*
- d. *How should we as board monitor and evaluate this?*
- e. *What level of reporting can we expect from senior leaders that is reasonable and proportionate in the circumstances?*
- f. *What data can we expect to have available to triangulate with executive reports and other sources of evidence?*
- g. *Does it mean that we should approach our monitoring differently e.g. appoint different link governor/trustee roles?*
- h. *Should we prioritise the reviewing certain policies (e.g. pupil premium) and aligning them to the “recovery phase”?*
- i. *Are there financial planning and resource implications that the governing board/finance committee need to consider?*
- j. *Should the governing board hold shorter meetings on a more frequent basis during the “recovery phase”?*
- k. *Should we maintain or adapt our existing committee structure during the recovery phase?*
- l. *Have we accounted for statutory compliance and annual tasks that still need to be undertaken throughout the year?*
- m. *Have we considered the board’s own development needs during this period?*



## Recruiting board members and managing membership

Schools being closed to almost all pupils has meant that governing boards have been unable to hold or complete the process of governor/trustee elections. Legislation does not allow for an extension to the terms of office for elected governors at maintained schools. At academy trusts the particular terms of their articles of association will determine if it is possible to extend the terms of office for elected governors.

The latest [school governance update](#) from DfE advises maintained school governing boards to take a pragmatic approach to the timing of governor elections during the outbreak and continue to function with vacancies where necessary and practical. It also advises academy trusts to make pragmatic decisions as to whether elected parent trustees and or local parent governors can be extended under the terms of their articles or whether the trust can continue to function with fewer governors or trustees if necessary.

NGA has taken view that although maintained school governance regulations and some articles of association do not allow the terms of office of elected governors to be extended, it is still sensible to do this when it is not possible to elect replacements and the governing board is unable to function without replacements. However, we also accept that the preferable alternative to extending terms of office until is:

- to function with vacancies until such time it possible to hold governor/trustee elections, and or
- to use governors/trustees whose terms have expired in an associate and or advisory capacity

All governing boards in this position, whether or not they have taken the decision to extend terms of office, should now be considering the timing of governor/trustee elections from September, even if this is provisional and subject to change.

Appointed governor/trustee positions can continue to be made at meetings held virtually following the required procedures and protocol.

Governing boards wishing to continue their efforts to identify and recruit new volunteers to the board do not need to put this on hold. Active volunteers registered on [Inspiring Governance](#) have confirmed that they are still keen to connect with governing boards and are happy to be interviewed using video conference calls.



## The work undertaken by governing board panels

The work undertaken by most governing board panels has been on hold whilst schools have been closed to most pupils.

### Complaints

Complaints' hearings currently on hold should be kept under review with a view to them taking place from September when schools begin to operate normally again. This may be a face to face hearing if it is possible to arrange one under whatever social distancing guidelines are in place, or a hearing that is conducted using video conferencing technology.

### Exclusions

The timeframes attached to reviewing exclusions including governing board and independent panel reviews have remained in place. However, the government appreciates that it may not be possible for these timeframes to be met due to the disruption caused by COVID-19. The DfE has therefore advised governing boards and arranging authorities to assess the facts of the case and decide whether the review needs to be delayed until as soon as is reasonable practicable, or whether to proceed using alternative technology such as video conferencing.

### Recruiting senior leaders

At present the stages in the recruitment process that normally happen in person, like panel shortlisting, interviews and decision ratification meetings, can only take place through the use of alternative technology such as video conferencing.

Some governing boards have decided to delay the process of recruiting senior leaders for logistical reasons or because they think that using alternative technology does not provide sufficient opportunity for all parties involved in the recruitment process to engage appropriately or reliably.

These decisions will need to be reviewed from September in the context of whatever social distancing guidelines are in place and giving careful consideration of the risk posed by further delaying the process.

Whilst it may prove to be relatively straightforward to manage shortlisting and the ratification meeting using video conferencing technology, it will mean adapting the selection process. Adapting the selection process should bear in mind that the activity should be selected because it is exploring an aspect of the candidate's suitability for the post and not just because it is workable through video conferencing. We recommend that governing boards seek the advice of a HR and school improvement professional as appropriate.

### Other HR and organisational matters

Schools being closed to most pupils has caused significant disruption to the conduct of a wide range of professional and organisational matters within schools and trusts including performance management and appraisal, pay progression decisions, restructuring decisions, disciplinary and capability procedures. NGA, the Association of School and College Leaders (ASCL) and the National Association of Headteachers (NAHT) have provided [joint guidance](#) on the conduct of schools on professional matters in light of Covid-19. Underpinning it is an expectation that governing boards and school leaders will respond flexibly with care, due diligence and concern for the mental health and wellbeing of those working in schools.



## Making virtual meetings work

Just as wider society has had to adapt to using technology to work from home and stay in touch with family and friends, those governing have had to adapt to participating in virtual meetings.

Most governing boards have by now approved their arrangements for participating and voting in meetings by telephone or video conference using the provision which exists in maintained school governance [procedures regulations](#), academy articles of association and academy committee terms of reference. Trust boards also have the option of making decisions via written resolutions.

We are learning that with the right preparation it is relatively easy for boards to hold a productive virtual meetings using platforms such as [Zoom](#), [Skype](#) or [Microsoft Teams](#).

**NGA recommends that governing boards arrange virtual meetings by telephone, video conference or through an online platform**, rather than conducting business and voting by email correspondence. The exchange of numerous emails lacks immediacy, restricts the opportunity for the governing board to interact in real time, can result in some governors/trustees losing track of others' contributions, and can make recording problematic for the clerk/governance professional. All governing boards should refer to their clerk for advice.

Governing boards do not need to adopt a substantial, stand-alone policy document that covers virtual meetings. A simple protocol or set of ground rules which are agreed by the board and documented by the clerk/governance professional will suffice. These could acknowledge existing policies relating to data protection, appropriate use of ICT, maintaining confidentiality etc.

*An example protocol for virtual meetings is included as an appendix to this guidance.*

We recommend that boards take the following steps to make their virtual meetings effective.

### 1. Decide what form the virtual meeting will take

An initial conversation between the chair, head teacher/CEO and clerk will help identify what form of virtual meeting (conference call, video conference or online platform) is likely to work best for the governing board. In all probability the school or trust and some governors/trustees will have experience of remote working so canvassing them for suggestions is a good idea. It also highlights any presenting issues like internet connectivity.

### 2. Provide clear instructions and offer support where necessary

Once the form of virtual meeting has been decided then it is important that participants are provided with clear instructions on how they will join the meeting e.g. the weblink, phone number or PIN codes that participants need to either dial in or connect to join the meeting. These instructions are best provided by the clerk as part of their duty to convene the meeting and to circulate the agenda papers. The clerk/governance professional may want to draw on experience and expertise from within the school or trust and the board itself to help them and any governors/trustees who require additional support to access the meeting.

### 3. Test the system platform

Particularly if it's the first time the governing board has held a virtual meeting then it is worth someone testing that the platform or system being used works in practice, thus avoiding finding out just prior to the start of the meeting that it doesn't.



#### 4. Pre-meeting preparation by the chair and clerk/governance professional

The preparation carried by the chair and the clerk prior to any meeting makes a difference to the way that the business is conducted. Virtual meetings are no different. Make time to discuss what's on the agenda, how much time is needed for each item, likely questions, required decisions and outcomes.

Chairs and clerks should be particularly alert to governors/trustees for whom electronic communication presents challenges. Arranging a one-to-one session whereby one person can be on the phone talking the other through how to connect and join a meeting can serve to raise levels of confidence and thus maintain inclusivity.

#### 5. Set the tone and explain the rules of engagement for the meeting

With any new way of working, being clear about expectations helps ensure success. Consider making clear the importance of:

- Joining on time
- Signing a digital attendance sheet
- Keeping to the agenda
- Using your mute button as appropriate for minimising background noises
- Using the chat facility to submit questions or make comments
- Allowing additional time for participants to refer to documents that they may have open in another application

Many people are surprised that being able to see other meeting participants on screen makes remote communication easier and it keeps everyone more engaged, so it is worth encouraging everyone to use their webcams if at all possible.

#### 6. Evaluate and learn from experience

The more the governing board practices virtual meetings then the more efficient the meetings will become. Don't be deterred by things that don't work perfectly to begin with. Take a note of what worked well, what could work better and be applied to future meetings.

#### GDPR considerations

The duties of schools and governing boards in relation to the GDPR has not changed and so it is important that this remains a priority.

Governing boards must therefore ensure that when meeting remotely they continue to have regard to the school's policies on data protection as referred to in the example protocol in Appendix 1.

Governing boards must also be satisfied that the school/trust on-line security is robust and data protection policies continue to be adhered to by staff and so they should consider the following:

- Is the equipment that staff are using remotely secure for data protection purposes?
- Are internal procedures for data protection continuing to be followed?
- Is data sharing with external parties being conducted in accordance with the GDPR?
- Are staff clear on the procedures around handling personal data when working remotely?



## Appendix 1

### *(Example) protocol to be followed when using alternative arrangements to participate and vote in meetings of the governing board*

#### **The protocol that applies to governors/trustees using alternative arrangements to participate and vote in meetings**

Where the governing board has approved and has in place alternative arrangements for governors/trustees to participate and vote in meetings (e.g. by telephone or video conference) and a governor/trustee wishes to use these alternative arrangements they should:

- restrict themselves to using the arrangements agreed by the governing board;
- inform the clerk to the governing board that this is their intention as soon as possible but no later than 72 hours before the meeting is due to take place (subject to the meeting being convened giving the normal notice period);
- communicate and co-operate with the clerk to the governing board, school or trust as necessary to ensure that the alternative arrangements can be put in place and work well for all concerned, and
- abide by the normal rules, procedures and code of conduct adopted by the governing board and give particular regard to the duty to maintain confidentiality.

#### **The protocol that applies to the governing board when using alternative arrangements to hold their meetings**

Where the governing board decides that a meeting should take place using alternative arrangements (e.g. by telephone or video conference) that have been previously agreed then following will apply:

- the usual (statutory) notice and arrangements for issuing papers except where the chair has exercised their right to waive the usual notice;
- all participants to receive clear instructions regarding how to access the meeting including where they can access support if they experience difficulty;
- all participants will note and follow any instructions given on how to manage their participation at the meeting. For example, confirming attendance, speaking through the chair of the meeting, voting on matters etc;
- the governing board will abide by their normal rules, procedures and code of conduct adopted by the governing board and give particular regard to the duty to maintain confidentiality;
- governors/trustees will contribute towards a safe and secure environment for the meeting by giving due regard to the school's policies relating to data protection and the appropriate use of ICT, and
- the minutes of the meeting will be taken by the clerk to the governing board and the meeting should not be recorded by any governor/trustee or the clerk without the approval of the governing board and for a specified purpose.