

Committees: Board of Governors of City of London School for Girls Establishment Committee Board of Governors of City of London Freeman’s School Community and Children’s Services Committee – For Decision Board of Governors of City of London School	Dated: 4 February 2015 5 February 2015 11 February 2015 13 February 2015 25 February 2015
Subject: Disclosure and Barring Requirements for School Governors appointed by the Court of Common Council	Public
Report of: Town Clerk	For Information

Summary

This report outlines the City of London Corporation’s obligations in relation to disclosure and barring service (DBS) requirements for chairmen and governors on boards of the City’s independent schools, academies, and one maintained school. It summarises the legal basis of the DBS requirements and advises that the checks are mandatory in the context of academies and independent schools, and can be enforced by the Secretary of State for Education through the criminal courts. This report goes on to advise members of the policy recommendation made by the City of London Corporation’s Education Board to make it obligatory of all members of the Court of Common Council who stand for nomination as a school governor to undergo DBS checks.

Recommendation

- Members of the Boards of Governors of the independent schools and the Establishment Committee are asked to note the report.
- Members of the Community and Children’s Services Committee are asked to agree that governors appointed by the City Corporation to maintained schools such as Sir John Cass Foundation Primary School be obliged to undergo DBS checks prior to commencing their appointment or as soon as practicable upon commencement.

Main Report

Background

1. Following queries from members over the legal basis for the enforcement of disclosure and barring checks for governors of the City’s independent schools and academies, officers in the Town Clerk’s Department have consulted with colleagues in the Comptroller and City Solicitor’s Department. The advice of the Comptroller and City Solicitor is summarised below. In short, the provisions are mandatory in independent schools, academies and free schools and can ultimately be enforced by the Secretary of State for Education through the criminal courts.

Independent Schools

2. Section 157 of the Education Act 2002 states that, in relation to independent schools, 'regulations shall prescribe standards about the following matters...(d) the suitability of proprietors of and staff at independent schools...'
3. The relevant Regulations are the Education (Independent Schools Standards) (England) Regulations 2010. The Regulations lay down the standards to be met by all independent schools (with limited exceptions). Part 4 of the Regulations deals with the standards in relation to suitability of the proprietor and staff. It should be noted that the Independent Schools Inspectorate publishes a Handbook (2014) which provides detailed guidance on the regulatory requirements applicable. As the Handbook does not have the force of law it is not referred to in this report but it should be noted that the approach in the Handbook is entirely consistent with the explanation of the legal requirements in this report.
4. Section 18 (2) (d) of the Education (Independent Schools Standards) (England) Regulations 2010 states that checks, including DBS Checks, regarding the suitability of a person to be a Chair of Governors or a Governor "should be carried out before or as soon as practicable after a person is appointed".
5. A 'proprietor' is defined in Section 579 of the Education Act 1996 as "the person or body of persons responsible for the management of the school (so that, in relation to a community, foundation or voluntary or community or foundation special school, it means the governing body)".
6. Ownership of the independent schools rests with the City Corporation, but management is delegated to the Boards of Governors. The Chief Inspector of the Independent Schools Inspectorate has expressed the view in a letter to the City of London Schools for Girls (16 October 2014) that each Board of Governors should be regarded as the proprietor of their respective City school by virtue of the wide ranging powers of management and control vested in each Board. It is the view of the Comptroller and City Solicitor that this interpretation is correct.
7. Part 4, paragraph 21(4) – paragraph 21(8) of the Regulations relate to the suitability of the proprietor where the proprietor is a corporate or unincorporated body of persons. The principal obligations are placed personally on the **chairman** of the proprietorial body, that is, the Board.
8. The required standard is met if the chairman:
 - (a) Is not barred from regulated activity relating to children, or otherwise prohibited or disqualified, and

(b) The Secretary of State makes the following checks relating to the chairman:

- a) an enhanced criminal records check, countersigned by the Secretary of State;
- b) checks confirming the individual's identity and their right to work in the United Kingdom;
- c) checks that the person is not barred from regulated activity relating to children in accordance with the Safeguarding and Vulnerable Groups Act 2006;
- d) in the case of an individual living or having lived outside the United Kingdom, and obtaining an enhanced criminal record check is not sufficient to establish the individual's suitability to work in a school, such further checks as the Secretary of State considers appropriate.

9. Paragraph 21(6) relates to the other Board members. It provides that the required standard is met if the member is not barred or otherwise prohibited or disqualified, and the chairman makes the following checks in relation to each Board member:

- a) an enhanced criminal records check;
- b) checks confirming the individual's identity and their right to work in the United Kingdom;
- c) in the case of an individual living or having lived outside the United Kingdom, and obtaining an enhanced criminal record check is not sufficient to establish the individual's suitability to work in a school, such further checks as the Secretary of State considers appropriate.

10. Clearly it would be onerous if the chairmen were required to make these checks personally on other Board members. The work involved can be undertaken on behalf of the chairmen, but they remain responsible for satisfying themselves that all other members of their Board have been subject to the necessary checks.

11. In addition, the Regulations, at paragraph 22, make it clear that the proprietor is under an obligation to keep a register, known as a Single Central Record, of the date of when the above checks were undertaken, in respect of all other governors appointed after May 2007 and the outcome.

12. From the above there is no doubt firstly that all the Board chairmen of the City schools will be subject to the above checking and secondly that these checks are mandatory rather than discretionary. As a matter of law the Secretary of State will only permit a person to be a Chairman of Governors if they have satisfied the above checks.

13. Again, neither the Regulations nor guidance suggest that the performance of these checks by the chairmen in relation to the other Board members is

discretionary. All governors of the City schools should undergo the above checking if this has not already taken place.

14. Section 163 of the Education Act 2002 gives the Independent Schools Inspectorate the duty to inspect registered schools, including those run by the City, and the inspections shall relate to ensuring that specified standards are being met. For the avoidance of doubt this includes assessing whether the standards required regarding the suitability of staff, the proprietor and members of the Board of Governors have been complied with.
15. In the event that the Inspectorate determines that the standards required have not been complied with, the Inspectorate can make a determination that:
 - a) Notice be served on the proprietor identifying the breaches and requiring that an action plan be submitted by the proprietor, within a specified timeframe, outlining when the breaches identified will be remedied.
 - b) Admittedly in more extreme circumstances, the school could be prohibited from admitting any new students or part closed or closed.
16. It is important to note, again in the worst case scenario, that failure to comply with regulatory standards is taken extremely seriously and can result in criminal prosecution of a chairman personally as the proprietor of a School who can be liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale.

Academies and Free Schools

17. Academies are defined as Independent Schools by virtue of Section 463 of the Education Act 1996. (*Meaning of Independent School is given as “any school at which fulltime education is provided for 5 or more pupils of compulsory school age And which is not (a) a school maintained by a local education authority” (b)*)
18. The relevant Regulations for Academies are the Education (Independent Schools Standards) (England) Regulations 2010. The Regulations lay down the standards to be met by all independent schools (with limited exceptions). Part 4 of the Regulations deals with the standards in relation to suitability of the proprietor and staff.
19. Accordingly, the Independent School Standards place a statutory duty on Academy Trusts (the legal entity that runs, and is the proprietor of, an Academy) to:
 - a) ensure that all members of staff have received an enhanced DBS check prior to the confirmation of their appointment or as soon as practically possible thereafter,
 - b) that this check confirms their suitability to work with children.

- c) New disclosures should be sought unless the member of staff has worked in a relevant educational setting within the previous three months.
- d) Undertake DBS Checks on the Chairman of Governors and all Governors.

20. The DBS check on the Chairman of Governors is carried out by the Secretary of State. However, it is the Chairman's responsibility to ensure that enhanced DBS checks are carried out for all other Governors. These checks must have been completed before a Governor takes up his/her position or as soon as practicable thereafter.

21. Free Schools are state funded primary, secondary, middle schools that are independent of local authorities and are academies in law and are set up under the Academies Act 2010. Therefore the DBS obligation is identical to that for Academies.

Maintained Schools

22. It should be noted that a cause of recent misunderstanding in the City Corporation is that there is a difference in legislative approach between the maintained and independent sectors. The Protection of Freedoms Act 2012 altered the position for Governors in the maintained sector, to the effect that only a Governor who engages in "regulated activity" has to have an enhanced criminal record check. However, the position has not changed in the independent sector because the Standards Regulations clearly require a Board Governor to submit to the checks specified above in para 8. The Inspectorate emphasise that this is still the position in the independent sector, and indeed, the opportunity was not taken to change the position in recent Regulations last year that amend certain of the other standards, effective from 29 September 2014.

Portability of DBS Clearance

23. It should be further noted that DBS clearance is portable from one organisation to another. However the Employee / Member / Governor must have firstly registered with the DBS Update Service and then provided to the employer for which the clearance is required a) the relevant reference number and b) permission to access the information for the purposes of checking to see if there have been any changes.

24. The City Corporation's Human Resources Department will support members engaged in registering with the DBS.

DBS Obligation for Members of the Court of Common Council

25. At its meeting on 15 January 2015, the Education Board considered the DBS obligations of governors across the City Schools, including the three independent schools, the City academies, and Sir John Cass Foundation primary school, the City Corporation's one maintained school. The Board noted that the Court of Common Council also appoints members onto the governing boards of schools such as Prior Weston Primary School in Islington.
26. The Education Board noted that the City Corporation appointed over 70 schools governors onto the boards of independent schools and academies, and 2 governors onto the board of the Sir John Cass Foundation Primary School.
27. The Board noted that, given the majority of governors appointed by the City Corporation were appointed to the boards of independent schools and academies, and in light of its terms of reference to consult with those Committees where education responsibilities are expressly provided for within the terms of reference of that Committee, that it would be advisable for it to be a requirement of all school governors appointed by the Court of Common Council to be obliged to undergo DBS checks, even where this was not a strict legal prerequisite. This would ensure consistency of application across the City Family of Schools.
28. It is therefore recommended that the Community and Children's Services Committee, under whose remit the two City Corporation governors of Sir John Cass Primary School are appointed, agree that any person nominated by the Court of Common Council to the board of Sir John Cass Foundation Primary School be required to undergo DBS checks prior to commencing their appointment or as soon as practicable upon commencement.

Corporate & Strategic Implications

29. The Comptroller and City Solicitor has been consulted on this report and his comments incorporated.

Conclusion

30. This report outlines the City of London Corporation's obligations in relation to disclosure and barring requirements for governors of the City Schools. It summarises the legal basis of the requirements and advises that the checks are mandatory and can be enforced by the Secretary of State for Education through the criminal courts. There is therefore no scope for discretion in their enforcement.

Appendices

- None

Background Paper(s)

- *Disclosure and Barring Requirements for Governors of Independent Schools*
– Report of the Town Clerk to the Education Board – 15 January 2015

Alistair MacLellan

Town Clerk's Department

T: 0207 332 1416

E: alistair.maclellan@cityoflondon.gov.uk