

Ms A Tunstall
Department for Education
Level 2 – SRG Flexible Resource Unit
Mowden Hall
Staindrop Road
Darlington
DL3 9BG

10 April 2014

by email

Dear Ms Tunstall,

Management of independent schools: proposed changes

On behalf of the Institute of Chartered Secretaries and Administrators (ICSA), I am pleased to respond to your consultation document regarding proposed changes to regulations relating to the removal of individuals involved in the management of independent schools.

ICSA is the professional body qualifying and supporting corporate governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, acting as adviser to government and regulators on company law and corporate governance; able to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. A number of our members are involved in the education sector, and all will be familiar with the importance of recruiting and appointing appropriate individuals able to uphold the vision and values of the establishment and demonstrate the ability to conduct themselves in an appropriate manner. This wealth of expertise and experience has informed our response to this consultation.

ICSA appreciates the opportunity to comment on the Department of Education's thinking in developing these regulations. Having read, and reflected on, the consultation document, ICSA would like to register the following comments for further consideration.



In situations where individuals are in positions of authority and influence and responsible for resources and assets that are not their own, it is only appropriate that certain minimum standards of conduct and behaviour are established. The proposed regulations are therefore to be cautiously welcomed as a measure to protect children and young adults in an educational establishment.

Each sector, however, has its own eligibility criteria establishing who can and cannot act in positions of authority: company directors; charity trustees; foundation trust non-executive directors and governors; and school governors. Within different pieces of legislation there is a certain degree of similarity in the disqualification criteria, but a significant variation of relevance to each sector. In addition, certain regulators, and HMRC will operate a 'fit and proper test' for those individuals in a position to exercise power within an organisation – namely senior managers and the governing body or board – seeking to gain a financial benefit in the form of tax reliefs or other publicly funded benefits. Legislation and regulation already exists to remove those individuals that do not meet the eligibility criteria, in terms of 'relevant offences'. Introducing regulations to cover 'egregious conduct', with no definition or examples, raises concerns as to the objectivity and ability to replicate fair decisions.

Rather than developing new regulations in isolation to prevent unsuitable individuals from acquiring positions of power within independent schools, it would be appropriate to dovetail any new measures with those that already exist, in the first instance. A professional and experienced governance expert would, as a matter of course, undertake the appropriate due diligence on potential candidates and bring any concerns to the attention of the appointing authority.

Individual organisations are likely to adopt codes of conduct for those in leadership positions, as part of their contractual obligations or as part of their standards of service. For governors and trustees, a well-written code will reflect the clauses within the governing document and should provide for circumstances where the individual can be removed. This is likely to include criminal activity along with appropriate standards of conduct and behaviour, especially where it harms the organisation's principal stakeholders or damages its reputation. Unacceptable behaviour, which is not illegal, that cannot be dealt with by internal procedures are likely to attract the attention of appropriate regulators who will have an interest in protecting charitable or public resources.

Regulators in other sectors, such as the Charity Commission and Monitor, have the power to remove those in leadership positions, where there is a valid reason to do so. Within the Commission's experience however, a notice to remove a trustee does not prevent that trustee from resigning their position before that order can be enforced. That individual can therefore avoid the appropriate sanction and any future ability to perform similar roles is avoided. The Department may wish to consider how it could avoid a similar situation, should it proceed with its plans to introduce the proposed regulations.

In conclusion, efforts to protect children and young people from the influence of unacceptable behaviour in the school environment are to be welcomed. The balance, however, is to achieve the appropriate duty of care for young people while respecting an individual's ability to behave in a manner they desire, within the law. It is recommended that the Department look again at what measures are currently available to it in terms of regulation and inspection to eradicate those behaviours it deems as 'egregious' rather than introducing new regulations that may not provide the sanctions desired.

I hope the above comments are useful to the Department in developing regulations covering the conduct of those involved with the management of independent schools. Should further information or clarification be required, please do not hesitate to contact me.

Yours sincerely,

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