

Committee(s): <u>For Decision</u> Policy and Resources Committee <u>For Information</u> Board of Governors – City of London Freeman’s School Board of Governors – City of London School for Girls Board of Governors – City of London School Standards Committee	Date(s): 4 July 2019 25 September 2019 7 October 2019 9 October 2019 4 October 2019
Subject: The City of London Corporation’s Independent Schools and Parent Governors	Public
Report of: The Town Clerk and the Comptroller & City Solicitor	For Decision
Report author: Polly Dunn, Senior Committee and Member Services Officer Edward Wood, Chief Solicitor	

Summary

This report concerns the management of the City Corporation’s three independent schools, and the extent to which the parents of current pupils can and should be able to serve as Governors. This report recommends making some change to the current constitutional arrangements and presents two options for consideration, depending on whether Members are for or against parental representation on those Boards.

Recommendation(s)

Members of the Policy and Resources Committee are asked to either:

- Recommend to the Court of Common Council that the parents or guardians of any child currently studying at the City of London School, the City of London School for Girls or the City of London Freeman’s School should be ineligible to sit on the Board of Governors for that School; or
- Request that the Board of Governors of the City of London School, the City of London School for Girls and the City of London Freeman’s School consider in more detail whether it is in the Schools’ best interests to allow parental representation and, if so, how this could best be achieved.

Main Report

Background

1. This report relates to the constitutional and governance arrangements for the Boards of Governors (“the Boards”) of the City Corporation’s three independent schools – the City of London School, the City of London School for Girls and the City of London Freemen’s School (“the Schools”).
2. In the last year the Standards Committee has received two requests for a dispensation to enable Members with children at one of the Schools, who had been appointed to the Board of that School, to fully participate in its business. The Standards Committee felt unable to grant those applications and as a result one Member subsequently stood down from his position as Governor and the other is not currently attending meetings, pending further consideration of this matter.
3. Following the second application, the Standards Committee asked that a resolution be sent to the Policy and Resources Committee, in view of that Committee’s overall governance role, on the issue of interests affecting the ability of a Member with children at one of the Schools to serve on that School’s governing body, in order to allow the Policy and Resources Committee to consider the matter further and possibly seek a solution to it. The resolution that was submitted is included at Appendix 1.
4. The Policy and Resources Committee considered the resolution at its meeting on 15 November 2018. The Committee agreed that it was unfortunate that Members with children at one of the Schools were effectively precluded from serving on the Board and that this was contrary to practice at other independent schools or in relation to parent governors more generally. Reference was also made to the way in which the provisions of local government legislation were perhaps inappropriately applied to the City Corporation’s non-local authority business. The resolution was noted and officers were asked to explore a solution to the issue identified.

The constitutions of the School Boards

5. The constitution and terms of reference of each of the three School Boards, as approved by the Court of Common Council, is attached at Appendix 2. Members will note that each of the Boards currently include provision for appointing a number of co-opted Governors with experience relevant to the Board. The co-opted Governors do not count towards the quorum, are not eligible to be Chairman, and any decision taken requires the agreement of a majority of the Common Council Governors present at the meeting and voting. Historically none of the co-optees have been parents of current pupils, and there is no provision for dedicated parental representatives (“Parent Governors”). Equally, however, there is nothing explicit to say that the parents of current pupils are ineligible to serve as Common Council Governors or co-opted Governors.

6. The governing documents of the three Schools (the Scheme and Acts of Parliament) are silent on the precise composition of the Boards. The City of London School and the City of London Freeman's School are subject to statutory provisions regarding the ineligibility of any person with an interest to sit on the Board in question. However this is considered to be restricted to works contracts rather than having a wider application to a parent with a child at the School.

Position under the Localism Act 2011 and the Members' Code of Conduct

7. The City Corporation's Member Code of Conduct applies to both elected Members and co-opted Members, and to all of the City Corporation's functions, not just its local authority or police authority functions. Members must have regard to the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
8. Paragraph 13 of the Code of Conduct, which reflects section 31 of the Localism Act 2011, specifically provides in relation to interests that:

"Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State."

9. One of the categories of disclosable pecuniary interest specified in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 is any undischarged contract between a Member (or their spouse/partner) and the City Corporation for goods or services. As a parent of a child at one of the Schools, a Member (or their spouse/partner) will in most cases be party to a contract with the City Corporation for their child's education and will therefore have a disclosable pecuniary interest in much of the business of the relevant Board. This does not prevent a Member from being appointed to that Board but, in the absence of a dispensation, their participation in the work of that Board is likely to be significantly impacted. The City Corporation may be unique in applying this particular governance framework to its three Independent Schools, although all schools will have their own governance arrangements in place.
10. Under section 33 of the Localism Act 2011 the City Corporation may, on a written request, grant a dispensation for up to four years allowing a Member to speak and/or vote in the circumstances described in the dispensation, notwithstanding any disclosable pecuniary interest. The granting of dispensations is a function that the Court of Common Council has delegated to the Standards Committee. Members will know that the Standards Committee recently produced a policy and guidance document on the granting of dispensations, which contains much more detailed information. That policy and guidance document does not specifically address the issue of Members with children at one of the Schools, partly because of this separate work stream.
11. In order to grant a dispensation, one of the statutory grounds must be satisfied. There are only two grounds that are potentially relevant in this case. One is that,

without the dispensation, the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business. This ground would not be satisfied at the present time, although could potentially be satisfied in the future if circumstances changed, or the composition of the Boards was altered. The other statutory ground is that it is otherwise appropriate to grant a dispensation. This ground could be made out if, for example, it was felt that the introduction of Parent Governors would assist with the good governance of the Schools.

12. In relation to the previous requests, one Member applied for a dispensation to speak and vote on all core strategic business of the Board where no direct pecuniary interest arose. The other sought a dispensation to speak and vote on all business of the Board, with the caveat that he would not vote on any matter that had a direct financial impact on him as the parent of a pupil, such as school fees. The grounds advanced were generally that: (i) if a dispensation were not granted the Board would be left with a further vacancy and this may impact on its ability to transact its business; and (ii) it was appropriate to grant a dispensation because it was common practice for parents to serve on school governing bodies in both independent and maintained schools, and to withdraw from the business when a specific pecuniary interest arises, and that a majority of the discussions would have no such direct impact.
13. In considering those requests the Standards Committee noted that there were some current Board vacancies, but felt that this was not sufficient to satisfy the first statutory ground. On the second ground, it was noted that the City Corporation had chosen not to have Parent Governors on the Boards, and that the role of a Common Council Governor was different. Regarding the wording used in the applications, the Standards Committee also felt that it was not possible to easily determine in every case what business before the Board was or was not relevant to the disclosable pecuniary interest. Whilst being sympathetic to the possibility of a Parent Governor role, and the content of the applications, both requests were therefore refused. However, there is currently nothing to stop further requests being submitted in the future, either for a Governor's term of office, or for a specific meeting or item of business, and any application would be considered on its own merits, and in line with the new policy.
14. It is also important to bear in mind that the City Corporation has voluntarily chosen to apply its Member Code of Conduct to its City's Cash functions, including its management of the Schools. This has advantages in terms of simplicity and consistency, particularly for those Committees exercising both local authority and non-local authority functions. It may also assist with the public perception of good governance. Ultimately, however, it would be open to the Court of Common Council to adopt alternative arrangements for the Schools, to facilitate the introduction of Parent Governors, if this was considered to be beneficial or necessary. For example, the Court of Common Council could disapply the disclosable pecuniary interest provisions in respect of contracts for education between Members of the Board and the City Corporation.

Feedback from the Schools

15. The jointly held opinion of the Headteachers of the three Schools is provided in a detailed note at Appendix 3, which analyses the issues and compares and contrasts the position with state schools and other independent schools. In summary, they advise that larger, more established independent schools very rarely have current parents on their boards. The Headteachers have serious reservations about allowing elected Members with children at one of the Schools to sit on its Board as a Common Council Governor under the current arrangements, due to potential confusion over roles, concern that this could be seen as 'double standards' by other parents, and the fact that they would be eligible to become Chairman. This option is therefore not recommended.
16. The Headteachers also note that the Boards have not had a chance to discuss how desirable a wider scheme of parental representation is and how best this could be achieved. In the absence of such a discussion, they continue to favour the current system of co-opting parents of recent leavers on to the Boards as this achieves the object of 'parental insight' without the attendant conflicts of interest. Their concerns relate to both the disclosable pecuniary interest issue (on which they consider that almost any item of business for the Boards will have financial implications) but also wider issues around disciplinary action, pastoral care, access to sensitive information, etc. which goes beyond the ambit of any dispensation.
17. This report is also being circulated to all Members of the three Boards for consultation prior to consideration by the Policy and Resources Committee and any additional comments received will be collated and included in the papers for the July meeting (Appendix 4).

Options

18. Preserving the status quo is not recommended. One option would be to formalise the current *de facto* bar on elected Members and co-opted Members serving on a Board where they have children or dependents at the School in question by amending the constitution and terms of reference for each of the Boards to make it explicitly clear that a Member in that situation is not eligible to serve. This could be achieved relatively easily through a report to the Court of Common Council, and the greater clarity would prevent any further ad hoc applications to the Standards Committee.
19. Alternatively, if Members wish to explore the option of Parent Governors further, then it is recommended that the Boards should be asked to consider in more detail whether it is in the Schools' best interests to allow parental representation. They could be asked to consider an appropriate method of appointment, and whether elected Members should be able to stand for these roles in the same way as other parents. They could also be asked to consider the appropriate remit of such a role. If the conclusions were positive, a report could subsequently be taken to the Court of Common Council seeking to amend the constitution and terms of

reference for each of the three Boards to include Parent Governors. With such a policy steer, and armed with more information, and as part of a wider framework of safeguards and constitutional changes, the Standards Committee could then be asked to develop guidelines on the granting of an appropriate dispensation to all Parent Governors. If necessary, the disclosable pecuniary interest provisions could be disapplied to contracts for education in these circumstances.

Conclusion

20. The current situation has led to some confusion about whether Members with children at one of the Schools should be permitted to serve on the Board of that School and participate in its business. It is recommended that this confusion is removed, either by making it explicitly clear that the parents of current pupils are not eligible to serve as Governors, or by exploring new arrangements for wider parental representation.

Appendices

- **Appendix 1** – *Standards Committee resolution to Policy & Resources*
- **Appendix 2** – *Constitutions of the three School Boards*
- **Appendix 3** – *Note from the Headteachers of the three Schools*
- **Appendix 4** – *Feedback from Governors of the three Schools*

Background Papers

- *Policy and guidance on the granting of dispensations under the Localism Act 2011 and the Members' Code of Conduct*

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