

## Safeguarding checks on academy governors

There are a different set of regulations that apply to academies compared to maintained schools regarding safeguarding checks that need to be carried out on governors. This article will tell you more.

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We are often asked for advice on what safeguarding checks academies need to carry out on their governors. The law in this area can cause confusion for a few reasons. There are a different set of regulations that apply to academies compared to maintained schools, there are specific rules which apply when a maintained school is converting to academy status and there can be a number of layers to academy governance.

With that final point in mind and to avoid any confusion, this article uses the following terminology:

- **'trustees'** – the individuals who sit on an academy trust board, whether in a single academy trust or multi-academy trust. These individuals will also be directors of the academy trust
- **'local governors'** – the individuals who, in a multi-academy trust, sit on a local governing body
- **'regulated activity'** – regular and unsupervised contact with children in a school or academy

### Where are academies' legal duties regarding safeguarding checks set out?

In a number of places:

- **The Education (Independent School Standards) (England) Regulations 2014 (the 'Standards')** - the latest version of the Standards has been in force since January 2015. They place a statutory duty on academy trusts to carry out certain suitability checks on staff and governors.
- **Funding Agreement** - the key contract entered into with the Secretary of State by the academy trust, it also requires the academy trust to comply with the requirements of the Standards in relation to Disclosure and Barring Service ("DBS") and other suitability checks.
- **Articles of Association ("Articles")** - every academy trust has Articles. The DfE's model Articles set out certain requirements in terms of the "suitability" checks that need to be carried out on trustees and local governors.
- **Keeping Children Safe in Education ("Keeping Children Safe")** - academies are bound to have regard to any guidance issued by the Secretary of State. Keeping Children Safe is the relevant statutory safeguarding guidance and includes a section on the checks to be carried out on academy governors.

### What checks does a school converting to academy status need to carry out on its Chair of Trustees when it becomes an academy?

The DfE's guidance confirms that where a chair of trustees has an enhanced DBS certificate from the same school prior to the conversion to academy status, they are exempt from the requirement to apply for an enhanced DBS check and the requirement to have the application countersigned by the Secretary of State - [read more here](#).

The academy will need to ensure that the requirements of its Articles are complied with. The latest version of the DfE's model Articles (the February 2016 version) states that once the academy has opened, a person is disqualified from holding or continuing to hold office as a trustee if he has not provided an enhanced DBS check. If the local authority has already carried out an enhanced DBS check and the checks to confirm the individual's identity and their right to work in the United Kingdom, as above, these checks do not need to be repeated on conversion to academy status. This should usually be the case. However, due to the requirements of the Articles, that

enhanced DBS certificate must be provided by the chair. Who the chair must provide the certificate to is not made clear in the Articles. However, we would suggest that oversight of these duties is carried out by the clerk to the board of trustees and, as such, providing a copy to the clerk will ensure compliance.

If the chair is going to have regular, unsupervised contact with children (and is therefore in “regulated activity”), a barred list check will also need to have been carried out to ensure the chair is not barred from regulated activity, as required by the Standards.

## **What checks does a school converting to academy status need to carry out on its trustees once it becomes an academy?**

If the local authority which was previously maintaining the school has already carried out enhanced DBS checks and the checks to confirm the individuals’ identity and right to work in the United Kingdom, these checks do not need to be repeated on conversion to academy status. However, to ensure compliance with the Articles and avoid disqualification, the trustee must provide the enhanced DBS certificate to the chair of trustees.

Where a trustee is going to be in regulated activity, a barred list check will still need to be carried out to ensure the trustee is not barred from regulated activity, as required by the Standards.

## **What checks does an existing academy trust need to carry out on its new Chair of Trustees?**

In accordance with the latest model Articles and DfE guidance, regardless of whether or not the chair of trustees is in regulated activity, an enhanced DBS certificate, countersigned by the Secretary of State, will need to be provided.

Under the Standards, to the extent that the chair of the trustees is not engaging in regulated activity, there is no requirement to carry out a barred list check on the chair. However, the Standards do require the Secretary of State to make checks regarding the individual’s identity and right to work in the UK.

If the chair is going to be in regulated activity, the following checks must be carried out on the individual to be appointed chair of trustees:

- a barred list check (to verify that the individual is not barred from regulated activity)
- an enhanced DBS check which has been countersigned by the Secretary of State;
- checks confirming the individuals identity; and
- checks confirming the individual’s right to work in the UK.

If the individual has lived outside of the UK and obtaining an enhanced DBS certificate is not therefore sufficient to establish the individual’s suitability to work in an academy, additional appropriate checks may be need to be undertaken.

The above checks need to be carried out before or as soon as reasonably practicable after the individual is appointed as chair.

## **What checks does an existing academy need to carry out on its other trustees?**

In accordance with the latest model Articles, regardless of whether or not the trustee is in regulated activity, an enhanced DBS check will need to be provided.

To the extent that a trustee is not, or will be not, engaging in regulated activity, there is no requirement to carry out a barred list check. However, even if the individual is not in regulated activity, Keeping Children Safe indicates that identity checks must still be carried out before, or as soon as practicable after, the person takes up their position as trustee.

If the trustee will be undertaking regulated activity, there will also be a need to carry out barred list check. If a trustee has lived (or is living) outside of the UK and obtaining an enhanced DBS certificate is not therefore sufficient to establish the individual’s suitability to work in an academy, the chair will need to decide whether additional checks may be need to be undertaken.

## **In a multi-academy trust (‘MAT’) structure, what checks are required to be carried out on local governors?**

In a MAT, one academy trust is the proprietor of all the academies within the group. Members of the local governing bodies (‘LGBs’) are informally known as governors, but they are not trustees. This means that they do not fall within the definition of ‘proprietor’ of an

academy under the Standards. However, the latest model Articles and Keeping Children Safe state that an enhanced DBS check must be carried out for all local governors and members of any sub-committees of the board.

If governors are undertaking regulated activity within the academy, they will also require a barred list check.

## Do we need to carry out checks on the members of the academy trust?

On this point, there is some inconsistency between the requirements of the Standards, the latest version of Keeping Children Safe and the terms of the DfE's model funding agreement.

To ensure that the statutory guidance is complied with, we advise carrying out the following checks on members:

- enhanced DBS check (as required by Keeping Children Safe)
- identity and right to work checks (as required by the Standards)
- barred list check **only if in regulated activity** (as required by the Standards)

## How do we get a DBS check countersigned by the Secretary of State?

Here is a [link to the relevant instructions](#).

## What happens if we do not carry out the right checks?

If the correct checks are not carried out, the key concern will obviously be a risk to the proper safeguarding of the pupils at the academy.

Another dimension is Ofsted inspection. Ofsted expects schools to be able to demonstrate that they meet all regulations and duties for the purposes of the safeguarding judgement. Failure to do so will leave schools exposed in the judgements for behaviour and safety and leadership and management.

Academies must also remember that a failure to comply with the Standards will technically be a contractual breach of their Funding Agreement. This could result in the Secretary of State taking action against the academy trust.

As a charity, the academy trust is expected to comply with the terms of its governing document – the Articles of Association. Failure to adhere to the requirements in the Articles could potentially leave the academy subject to criticism or regulatory action from a charity law perspective.

## Final words...

It was previously thought that the Government was trying to reduce the number of checks on governors but recent changes have seen increased obligations for both academy and maintained school governors. More detail regarding the definition of regulated activity can be found at page 32 of Keeping Children Safe. If you are not sure whether someone will be in regulated activity, please contact us for further advice.

We should also mention that the Standards require academies to ensure that anyone acting as a trustee or a member of an academy trust is not carrying out work at the academy in contravention of a prohibition order or interim prohibition order or is restricted from taking part in the management of an independent school by virtue of a section 128 direction made by the Secretary of State. Keeping Children Safe explains how these checks can be made.

If you are meeting resistance in obtaining the right DBS checks on your governors or facing questions from Ofsted, please contact us and we can offer further advice.

In addition to this article, we have produced two flowcharts which aim to provide a step-by-step guide to determine what checks are required for both a school [converting to academy status](#) and an [existing academy](#).

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