

Report of the Deputy Director to the meeting of the Children's Services Overview and Scrutiny Committee to be held on 12 October 2016.

Subject:

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Unregistered Schools

Summary statement:

This report provides members with legislative framework surrounding unregistered schools, and the Local Authority response when dealing with notifications of organisations that maybe operating illegally.

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Overview & Scrutiny Area:

Children's Services

1. SUMMARY

- 1.1 The Education and Skills Act 2008 ('ESA 2008') requires all independent schools to register as an education provider. The registration procedure is set out in sections 98 and 99 of this Act. It is a criminal offence to operate an independent school which is not registered (section 96 of the ESA 2008).

2. BACKGROUND

- 2.1 The Secretary of State for Education is the regulator of independent schools and maintains a register of these institutions. The registration procedure is set out in sections 98 and 99 of the Education and Skills Act 2008 ('ESA 2008'). Once a school is registered, the Secretary of State has a range of regulatory powers available.
- 2.2 An independent school is a school that provides full-time education for five or more pupils of compulsory school age, or one or more pupils who are looked after or have a statement of SEN/an Education, Health and Care Plan, and is not a maintained or non-maintained school. It is a criminal offence to operate an independent school which is not registered (section 96 of the ESA 2008).

3. OTHER CONSIDERATIONS

3.1 Legal definition of Independent School

- 3.1.1 The legal definition of "independent school" in the Education Act 1996 refers to a school that is providing "full-time" education. Schools that provide less than full-time education do not come under the definition. There is no legislative definition of "full-time education."
- 3.1.2 It is important to understand there is a difference between an unregistered full time education provider and a supplementary school. Supplementary schools are organisations that run in addition to full time education providers and provide input that can relate to religious, cultural, linguist education. These tend to run in an evening or afternoon for 2-3 hours at a time. There are approx. 164 supplementary schools known to the LA who engage and adopt effective safeguarding practices.

3.2 Powers of Authority

- 3.2.1 The Secretary of State takes the decision on whether to consent to a prosecution of an unregistered independent school. Their approach individual cases would depend on the particular circumstances of each case. Consideration includes:
- The level of risk to the welfare of children; the greater the risk the swifter the need to investigate and take action, including prosecution of the proprietor. Welfare considerations include not only the safety and physical wellbeing of children, but also whether they are, or at risk of, being exposed to extremism, including conduct which is aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs
 - The extent to which the proprietor demonstrates an understanding of the regulatory requirements and the need to comply with them, and their engagement with the

- Department for Education;
- Whether the Department for Education has concerns about the suitability of the proprietor to be involved in providing education.

3.3 Notifications

3.3.1 We could be notified about unregistered schools through:

- Reports from the police;
- Complaints from members of the public or other schools;
- Reports from parents
- Media – TV, newspaper articles, leaflets
- Information from Ofsted

3.3.2 The LA is currently developing briefing sessions for police wardens who visit residential properties when a crime is committed. The briefings will highlight to police staff what the signs of CME are and how to report concerns. This will include asking very brief questions i.e. if a child is present during school hours, asking what school the child attends or why they are not in the school. This data will be fed through to the Education Safeguarding Team for the relevant safeguarding checks to be made. These briefings will also include what the signs an unregistered school may be operating, for example, parking issues in a residential areas, early morning or late afternoon, gathering of pupils in particular uniform this may include religious dress, this may indicate no formal educational establishment operating. These briefings will also be rolled out to council ward officers.

3.3.3 We are currently working with other LA's who have a similar demographic to Bradford in trying to learn from their experiences in discovering possible unregistered schools that may be operating. Some of this learning will be around making contact with organisations like tuition centres to establish whether they offer a full time provision to children. This work will also include working our new arrivals to ensure they are aware of the education entitlements available to their children.

3.4 Procedures

3.4.1 Upon notification, the Local Authority will gather information about the organisation, through visiting the premises during operational hours and notify the DfE. For any possible unregistered school, immediate steps will be taken to establish whether the institution is providing full-time education and is operating unlawfully as an independent school.

3.4.2 The LA will also check with Planning and Building Control to ascertain if the relevant building regulations are in place.

3.4.3 If after the initial intelligence gathering there are welfare concerns, a referral to Children's Social Care will be made. If any health and safety concerns are identified, a referral will be made to the Fire Service as well as Planning and Buildings Control. See appendix 3 for the procedural flowchart.

3.4.4 Upon notification, Ofsted may decide to make an unannounced visit to an institution on the basis of information they have received to establish whether the institution is operating as an independent school and the identity of the proprietor. The

Department may write to an institution or may refer information direct to Ofsted to decide whether to make an unannounced visit.

3.4.5 If Ofsted consider in the course of such a visit that an institution is operating unlawfully and should cease to operate as a school, they will inform the proprietor that it is an offence to operate without registration and take any appropriate steps with the LA to ensure the premises are closed and the children provided for. They will inform the Department for Education on the same day for follow-up action.

3.4.7 Where an institution is identified as operating unlawfully, the Department for Education (Independent Education and Boarding Team) will consider taking the following steps:

- Confirm to the institution the legal requirement to register as an independent school, setting out the consequences of failing to do so. The institution may also have received the same information from Ofsted;
- Make clear to the institution that it must not operate as a school in advance of registration being granted and must cease to operate;
- Point the institution to the guidance on the DfE website on how registration applications can be made;
- Ask the institution to confirm by return that it has ceased to operate as a school and to confirm whether or not it intends to submit a registration application;
- If the institution continues or continued to operate as a school without registration, including during the registration process, the Secretary of State may exercise her power to pursue the prosecution of the person(s) who the Department considers is conducting/has conducted the unregistered independent school (section 96 ESA 2008).

4. FINANCIAL & RESOURCE APPRAISAL

No issues at this time.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

No issues at this time.

6. LEGAL APPRAISAL

No issues at this time.

7. OTHER IMPLICATIONS

No issues at this time.

8. NOT FOR PUBLICATION DOCUMENTS

None

9. OPTIONS

N/A

10. RECOMMENDATIONS

- 10.1 That the Local Authority works with partner organisations to effectively respond to, and support (where necessary) any education organisation that maybe operating illegally, either knowingly or unknowingly.

11. APPENDICES

Appendix 1: Department for Education Policy statement: prosecuting unregistered

Appendix 2: Independent schools Education Safeguarding Team
Unregistered School Process Diagram

12. BACKGROUND DOCUMENTS

Education and Skills Act 2008