

COUNCIL

25 APRIL 2013

APPOINTMENT OF LOCAL AUTHORITY SCHOOL GOVERNORS:

CHANGES TO CRITERIA AND DELEGATION

Report from: Barbara Peacock, Director of Children and Adults

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Summary

This report seeks to change the criteria the Local Authority apply to nominations when appointing and removing Local Authority school governors. It also seeks to provide for future changes to the criteria to be made by the Director of Children and Adults Services under an appropriate delegation.

1. Budget and Policy Framework

1.1 Each Local Authority appoints or nominates a certain number of governors (Local Authority governors) to maintained school governing bodies. In Medway, the decision to appoint can only be made by Full Council, or the Chief Executive under delegated powers. Criteria have previously been agreed by Full Council to guide the panel of councillors who consider nominations and make recommendations for appointment to the Chief Executive. This is a matter for Full Council

2. Background

2.1 The criteria were last agreed in June 2010. Since then a number of issues have arisen affecting governance arrangements and it is therefore prudent to review the criteria in the light of those issues

2.2 Training

Since the coalition government came to power and increasingly under the most recent Ofsted inspection framework (September 2012) there has been an increasing focus on Governing Bodies, and particularly the degree to which members are skilled and trained to carry out their role. In June 2010 Full Council agreed to a change to the previously agreed criteria that introduced the requirement to provide evidence of commitment to maintaining up-to-date expertise. This proposal seeks to strengthen this further.

2.3 Protection of Freedoms Act 2012

The above Act came into force on 10 September 2012 with the intention of scaling back checks to what the government consider to be more proportionate levels while still offering protection to those that need it. Under the Act the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) have been merged into a new organisation called the Disclosure and Barring Service (DBS). As part of this merger there have been significant changes to the criteria that dictate whether or not an organisation should request that an individual submits to an enhanced DBS check (the new name for CRB checks).

- i) The position of school governor has been removed from the list of regulated activities and governors therefore **cannot** be eligible for an enhanced DBS disclosure with check against the barred list unless they have regular **and** unsupervised access to children.
- ii) Governors can still be eligible for an enhanced check (without barred list), however both the DFE and Ofsted are clear that such checks are neither required nor expected unless governors have regular contact with children or otherwise give cause for concern. Ofsted go on to state that over zealous application of routine checks may be viewed as excessive as they go beyond what the law requires and government recommends and may be considered to represent poor use of resources.
- iii) Currently the criteria states that LA governor appointments and re-appointments are subject to the results of an enhanced disclosure dated within the previous 12 months. This exceeds the time frames for staff employed in the school and would seem to go well beyond the requirement of the Protection of Freedoms Act

This report seeks to change the criteria so as to be consistent with legal requirements and the spirit of the Act.

2.4 Delegation

Currently all proposals for alterations to the criteria for the appointment of Local Authority Governors are brought to Full Council for approval which places limitations on the pace at which changes can be enacted and places pressures on what is recognised as an already full agenda. The Director of Children and Adults has expressed her willingness to accept a delegation to make future changes in consultation with Group Whips in order to streamline the process.

3. Options

- 3.1 To respond to the increased focus on governors being well informed and well trained by strengthening further the expectations on Local Authority Governors to engage in appropriate periodic training.

3.2 To respond to changes in the legislative framework by:

Option A (Appendix 2)

Removing the criterion for an enhanced disclosure check and devolving responsibility to schools

Or

Option B (Appendix 3)

Reducing the requirement for enhanced disclosure checks so that re-appointment checks are not required unless there is a break of more than three months in service, which is consistent with the requirements on school staff.

3.3 To enable a swift and timely response to changing circumstances by approving a delegation to The Director of Children and Adults to make future changes to the criteria for the appointment of Local Authority School Governors, in consultation with Group Whips.

3.4 The current and proposed criteria are attached as appendices 1, 2 and 3 to the report.

4. Advice and analysis

4.1 To take forward the proposal to amend the criteria as detailed in paragraph 3.1:

The Local Authority directly appoints or nominates only a small proportion of each governing body, but in requiring those governors to set an example of commitment to an ongoing development of their skills and expertise it will show its ambition that all governing bodies are highly trained and effective champions of excellent education for all children

4.2 To take forward a proposal to amend the criteria as detailed in paragraph 3.2:
Option A

Option A is the recommended way forward. Continuing to require enhanced disclosure checks for all LA appointments substantially exceeds legal requirement and guidance. It has potential to leave the Local Authority open to challenge on grounds of a lack of proportionality, and inefficient use of resources. This could best be addressed by devolving the responsibility for determining eligibility and appropriateness of enhanced disclosure checks to schools themselves who are best placed to make those decisions.

Safeguarding will continue to be protected because schools already are obliged to take responsibility for decisions about disclosure checks and appropriate supervision for all other types of governor and all other volunteers. A failure to agree to a check if requested to do so by the Clerk remains grounds for immediate disqualification. A further consideration is that an absence of detail on a disclosure only proves that an individual has not come to the attention of the authorities. It does not provide a safeguarding guarantee and may even lull schools into a false sense of security leading to less day to day vigilance and consequently greater risk.

- 4.3 To take forward the proposal to agree a delegation to the Director of Children and Adults as detailed in paragraph 3.3:

Subject to the ability to refer to Full Council for decision in any instance where the Director of Children and Adults prefers to not exercise the delegated authority.

The directorate will be able to respond effectively and efficiently to both desirable and externally driven change. Subject to Council approval of the recommendations, the Council's Constitution (Employee Scheme of Delegation) will be amended to include this delegation to the Director.

5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Safeguarding	Persons on the barred list having access to children Other unsuitable persons having access to children	Ongoing information and guidance to schools and governing bodies on ensuring appropriate supervision and acting on concerns	D2
Recruitment and retention difficulty	Candidates concern that the demands are over-onerous.	A rich and varied programme of training opportunities both centrally and in-school e.g. face to face, online and through briefings.	

6. Consultation

- 6.1 Group Whips who consider nominations for recommendation to the Chief Executive and Portfolio Holder for Children's Services have been consulted on the proposed changes.

7. Financial and legal implications

- 7.1 Legally the local authority can appoint or nominate any person as a school governor, other than a person who is eligible to be a staff governor or who is disqualified by Schedule 6 of the School Governance (Constitution) (England) Regulations 2007 or Schedule 4 of the School Governance (Constitution) (England) Regulations 2012.
- 7.2 The criteria are a guide to the matters that will be considered in determining whether to make an appointment as a governor.

7.3 There are no financial implications arising from this report.

8. Recommendations

8.1 To agree to adopt the criteria for appointments as set out in Appendix 2 (option A) with effect from 1 May 2013 and to agree that schools will in future determine eligibility and appropriateness of enhanced disclosure checks for Local Authority appointed School Governors on the same basis as they already do for all other types of governors and all other volunteers as set out in paragraph 4.2 of the report.

8.2 To agree a delegation for future changes to the criteria for the appointment of Local Authority School Governors to the Director of Children and Adults, in consultation with Group Whips, subject to the ability to refer to Full Council for decision in any instance where the Director of Children and Adults prefers to not exercise the delegated authority with effect from 1 May 2013.

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Background papers:

School Governance (Constitution)(England) Regulations 2007
School Governance (Constitution)(England) Regulations 2012
Protection of Freedoms Act 2012

**Criteria for the appointment and reappointment of Authority Governors,
from 6 September 2010**

Part A

In deciding whether a candidate should be appointed as an Authority governor, the Council will consider the following:

- i) the statutory qualifications and disqualifications criteria as set out in the current Regulations;
- ii) the skills and experience of which the school has the greatest need;
- iii) the skills and experience of the candidate and the ability to make full and effective contribution to the work of the governing body of the school;
- iv) the candidate's support for the school's ethos and mission;
- v) in the case of governors requesting re-appointment, the candidate's prior attendance record, and evidence of their commitment to maintaining up-to-date expertise, and taking a full part in the work of the governing body;
- vi) the willingness of the candidate to commit to regular training, to keeping expertise up-to-date and to taking a full part in the work of the governing body
- vii) the results of an enhanced CRB check – or current one dated within the last 12 months

Part B

Unless in exceptional circumstances, the following candidates will not normally be eligible for appointment as Authority governors:

- i) a member of staff in any maintained school in Medway (apart from supply teachers, who can be a Authority governor of a governing body in schools at which they do not work);
- ii) the spouse, partner or close family relation of any paid employee of the school (as a governor to that school);
- iii) a former head-teacher or teacher to the governing body of the school where they were employed, until at least two years after the end of his/her employment; unless at the express recommendation of the Director of Children and Adults;
- iv) those where the result of the enhanced CRB check raises issues of child protection.

Part C

Once appointed, the Local Authority will expect that the governors appointed by them will continue to meet the criteria set out in Part A above and in particular will

- i. do nothing that could bring the school or the Local Authority into disrepute, and
- ii. disclose any information that could form the basis for disqualification; and
- iii. demonstrate a commitment to regular training, to keeping expertise up-to-date and to taking a full part in the work of the governing body

Failure to do so will be grounds for removal from office.

The Authority would, in line with the School Improvement Strategy, expect to review Authority governors' commitment if their school went into an Ofsted category or became of serious concern to the Authority.

Cycle of dates

Nominations and supporting CRB results received by	21 Nov 12	2 Jan 13	13 Feb 13
Considered by councillors by	28 Nov 12	9 Jan 13	20 Feb 13
Those recommended for appointment usually appointed by	19 Dec 12	30 Jan 13	13 Mar 13

**Criteria for the appointment and reappointment of Authority Governors,
from May 2013 Option A**

Part A

In deciding whether a candidate should be appointed as an Authority governor, the Council will consider the following:

- i) the statutory qualifications and disqualifications criteria as set out in the current Regulations;
- ii) the skills and experience of the candidate and the ability to make full and effective contribution to the work of the governing body of the school;
- iii) the candidate's support for the school's ethos and mission;
- iv) in the case of governors requesting re-appointment, the candidate's prior attendance record, and evidence of their commitment to training and maintaining up-to-date expertise, and taking a full part in the work of the governing body;
- v) the willingness of the candidate to commit to regular training (recommended one per term), to keeping expertise up-to-date and to taking a full part in the work of the governing body

Part B

Unless in exceptional circumstances, the following candidates will not normally be eligible for appointment as Authority governors:

- i) a member of staff in any maintained school in Medway (apart from supply teachers, who can be a Authority governor of a governing body in schools at which they do not work);
- ii) the spouse, partner or close family relation of any paid employee of the school (as a governor to that school);
- iii) a former head-teacher or teacher to the governing body of the school where they were employed, until at least two years after the end of his/her employment; unless at the express recommendation of the Director of Children and Adults;

Part C

Once appointed, the Local Authority will expect that the governors appointed by them will continue to meet the criteria set out in Part A above and in particular will

- i. do nothing that could bring the school or the Local Authority into disrepute, and
- ii. disclose any information that could form the basis for disqualification; and
- iii. demonstrate a commitment to regular training (recommended one per term), to keeping expertise up-to-date and to taking a full part in the work of the governing body.

Failure to do so will be grounds for removal from office.

The Authority would, in line with the School Improvement Strategy, expect to review Authority governors' commitment if their school went into an Ofsted category or became of serious concern to the Authority.

**Criteria for the appointment and reappointment of Authority Governors,
from May 2013 – Option B**

Part A

In deciding whether a candidate should be appointed as an Authority governor, the Council will consider the following:

- i) the statutory qualifications and disqualifications criteria as set out in the current Regulations;
- ii) the skills and experience of the candidate and the ability to make full and effective contribution to the work of the governing body of the school;
- iii) the candidate's support for the school's ethos and mission;
- iv) in the case of governors requesting re-appointment, the candidate's prior attendance record, and evidence of their commitment to training and maintaining up-to-date expertise, and taking a full part in the work of the governing body;
- v) the willingness of the candidate to commit to regular training (recommended one per term), to keeping expertise up-to-date and to taking a full part in the work of the governing body
- vi) the results of an enhanced CRB check – Within the last 12 months for new appointments and for re-appointments where a break of service exceeds three months.

Part B

Unless in exceptional circumstances, the following candidates will not normally be eligible for appointment as Authority governors:

- i) a member of staff in any maintained school in Medway (apart from supply teachers, who can be a Authority governor of a governing body in schools at which they do not work);
- ii) the spouse, partner or close family relation of any paid employee of the school (as a governor to that school);
- iii) a former head-teacher or teacher to the governing body of the school where they were employed, until at least two years after the end of his/her employment; unless at the express recommendation of the Director of Children and Adults;
- iv) those where the result of the enhanced CRB check raises issues of child protection.

Part C

Once appointed, the Local Authority will expect that the governors appointed by them will continue to meet the criteria set out in Part A above and in particular will

- i. do nothing that could bring the school or the Local Authority into disrepute, and
- ii. disclose any information that could form the basis for disqualification; and
- iii. demonstrate a commitment to regular training (recommended one per term), to keeping expertise up-to-date and to taking a full part in the work of the governing body.

Failure to do so will be grounds for removal from office.

The Authority would, in line with the School Improvement Strategy, expect to review Authority governors' commitment if their school went into an Ofsted category or became of serious concern to the Authority.