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Shake-up for church schools is on the way

18 JUNE 2021

The structures governing diocesan education are changing. *Howard Dellar* unpicks the new advice

THE new Diocesan Boards of Education Measure 2021 received the Royal Assent on 29 April. It will require all dioceses in England to look at the central legal structures that surround their work in [education](#) and church schools.



Furthermore, it will also open up again the sometimes strained relationship between diocesan boards of education (DBEs) and the diocesan boards of finance (DBFs), and how they work together. A new scheme passed by each diocesan synod will need to be ready to come into operation by 1 January 2023. The timetable is possible, but needs careful planning to link with meetings of diocesan synods.

To aid this, the Church of England's Education Office issued, on 5 May, guidance on the new framework to the diocesan directors of education, and published template schemes for each of the five different structures permitted

under the new Measure.

It is clear that the Government's Department for Education and the Charity Commission have been consulted about these template schemes. The guidance is silent, however, on whether they have approved them; so changes will need to be worked through carefully, advice sought, and drafts approved by the Charity Commission within this 18-month time frame.

Customarily, the governance model preferred by diocesan directors of education and their boards has been that of a charitable company. The Charity Commission's preference for corporate bodies when large sums of both public and private funds are being handled is well known.

We were surprised to find any other option now available, even though about half the dioceses have also worked well with the unincorporated DBE model, and referred to closer workings with the DBFs as central to their reasoning for this preference.

One new option is to establish the diocesan board of education as a "statutory committee of the DBF". This could, though, raise issues for the Charity Commission and for DBEs and DBFs alike.

QUESTIONS to be asked of this new model creating the DBF and a committee as the DBE will be:

First, whether the DBF has put in place a structure and procedures that enable to it assure itself (and the Charity Commission) that the charitable functions given to it by the Measure are properly carried out in support of appropriately stated charitable purposes. This is crucial to safeguard the DBF, since all liabilities will sit with it.

Second, whether a new DBE committee would be eligible to be designated as a linked charity to the DBF under the Charities Act, and should be so designated — or, if not, how and to what extent could its members be protected from individual liability for the decision and actions which do not

have to be validated by the DBF.

And, third, whether the committee members are (or could be deemed to be) charity trustees under the Charities Act 2011. We note that while the Measure does not require the DBE committee to be a registered charity, it does not prevent it from being so.

THE Charity Commission has powers under the Charities Act in respect of the suitability of proposed articles and constitutions, and is likely to have an interest in schemes of delegation and committee constitutions under the DBF structure.

Dioceses should consult with the Charity Commission before sending a draft scheme to the [Archbishops' Council](#) for the initial vetting proposed in the Education Office guidance, and before presenting the proposed scheme to the diocesan synod. This is to avoid the difficulties and delays that would arise if a scheme approved by the council and then by the synod proved to contain details that were then not approved by the Commission.

When it comes to deciding on the legal structure, note that the choice of structure is for the bishop of the diocese to determine, subject only to the consent of the existing diocesan board of education. Bishops may consult whomever they wish, but may not delegate the decision.

We note that, as the Measure is worded, a diocesan synod appears to have no power to amend the scheme proposed by the bishop (let alone to change it for a different one), and perhaps has no power to refuse to agree the proposed option.

We note also that the certification part played by the Archbishops' Council lies only in determining the date on which the scheme shall come into operation. While we would expect the council to point out (as the Education Office guidance explains) any aspects of a scheme that are contrary to the provisions of the Measure, the Archbishops' Council has otherwise no power to require or request changes to the draft, or to approve it, or its wording.

FINALLY, having caused [Parliament](#) to pass an Act that contains five possible DBE structures, the Church's Education Office argues strongly in its guidance against the two unincorporated options that it asked Parliament to include. This puts many dioceses in a potentially tricky position, and would appear to make the DBF structure the only option available for those dioceses that, for some reason, do not wish to have an incorporated DBE.

As a consequence, we have been advising clients that, for bodies that are going to have to handle large sums of public money as well as carry out charitable functions and hold large charitable assets, a corporate structure is the only sensible option. If a bishop or the diocese has concerns about a company limited by guarantee, a charitable incorporated organisation provides an excellent and simple alternative.

An unincorporated DBE is a possible if, in our view, less desirable option, assuming that it can be established as acceptable to the Charity Commission. We share the Education Office's reservations, as set out in its guidance, but do not regard them as ruling this option out.

We do not regard the DBF committee structure as an easy third option for dioceses, as it neither protects the DBFs nor the DBE committee from liabilities. We have ourselves always advised against putting the DBF in the position of being the body with clear potential liabilities for schools matters.

Dioceses will be aware that the new Measure affords them an exciting opportunity to review the conduct of this substantial and important facet of the national ministry of the Church of England, the like of which is not likely to recur for a generation. They need to think carefully and take advice, so that they make the decisions that best suit them.

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