

Updated December 2021

(in line with Keeping Children Safe in Education 2021 – KCSIE 2021)

## St. Wilfrid's Catholic (VA) Primary School and Nursery



### Policy on Disclosure and Barring Service (DBS) and 128 Checks for School Governors of Maintained Schools

#### Introduction

The School Governance (Constitution and Federations) (England) (Amendment) Regulations 2016 were laid before Parliament on 25<sup>th</sup> February 2016.

Regulations 1 and 2 came into force on 18th March 2016 and amended the School Governance (Constitution) (England) Regulations 2012 to require governors of maintained schools to have an Enhanced (DBS) check.

*KCSIE 2021 – guidance states:*

#### DBS Check

Governors in maintained schools are required to have an enhanced DBS check. It is the responsibility of the governing body to apply for the certificate for any governors who do not already have one.

Governance is not a regulated activity relating to children, so governors do not need a children's barred list check unless, in addition to their governance duties, they also engage in regulated activity. All Governors appointed after 1<sup>st</sup> April 2016 must apply for an Enhanced DBS Check within 21 days of their appointment or election. Enhanced DBS checks are mandatory for governors but not associate members.

Governor Services recommends DBS checks are completed for Associate Members or at least advises the Board to determine on appointment of an Associate Member the appropriateness of a DBS check.

#### Section 128 Check

It is not statutory for maintained school governors to have a section 128 check, but a person subject to a section 128 direction is disqualified from holding or continuing to hold office as a governor of a maintained school. The check is the only way to assess whether an individual is disqualified. New governors are subject to section 128 checks.

This policy is in line with the national regulations and on adoption must have regard to the latest KCSIE guidance, the school's own safeguarding policy and procedures, and the school's own DBS policy.

#### Policy

1. DBS checks will apply to all categories of Governor (LA, Parent, Co-opted, Headteacher, Staff, Foundation and Ex-officio). They will also apply to Associate Members of the Governing Board.

2. In the interest of fairness, consistency, and confidentiality all DBS checks will be undertaken by the school.
3. All Governor DBS information should be recorded in the school's Single Central Record.
4. All DBS checks will be at an Enhanced level. This will reveal any details of both 'spent' and 'unspent' convictions, as identified under the Rehabilitation of Offenders Act 1974, as well as cautions, reprimands and final warnings held on the Police National Computer. It may also include additional information held by local police that is reasonably considered relevant to the role being applied for.
5. Having 'spent' or 'unspent' convictions will not necessarily bar an individual from appointment or election as a Governor. This will depend on the relevance in respect of an individual's eligibility to serve as a Governor. Advice can be sought from Governor Services regarding convictions that would prevent a Governor from serving on a Governing Body as stipulated in Schedule 4 of The School Governance (Constitution) (England) Regulations 2012.
6. Governors will **not** be checked against the barred lists as they are not undertaking 'regulated activity'. Paragraph 52 of the DfE's statutory guidance on safeguarding explains that an individual will be considered to be in 'regulated activity' where he or she:
  - Will be responsible, on a regular basis in a school or college, for teaching, training, instructing, caring for or supervising children; or
  - Will carry out paid, or unsupervised unpaid, work regularly in a school or college where that work provides an opportunity for contact with children; or
  - Will be engaged in intimate or personal care or overnight activity, even if this happens only once
7. All new Governors must apply for an Enhanced DBS check within 21 days of their election or appointment.
8. All Governors seeking re-election or re-appointment must apply for an Enhanced DBS checks within 21 days of their re-appointment or re-election.
9. If a Governor is registered with the update service for an Enhanced check, a school can check the register and a further DBS check is not required. (Registration for the update service should be renewed annually).
10. When Governor Services are made aware of a newly appointed or re-appointed Governor, they will write to the governor to advise them of the requirement to undergo a DBS check and that an application should be made within 21 days of their appointment or election.
11. Individuals who declare a criminal conviction on their Disclosure application form will be given an opportunity, to discuss the matter with the Countersignatory. Disclosure information will be considered on the following basis:
  - whether an individual is disqualified from working with children by Section 35 of the Criminal Justice and Court Services Act 2000
12. Whether the conviction, or matter revealed, contravenes one of the conditions imposed in Schedule 4 of The School Governance (Constitution) (England) Regulations 2012. (see appendix A)
  - the seriousness of any offence or other matter revealed

- the length of time since the offence or other matter occurred
  - whether the individual has a pattern of offending behaviour or other relevant matters
  - whether the individual's circumstances have changed since the offending behaviour or other relevant matters occurred.
13. If there are any discrepancies between the information provided by an individual and the results of the DBS check, the individual will be given the opportunity to discuss these with the Countersignatory before further action is taken.
  14. All reasonable attempts will be made by the Countersignatory to resolve any discrepancy. Individuals will be advised to use the DBS Appeals procedure if they believe any of the information to be incorrect.
  15. In the case of appointed and ex-officio Governors, the Countersignatory will advise the Appointing Body on the suitability/eligibility of the Governor for appointment. The Appointing Body will consider this recommendation in deciding whether to withdraw the offer of appointment as a Governor. In respect of elected Governors, the Countersignatory will inform the individual as to their suitability/eligibility for office and give advice on any appropriate action.
  16. All information obtained by a Disclosure check will be treated with the strictest confidentiality

## Appendix A

### Schedule 4 of The School Governance (Constitution) (England) Regulations 2012.

A person is disqualified from holding or continuing to hold office if that person:

1. Is the subject of a bankruptcy restrictions order or an interim order, debt relief restrictions order, an interim debt relief restrictions order or their estate has been sequestrated and the sequestration has not been discharged, annulled or reduced is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986, a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989, a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002, or an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)
2. Has been removed from the office of charity trustee or trustee for a charity by the Charity Commission or Commissioners or High Court on grounds of any misconduct or mismanagement, or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 from being concerned in the management or control of any body
3. Is included in the list of teachers or workers considered by the Secretary of State as unsuitable to work with children or young people
4. Is barred from any regulated activity relating to children
5. Is subject to a direction of the Secretary of State under section 128 of the Education and Skills Act 2008
6. Is disqualified from working with children or from registering for child-minding or providing day care
7. Is disqualified from being an independent school proprietor, teacher or employee by the Secretary of State
8. Has been sentenced to three months or more in prison (without the option of a fine) in the five years before becoming a governor or since becoming a governor
9. Has received a prison sentence of two years or more in the 20 years before becoming a governor
10. Has at any time received a prison sentence of five years or more
11. Has been fined for causing a nuisance or disturbance on school premises during the five years prior to or since appointment or election as a governor
12. Refuses a request for the clerk to apply to the Disclosure and Barring Service for a criminal records check.