

THE DIOCESAN BOARD OF EDUCATION (DBE) MEASURE FOR THE JOINT DBE IN WINCHESTER & PORTSMOUTH

Request to the Diocesan Synods in Portsmouth & Winchester to endorse the recommendation of the joint DBE, both Bishop's Councils & both Diocesan Boards of Finance, and agree the new status of the joint DBE

1. The issue:

All diocesan synods are required to make a *Scheme* in accordance with the new *Diocesan Board of Education (DBE) Measure 2021* to designate an entity as the DBE for each diocese in accordance with legislation (<https://www.legislation.gov.uk/ukcm/2021/1/enacted>)

2. Timing

- a. The new DBE Measure must be operational for January 2023. Failure to submit a Scheme by November 2022 (and allowing at least three months beforehand for legal checking and any suggested revisions by the National CofE Education Office) will mean that the Archbishops' Council will direct The Diocese of Winchester & will direct The Diocese of Portsmouth in order that the dioceses comply with legislation.
- b. The DBE's recommendation at its March 30th 2022 meeting must be agreed by the synod in both Winchester and Portsmouth Dioceses, and beforehand has been tested, evaluated and scrutinised agreed by the Bishop's Council & Diocesan Board of Finance in both dioceses.
- c. Agendas have therefore been set in both dioceses so that the decisions are actioned by July 2022.

3. Background:

- a. There are five different DBE structures permitted under the 2021 Measure:
 - i. Single Incorporated DBE;
 - ii. Joint Incorporated DBE;
 - iii. Single Unincorporated DBE;
 - iv. Joint Unincorporated DBE; and
 - v. DBE which is a Statutory Committee of the Diocesan Board of Finance (DBF).
- b. Currently the DBE is a Joint Unincorporated Body.
- c. At both the Revision stage and Final Approval of the Measure, before gaining parliamentary assent, members of the (National) General Synod expressed concern about allowing dioceses to select an unincorporated structure for their DBE. These concerns centred around the level of risk as unincorporated entities are now rarely considered to be the most appropriate structures for an operational charity.
- d. The risks inherent in unincorporated structures stem from the fact that they do not have an independent legal personality. This means that the trustees of an unincorporated DBE do not have limited personal liability.

- e. The Charity Commission's Guidance CC3 (The Essential Trustee) advises trustees that: *"if your charity is unincorporated and employs staff or enters into other contracts, the trustees should seriously consider changing the charity into an incorporated form"*
- f. The DBE along with representatives from both dioceses' DBFs met with the DBE's solicitor 'Anthony Collins Solicitors' on 25th January 2022. Strong advice was given to the meeting that remaining unincorporated (the preferred option of both dioceses at the time) was extremely risky and should not be considered.

4. Meeting of the DBE/DBF working-group

- a. It was agreed that a working group of the DBE/DBFs would meet to consider the matter in more detail. The group met on 25th March 2022. Winchester Diocese's Registrar and the policy lead from the CofE's Education Office were in attendance and offered observations but were not commissioned to offer legal advice. The table attached provides an overview of some of the key points discussed. The group unanimously determined that :
 - Options (i) and (iii) were extremely undesirable, and would split the joint DBE into separate DBEs at a time when closer cross-diocesan working is being encouraged nationally in a range of areas;
 - Option (iv) is strongly not-recommended by our lawyer and the National Education Office due to risks for trustees; existing DBE members expressed serious doubt of continuing if this option was taken.
 - Option (v) is not permitted under the Measure for a joint DBE
- b. Section 4(3) of the 2021 Measure enables diocesan synods to designate an entity as a joint DBE for two or more dioceses. Subsection (1) provides that the joint entity must be an incorporated registered charity or an unincorporated registered charity.
- c. The working group unanimously agreed to recommend option (ii) Joint Incorporated DBE. As an incorporated board, two versions are available :
 - (1) A Company Limited by Guarantee (CLG) – that would require dual regulation with Companies House and the Charity Commission which would be more costly and administratively onerous initially and ongoing.
 - (2) A Charitable Incorporated Organisation (CIO) enables charities to enjoy the benefits of incorporation without the complexities of being a company. A CIO constitution is also simpler than articles of association.
- d. The meeting unanimously recommended the CIO as this is a registered charity but is wholly owned and managed by the two dioceses (who fund the CIO/DBE anyway) – including the appointment of trustees (who would not own the charity – as per the other options) thus allowing the DBFs control over their finances (as current) with the DBE's work.

5. Unanimous foundation position : at each stage, and in every meeting of all boards and groups named in this paper, there has been unanimous and categorical statements regarding the positive and beneficial working as a joint DBE. As the only joint DBE in the CofE, others are looking to us as a model for more collaborative work across dioceses. While the question has been rightly raised for due diligence at all of the meetings, not a single person wanted or

proposed a split, so that the Diocese of Winchester and the Diocese of Portsmouth revert to having separate DBEs.

6. Next steps : If both synods agree with the recommendation and vote accordingly, significant detailed work will be required to implement The Measure, the new Scheme and to determine joint working between the dioceses. This has been factored into budgeting for HR, legal and other costs. The following list offers most (but not all) of the work required post-Synod decision:

Immediately :

- I. Mapping the existing diocesan Memorandum of Agreement (MoA) between Winchester and Portsmouth onto the legal template for the DBE Measure – by our lawyers
- II. Sending our draft Measure and Scheme to the National Office for checking and feedback
- III. Reviewing the make-up of our Board in terms of skillset expectations as a new charitable body but also size and representation to be efficient and effective

And rapidly afterwards:

- IV. Revising the MoA to ensure that it is future-proofed particularly regarding provisions to deal with any unforeseen disagreements between the dioceses (as advised by the Charity Commission in its notes)
- V. Registering the DBE with the Charity Commission
- VI. Agreeing financial models and Service Level Agreements for the DBFs to secure the ongoing joint working between the two dioceses; the employment of DBE staff and their TUPE, office space, HR provision and other requirements
- VII. Determining skill sets of Trustees going forward so that the new requirement to agree and review Budgets and other financial reporting is secure in terms of analysis and timing at Board meetings
- VIII. Costs for the dioceses to cover essential requirements (eg. Staffing in the finance team)

Recommendations and decision : that the Diocesan Synod-

- a) Complies with the legislative requirement to decide the future format of the DBE and within the expected timeframe.
- b) Endorses the recommendation from the DBE, coupled with the proposal from the working group of the DBE and DBFs, that to comply with the new DBE Measure, the DBE should become a Joint Incorporated Body as a Charitable Incorporated Organisation (CIO) and votes accordingly.
- c) Requests that the relevant legal drafting and work is commenced to ensure documentation and other requirements are completed in time (I,II and III in para 6 above)
- d) Agrees to receive any further updates and detail by correspondence with any detailed feedback, but none that might change the decision regarding the DBE Structure agreed at the meeting.

- e) Notes that the Director of Education (Portsmouth & Winchester); the DBE's Executive Resource Group (ERG); the Diocesan Secretary, Chair of the DBF and Chair of the BC (Portsmouth); the Interim Diocesan Secretary, Chair of the DBF and Chair of the BC (Winchester); The Finance Director (Portsmouth & Winchester); the DBE's lawyers; the Diocesan registrars and Lawyers (Portsmouth & Winchester); will work closely to ensure that detail and actions required are timely, particularly those in paragraph 6 above.

Jeff Williams
Director of Education
June 2022