

## Guidance Document

### Qualification and Disqualification Regulations for those Governing in an Academy

Those involved in Academy Governance may be subject to disqualification rules under Charity Law as well as Education Law.

The disqualifying reasons under Charity Law below will apply to Members/Trustees/Directors and those in Senior Management Positions of an Academy. Senior Management Positions will apply to individuals who have the responsibilities of a Chief Executive or Finance Director/Chief Financial Officer and these individuals should be asked to read and sign **Annex A and B** of this document

**Those serving on local governance boards will only need to read and sign Annex B of this document.**

**Below are the automatic disqualification rules for charity trustees and charity senior position that will apply to Members/Trustees/Directors/Senior Management Positions**

**Disqualifying reasons relating to unspent convictions.**

**You are disqualified if you have an unspent conviction for**

- An offence involving dishonesty or deception.
- Specified terrorism related offences.
- Specified money laundering offences.
- Specified bribery offences.
- Contravening a Charity Commission Order or Direction.
- Offences for misconduct in public office, perjury, and perverting the course of justice.
- Attempting, aiding or abetting these offences.

**Other disqualifying reasons – non-financial**

**You are disqualified if you:**

- Are subject to notification requirements under sexual offences legislation, commonly referred to as being on the sexual offenders' register. If these

notification requirements apply to you, you are disqualified by the automatic disqualification rules, even if your offence is spent.

- Are disqualified from being a company director – limited exceptions apply.
- Have previously been removed as a trustee, or as an officer, agent or employee of a charity by either the Charity Commission or the High Court due to misconduct or mismanagement.
- Have previously been removed from a position of management or control of a charity in Scotland for mismanagement or misconduct.
- Have been found to be in contempt of court for making, or causing to be made, a false statement – limited exceptions apply.
- Are a designated person under particular anti-terrorist legislation.

### **Other disqualifying reasons - financial**

- Are currently declared bankrupt or are subject to bankruptcy restrictions or an interim order, including an individual voluntary arrangement (IVA) – limited exceptions apply.
- Are subject to a debt relief order under the Insolvency Act 1986, or a debt relief restrictions order, or interim order, under that Act.

## Annex A – Disqualification Reasons

You are automatically disqualified from acting as a  
**Member/Trustee/Director/Senior Manager if:**

1. You have an **unspent** conviction for any of the following
  - a) an offence involving **deception or dishonesty**
  - b) a **terrorism** offence
    - a. to which Part 4 of the Counter-Terrorism Act 2008 applies
    - b. under sections 13 or 19 of the Terrorism Act 2000
  - c) a **money laundering** offence within the meaning of section 415 of the Proceeds of Crime Act 2002
  - d) a **bribery** offence under sections 1, 2, 6 or 7 of the Bribery Act 2010
  - e) an offence of **contravening a Commission Order or Direction** under section 77 of the Charities Act 2011
  - f) an offence of **misconduct in public office, perjury or perverting the course of justice** yes/no
  - g) In relation to the above offences, an offence of: attempt, conspiracy, or incitement to commit the offence; aiding, or abetting, counselling or procuring the commission of the offence; or, under Part 2 of the Serious Crime Act 2007(encouraging or assisting) in relation to the offence
2. You are **on the sex offenders register** (ie. subject to notification requirements of Part 2 of the Sexual Offences Act 2003)
3. You have an unspent sanction for **contempt of court** for making, or causing to be made, a false statement or for making, or causing to be made, a false statement in a document verified by a statement of truth
4. You have been found guilty of **disobedience to an order or direction of the Commission** under section 336(1) of the Charities Act 2011.
5. You are a **designated person** for the purposes of Part 1 of the Terrorist Asset-Freezing etc. Act 2010, or the Al Qaida (Asset Freezing) Regulations 2011.
6. You have **previously been removed as an officer, agent or employee of a charity** by the Charity Commission, the Scottish charity regulator, or the High Court due to misconduct or mismanagement
7. You have **previously been removed as a trustee** of a charity by the Charity Commission, the Scottish charity regulator, or the High Court due to misconduct or mismanagement
8. You have been **removed from management or control of anybody** under section s34(5)(e) of the Charities and Trustee Investment (**Scotland**) Act 2005 (or earlier legislation)

9. You are **disqualified from being a company director**, or have given a disqualification undertaking, and leave has not been granted (as described in section 180 of the Charities Act) for you to act as director of the charity
10. You are **currently declared bankrupt** (or subject to bankruptcy restrictions or an interim order
11. You have an **individual voluntary arrangement** (IVA) to pay off debts with creditors
12. You are **subject to** a moratorium period under a **debt relief order**, or a debt relief restrictions order, or an interim order
13. You are subject to an order made under s.429(2) of the Insolvency Act 1986. **(Failure to pay under a County Court Administration Order.)**

***Declaration:***

I declare that:

- I am not disqualified from acting as a Member/Trustee/Director/or holding a senior management position and
- I will inform the Clerk promptly if after the date of this declaration, one or more of the disqualification reasons applies to me

Name:	
Signature:	
Date:	

## **Annex B – Disqualification Reasons**

**You are automatically disqualified from acting as a  
*Member/Trustee/Director/Senior Manager/Local Governor if:***

1. You are under aged 18 at the date of the election or appointment. You are a current pupil [or current student] of any of the Academies or the Academy].
2. You hold another governance position at the same Academy at the same time (unless renewing a current position).
3. You shall cease to hold office if you become incapable by reason of illness or injury of managing or administering your own affairs.
4. You shall cease to hold office if without the permission of the Trustees/Directors/Governors you have been absent from all their meetings held within a period of six months and the Trustees/Directors/Governors resolve that your office be vacated.
5. You shall be disqualified from holding or continuing to hold office as a Member/Trustee/Director/Governor if -
  - You have been declared bankrupt and/or Your estate has been seized from your possession for the benefit of your creditors and the declaration or seizure has not been discharged, annulled or reduced; or
  - You are the subject of a bankruptcy restrictions order or an interim order; or
  - You are the subject of a debt relief restrictions order or an interim debt relief restrictions order.
6. You shall be disqualified from holding or continuing to hold office as a Member/Trustee/Director/Governor at any time when you are subject to a disqualification order or a disqualification undertaking under the Company Directors Disqualification Act 1986 a disqualification order under the Companies (Northern Ireland) Order 2002; a disqualification undertaking accepted under the Company Directors Disqualification (Northern Ireland) Order 2002 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
7. You shall cease to hold office if you cease to be a Member/Trustee/Director/Governor by virtue of any provision in the Companies Act 2006, are disqualified from acting as a trustee by virtue of section 178 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision) or you are otherwise found to be unsuitable by the Secretary of State under the provisions of the Relevant Funding

Agreements or Funding Agreement.

8. You shall be disqualified from holding or continuing to hold office as a Member/Trustee/Director/Governor if you have been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which you were responsible or to which you were privy, or which by your conduct contributed to or facilitated, or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 from being concerned in the management or control of any body.
9. You have been removed from office as an elected governor within the last five years.
10. You are included in the list of people considered by the Secretary of State as unsuitable to work with children or young people.
11. You are barred from any regulated activity relating to children.
12. You are subject to a direction of the Secretary of State under section 142 of the Education Act 2002 or section 128 of the Education and Skills Act 2008.
13. You are disqualified from working with children or from registering for child-minding or providing day care.
14. You are disqualified from being an independent school proprietor, teacher or employee by the Secretary of State.
15. You shall be disqualified from holding or continuing to hold office as a Member/Trustee/Director/Governor where you have, at any time, been convicted of any criminal offence, excluding any that have been spent under the Rehabilitation of Offenders Act 1974 as amended, and excluding any offence for which the maximum sentence is a fine or a lesser sentence except where a person has been convicted of any offence which falls under section 178 of the Charities Act 2011.
16. After the first (or original stand-alone) Academy has opened, you shall be disqualified from holding or continuing to hold office as a Member/Trustee/Director/Governor if you have not provided to the chairman of the Trustees a criminal records certificate at an enhanced disclosure level under section 113B of the Police Act 1997. In the event that the certificate discloses any information which would in the opinion of either the chairman or the Chief Executive Officer/Principal confirm their unsuitability to work with children that person shall be disqualified. If a dispute arises as to whether a person shall be disqualified, a referral shall be made to the Secretary of State to determine the matter. The determination of the Secretary

of State shall be final.

17. Subject to certain exceptions for overseas offences that do not correlate with a UK offence, you have not been sentenced to 3 months or more in prison (without the option of a fine) in the 5 years ending with the date preceding the date of appointment/election as a Member/Trustee/Director/Governor or since becoming a Member/Trustee/Director/Governor.
18. Subject to certain exceptions for overseas offences that do not correlate with a UK offence, you have not received a prison sentence of 2 ½ years or more in the 20 years ending with the date preceding the date of appointment/election as a Member/Trustee/Director/Governor.
19. Subject to certain exceptions for overseas offences that do not correlate with a UK offence, you have not at any time received a prison sentence of 5 years or more.
20. You have not been convicted and fined for causing a nuisance or disturbance on school or educational premises during the 5 years ending with the date immediately preceding appointment/election or since appointment or election as a Member/Trustee/Director/Governor

***Declaration:***

I declare that:

- I am not disqualified from acting as a Member/Trustee/Director/Governor or holding a senior management position and
- I will inform the Clerk promptly if after the date of this declaration, one or more of the disqualification reasons applies to me

Name:	
Signature:	
Date:	