

# Hillcrest School Cramlington



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## Criminal Records Code of Practice for Staff and Volunteers in School Policy

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**Date established by governing body**

Autumn Term 2015

**Date for full implementation**

Immediately

**Date for review**

Autumn Term 2016

### 1 Scope

This code of practice is available for adoption by all maintained schools and academies. An alternative version is available for schools that wish to undertake additional discretionary criminal records checks for current staff.

The code applies to the school's responsibilities for obtaining criminal record disclosures for all employees and some volunteers appointed by the school. It also sets out the steps it should take to ensure third parties such as external agencies and contractors follow the same arrangements.

### 2 Purpose

The purpose of this code of practice is to set out how schools should handle criminal record disclosures from the Disclosure and Barring Service (DBS), either as one of the pre-appointment checks required under the Recruitment and Selection Code of Practice for Schools or in other limited circumstances, and their powers to check in some circumstances whether individuals are barred from working with children by their inclusion on the Children's Barred List.

This will ensure schools follow appropriate and proportionate vetting procedures as part of their commitment to safeguarding and promoting the welfare of children and young people.

### 3 Roles and Responsibilities

**Governing Body:** The governing body should ensure that the school operates safe recruitment practices and that all appropriate checks are carried out on staff and volunteers who work with children.

**Headteacher:** The headteacher will:

- ensure, on behalf of the person(s) with the delegated responsibility for making appointments, that all new employees apply for an enhanced criminal records check and undertake any necessary additional checks if the person has previously lived overseas;
- decide whether a new unpaid volunteer needs to apply for an enhanced criminal records check and/or Children's Barred List check and undertake any necessary additional checks if the person has previously lived overseas;
- decide whether a previous enhanced criminal records check is portable under this Code of Practice;
- decide whether a new employee or unpaid volunteer can start before the enhanced criminal records check is received under the respite measures set out in this Code of Practice;
- consult with the person(s) delegated to make appointment or dismissal decisions about whether a criminal conviction and/or additional disclosed information makes a selected candidate or current employee or volunteer unsuitable for the work they do;
- seek assurance from supply agencies and external contractors that their staff have had an enhanced criminal records check and the third party provider is following the full range of safer recruitment practices;
- ensure that enhanced criminal records and other pre-appointment checks are recorded on the school's single central record of recruitment and vetting checks; and
- ensure that criminal convictions information is treated confidentially and only disclosed and retained as allowed for in this Code of Practice.

**Local authority:** Employee Services will process criminal records applications for staff/volunteers as the registered body for schools. The County Council has a number of countersignatories who will countersign the application and receive the disclosure from the DBS. Each countersignatory is registered with the DBS and has been subject to a criminal records check themselves.

## **4 Legal Considerations**

The entitlement to request a check of the Children's Barred List only applies to individuals carrying out "regulated activity". This includes:

- unsupervised activities involving teaching, training, instructing, caring for or supervising children, or providing advice/guidance on well-being, or driving a vehicle only for children on a regular basis, whether paid or voluntary; and
- work for specified places, including schools, on a regular basis with opportunity for contact with children, excluding supervised volunteers.

"Regular" is defined as once a week or more, four or more days in a 30-day period or overnight (between 2am and 6am, even if only once).

It is a legal requirement that an enhanced criminal records disclosure is obtained for all newly appointed school staff carrying out regulated activity. This includes staff in schools that do not work directly with children, for example administrative staff, caretakers and other ancillary staff. Schools have discretion in relation to requiring an enhanced criminal records disclosure for supervised volunteers based on a risk assessment of the individual circumstances of the situation.

All posts in schools are exempt from the Rehabilitation of Offenders Act 1974 and therefore applicants need to disclose all convictions including those that would normally be regarded as “spent”.

All schools are required to keep and maintain a single central record of recruitment and vetting checks including criminal records checks.

## **5 Information contained in an enhanced criminal records check**

An enhanced criminal records check includes:

- convictions, cautions, reprimands and warnings held in England and Wales on the Police National Computer (most of the relevant convictions in Scotland and Northern Ireland may also be included); and
- where local police records hold data that the police reasonably believes to be relevant to the post, additional information released by the Chief Police Officer. Exceptionally, and in a very small number of circumstances (typically to protect the integrity of current police investigations), additional information may be sent under separate cover to the registered body’s countersignatory and must not be revealed to the applicant.

## **6 Additional checks to accompany the criminal records disclosure for overseas staff**

Criminal records disclosures will not generally show offences committed by individuals whilst living or working abroad (except in the case of service personnel and their families). Therefore, in addition to an enhanced criminal records disclosure, additional checks such as obtaining certificates of good conduct from relevant embassies or police forces are necessary. This does not apply to Foreign Language Assistants where the British Council ensures that criminal records checks are provided by their home country.

Where an applicant is from or has lived in a country where criminal record checks cannot be made for child protection purposes, or is a refugee with leave to remain in the UK, and has no means of obtaining relevant information, the school must take extra care in taking up references and carrying out other background checks. For example, additional references should be sought, and references followed up by phone as well as letter.

## **7 Cost of an enhanced criminal records disclosure and additional checks for overseas staff**

The Disclosure and Barring Service (DBS) charges an application fee for each enhanced criminal records disclosure. There is discretion about whether the individual or the school pays the DBS application fee, although the practice in Northumberland is for schools to meet these costs by a recharge from Employee Services. It is expected that applicants meet the costs of any additional checks for overseas staff, although the school may decide to pay for these.

The DBS application fee does not apply to checks for volunteers which are free. The DBS defines a volunteer as “a person who performs any activity which involves spending time, unpaid (except for travel and other approved out of pocket expenses), doing something which aims to benefit some third party other than or in addition to close relatives”. However Employee Services charge an administration fee to cover the costs of processing checks for volunteers which is recharged to schools.

## **8 Individuals for whom the school has a mandatory duty to undertake a check of the Children’s Barred List/obtain an enhanced criminal records disclosure and portability of previous disclosures**

### **8.1 New appointments – paid employees**

A Children’s Barred List check and an enhanced criminal records check are mandatory for all school staff newly appointed by the school including those who do not work directly with children. This applies to staff employed on permanent, fixed-term or supply/casual contracts.

The requirement is applied as follows:

- the school must undertake an enhanced criminal records check if the new employee does not currently work or has not worked in the last three months for the County Council or any of its voluntary aided or foundation schools;
- the County Council delegates discretion to the headteacher to decide whether to require an enhanced criminal records check if the employee currently works or has worked in the last three months for the Council or any of its voluntary aided or foundation schools and has previously had an enhanced criminal records check undertaken by the Council for a post working with children. Further guidance on treating previous criminal records disclosures as portable is set out in the Portability section below.

## 8.2 New appointments – unpaid volunteers

A Children's Barred List check can only be requested if a volunteer is undertaking "regulated activity". An enhanced criminal records check is also required for volunteers undertaking "regulated activity"; the school has discretion whether to request an enhanced criminal records check for volunteers not undertaking "regulated activity" i.e. volunteers working on an irregular basis or as supervised volunteers. The definition of "regulated activity" is explained in the Legal considerations section above.

Schools will need to identify in each case whether the level of supervision of a volunteer is sufficient to decide they are not undertaking "regulated activity". The law requires that supervision must be reasonable in all the circumstances for the purpose of protecting any children concerned, which gives each school the flexibility to determine what is reasonable in each individual case. The duty that supervision must take place "on a regular basis" means that supervision must not, for example, be concentrated during the first few weeks of an activity and then tail off, becoming the exception not the rule. It must take place on an ongoing basis, whether the worker has just started or has been doing the activity for some time. The level of supervision may differ, depending on all the circumstances of a case. Headteachers should consider the following factors in deciding the specific level of supervision they will require in an individual case:

- the age of the children concerned;
- the number of children that the individual is working with;
- whether or not there are other carers/ adults around;
- the nature of the individual's work or contact with the children;
- the vulnerability of the children;
- the experience of, and checks carried out on, the person being supervised;
- the number of people being supervised.

The decision regarding whether the individual is undertaking regulated activity must be kept under review.

Having decided that an individual is classed as an irregular or supervised volunteer and therefore not undertaking "regulated activity", headteachers should consider the following factors when considering whether to exercise discretion to seek an enhanced criminal records check:

- the duration, frequency and nature of contact with children;
- what the school knows about the volunteer, including formal or informal information offered by staff, parents and other volunteers;
- whether the volunteer is well known to others in the community who are likely to be aware of behaviour that could give cause for concern;

- whether the volunteer has other employment, or undertakes voluntary activities where referees would advise on suitability; and
- any other relevant information about the volunteer or the work they are likely to do.

If the headteacher decides that an enhanced criminal records disclosure is required, the following will apply:

- the school must undertake its own enhanced criminal records check if the new volunteer does not currently work/volunteer or has not in the last three months worked/volunteered for the County Council or any of its voluntary aided or foundation schools;
- the County Council delegates discretion to the headteacher to decide whether to undertake an enhanced criminal records check if the volunteer currently works/volunteers or has worked/volunteered in the last three months for the Council or any of its voluntary aided or foundation schools and has previously had an enhanced criminal records check undertaken by the Council for a post working with children. Further guidance on treating previous criminal records disclosures as portable is set out in the Portability section below.

### **8.3 Portability of previous criminal records disclosures**

Portability refers to the re-use of a criminal records disclosure obtained for one post and later used for another post. The DBS advises organisations considering accepting an existing disclosure to carry out a risk assessment before deciding to do so.

It is County Council policy not to accept disclosures obtained by another registered or umbrella body due to the potential that additional information not available to the applicant was disclosed by the DBS.

The ability for the school to use its discretion to accept an existing disclosure when the individual currently works or has worked for the County Council or any of its voluntary aided or foundation schools in the last three months, as set out in the New appointments sections above, is based on the following principles:

- the existing criminal records disclosure was obtained by Northumberland County Council as the registered body;
- it was at the enhanced, not standard, level;
- it was for a post working with children;
- the school is willing to accept the judgement made by the previous appointment panel that any convictions or additional information provided by the DBS did not make the person unsuitable to work with children; and
- the school has completed all other recruitment and vetting checks including checking identity and obtaining two satisfactory references.

When considering using the portability provisions headteachers should consider that:

- a disclosure is only accurate at the time it is obtained. The person's criminal record or other relevant information may have changed since the existing disclosure was issued;
- the school will not be able to access the existing disclosure information as this is only retained for a maximum of six months, as set out in the Policy on secure storage, handling, use, retention and disposal of disclosure information section below; and
- the relevance of any conviction or other information may be different to this post compared with the original post.

## **9 Individuals for whom a third party has a mandatory duty to obtain an enhanced criminal records disclosure**

Third party providers, rather than the school, are responsible for ensuring that their staff have obtained an enhanced criminal records disclosure. It is not appropriate for schools to see their criminal records disclosure but they should seek written confirmation from each third party that they have followed safer recruitment practices and undertaken the appropriate vetting checks including an enhanced criminal records disclosure.

This includes:

- supply staff engaged by a third party whether from the County Council's Supply Register or an external agency – further guidance is included in the Procedure for ensuring third party supply staff have enhanced criminal records disclosures section below;
- contracted staff for facilities services such as catering, cleaning and caretaking whether from the local authority or an external contractor;
- third party providers of extended services;
- other public sector staff such as Ofsted inspectors, psychologists, nurses, dentists and centrally employed teachers and support staff who work in schools; and
- trainee teachers undertaking school-based elements of their training.

The school should carry out an identity check of supply staff engaged by a third party to confirm that the individual arriving is the individual that the local authority or agency told them would be arriving.

## **10 Individuals for whom the school does not require a criminal records disclosure**

### **10.1 Current employees and volunteers**

There is no requirement to recheck staff or volunteers on an ongoing basis once an enhanced criminal records disclosure has been obtained.

It is not necessary to ask current staff or volunteers in the school who have not previously had an enhanced criminal records disclosure to apply for one unless:

- there are concerns about their suitability to work with children; or
- they move to work that involves greater contact with children.

## **10.2 Visitors**

It is not necessary to obtain an enhanced criminal records disclosure for visitors who will only have contact with children on an ad hoc or irregular basis for short periods of time, or secondary pupils undertaking voluntary work or work experience in other schools.

Examples of people who do not require a criminal records disclosure include:

- visitors who have business with the headteacher or other staff or who only have brief contact with children with a member of staff present;
- people who visit a school only once but their work takes them into numerous schools as a one-off visit. This would be likely to apply to visiting authors, drama companies, poets and other people who visit an individual school to deliver a one-off session for children, but will repeat such sessions in other schools on a regular basis and will not therefore have contact with the same children;
- visitors or contractors who come on site only to carry out emergency repairs or service equipment and who would not be expected to be left unsupervised on school premises;
- secondary pupils on Key Stage 4 work experience in other schools or nursery classes, secondary pupils undertaking work in another school as part of voluntary service, citizenship or vocational studies; or Key Stage 5 or sixth form pupils in connection with a short careers or subject placement. In these cases the school placing the pupil should ensure that they are suitable for the placement in question; and
- people who are on site before or after school hours when children are not present: e.g. local groups who hire premises for community or leisure activities.

## **10.3 Building contractors**

Building contractors should not require an enhanced criminal records disclosure as children should not be allowed in areas where builders are working, for health and safety reasons, so these workers should have no contact with children. If the arrangements are such that contractors will come into contact with children then the provisions for third parties to obtain an enhanced criminal records disclosure will apply.

The school should carry out an identity check to confirm that the individual arriving is the individual that the contractor informed them would be arriving.



## **11 Procedure for obtaining an enhanced criminal records disclosure**

### **11.1 Disclosure of Criminal Convictions Form**

All applicants for posts in schools are required to complete a disclosure of criminal convictions form. The Recruitment and Selection Code of Practice for Schools explains the actions that the person(s) with the delegated responsibility for appointments need to take at the short-listing and interview stages.

### **11.2 Application to DBS**

Only the applicant who has been conditionally offered the post is required to complete a DBS application form.

The school is responsible for ensuring that the individual requiring the enhanced disclosure completes the DBS application form and provides the required identity documents. The original application form and copies of the identity documents (signed by the school to confirm originals were seen) are returned to Employee Services for checking and authorisation by a countersignatory.

It is the responsibility of the appropriate countersignatory to ensure that the DBS application form indicates the type of disclosure required (i.e. enhanced level), whether or not a check of the Children's Barred List is required and whether or not the check is for a volunteer. This determines whether additional information may be provided, whether the disclosure will confirm if the individual is barred from working with children and whether the school will be charged an application fee. A separate check of the Independent Safeguarding Authority's Children's Barred List is not required unless the criminal records disclosure remains outstanding at the time the individual begins work. The type of proof supplied should also be noted on the disclosure application form by the countersignatory.

The countersignatory sends the application to the DBS. The registered body should provide 90% of all enhanced certificates of disclosure within 28 days of the DBS receiving a correctly completed application form.

The headteacher has discretion to allow an employee to start work pending receipt of a criminal records certificate of disclosure. They should consider carefully the circumstances of the situation before doing so, as set out in the Starting work pending a criminal records disclosure section below.

The DBS sends two copies of the certificate of disclosure, one to the individual and one to the countersignatory. Enhanced disclosures may contain non-conviction information local police forces reasonably

believe to be relevant. On most occasions, this will be available to both the applicant and the countersignatory. However, on rare occasions, additional information will only be supplied to the registered body and not to the individual. This information will be sent separately in a sealed envelope to the countersignatory. It may indicate that the individual is under investigation for a relevant offence or that an arrest is imminent. This information must not be shared with the individual.

The disclosure is returned marked confidential and for the attention of the countersignatory. This is due to the sensitive nature of the information provided.

Where no convictions or additional information are included on the disclosure the countersignatory will:

- notify the school that a satisfactory certificate of disclosure has been received and provide the information required for the school to maintain its single central record of recruitment and vetting checks, specifically the unique reference number and date of issue; and
- personally ensure that the certificate of disclosure is retained and disposed of in accordance with the security policy below.

Where convictions or additional information are included on the disclosure the countersignatory must contact the school so that it can make a decision about whether this affects the individual's suitability for their role. The school will need to consider this information using the guidance in the Procedure for dealing with criminal convictions and additional information section below.

## **12 Procedure for ensuring staff from external agencies have enhanced criminal records disclosures**

Before taking on a member of supply staff provided by an external agency, the school must obtain written confirmation that the provider has carried out all of the relevant recruitment and vetting checks including an enhanced criminal records disclosure.

In relation to criminal records disclosures the written notification from the provider must confirm that an enhanced criminal records disclosure has been requested, whether or not it has been received and, if received, whether it included any disclosed information. Where there is disclosed information, the school must obtain a copy of the criminal records disclosure from the provider before the individual starts work. If the criminal records disclosure has not yet been received by the provider, the school must require the agency to notify it of the content as soon as it is received.

If the criminal records disclosure refers to the existence of information additional to what is on the face of the disclosure, the external agency cannot provide a copy of that information. The school, if they want to engage that person, should carry out a repeat criminal records disclosure of their own and not engage the person until they receive the new disclosure.

Any convictions or additional information disclosed should be considered by the headteacher in accordance with the Procedure for dealing with criminal convictions and additional information section below.

### **13 Procedure for ensuring staff from the local authority's supply register have enhanced criminal records disclosures**

All staff on the Northumberland School Teacher Supply Register have had all of the relevant recruitment and vetting checks including an enhanced criminal records disclosure. Staff are only included on the register if they do not have any criminal convictions.

### **14 Procedure for dealing with criminal convictions and additional information**

#### **14.1 Assessing the relevance of criminal convictions and/or additional information**

Criminal convictions, cautions, reprimands, warnings and/or additional information from the police do not automatically make a person unsuitable for work in a school. A person's suitability should be judged in light of all the relevant information available about them including other recruitment and vetting checks if the disclosure has been obtained as part of a recruitment and selection process.

The headteacher, in consultation with the persons with delegated responsibility for the appointment and the registered body, must make a judgement about suitability, taking into account only those offences that may be relevant to the particular job or situation in question. A number of points should be considered in deciding the relevance of convictions:

- **the nature of the offence:** in general, convictions for sexual, violent or drug offences will be particularly strong contra-indicators for work with children;
- **the nature of the appointment:** for example, serious sexual, violent, drug or drink offences would be of particular concern where the individual would be providing care and driving or drink offences would be relevant in situations involving transport of children;
- **the age of the offence:** offences which took place many years in the past may often have less relevance than recent ones. However, convictions for serious violent or sexual offences or serious offences involving substance abuse are more likely to give cause for continuing concern than, for instance, an isolated case of dishonesty committed when the person was young. The potential for rehabilitation must be weighed against the need to protect children; and
- **the frequency of the offence:** a series of offences over time is more likely to give cause for concern than an isolated minor conviction.

The headteacher may also take into account whether or not an individual disclosed these convictions or other information on their Declaration of Criminal Convictions Form and should discuss failure to do so with them. If an individual admits to a previously undisclosed conviction but claims the failure to disclose was an oversight it will be for the headteacher, or where appropriate governing body, to decide whether the explanation is credible.

If an applicant disputes the information provided on the disclosure then either the applicant or the registered body can contact the DBS within 3 months of the date of issue of the disclosure. In all cases the applicant should notify the registered body of the dispute in order to prevent a recruitment decision being made before the dispute is resolved.

The school's decision about whether the individual is suitable to be appointed to or continue in their role is final.

#### **14.2 Action required if the individual is judged to be unsuitable**

The school may decide that an individual's criminal convictions and/or additional information provided by the DBS make them unsuitable to work with children. The relevant actions, depending on the individual's position with the school, are:

- an applicant considered unsuitable following a recruitment interview based on the declaration of criminal convictions form completed by the applicant, the discussion at interview and other pre-appointment checks should not be offered the post;
- an applicant considered unsuitable following a conditional offer of appointment based on an enhanced criminal records disclosure and/or additional information obtained from the DBS should have their conditional offer withdrawn; or
- a current employee (including those who have started work under respite measures before the criminal records disclosure was received) considered unsuitable must be withdrawn by the school immediately pending further enquiries and disciplinary or dismissal procedures may follow; or
- a current volunteer considered unsuitable must be withdrawn by the school immediately pending further enquiries and the school may decide not to use their services again; or
- supply staff provided by a third party considered unsuitable must be withdrawn from the school immediately by the agency pending further enquiries and the school may decide not to use their services again.

### **15 Starting work before an enhanced criminal records disclosure is obtained**

Ideally a criminal records check should be obtained before an employee or volunteer begins work. It must in any case be obtained as soon as

practicable after the individual's appointment and the request for a criminal records disclosure should be submitted before the individual starts work.

Headteachers have discretion to allow employees, volunteers, third party supply staff or third party contractors to begin work pending receipt of the disclosure under respite measures. In the case of Council staff contracted to the school via a Service Level Agreement the local authority will seek written permission from the headteacher prior to the individual starting work.

The headteacher must complete the Criminal Records Respite Measures Form for any individual who is allowed to start work before an enhanced criminal records disclosure is received and return it to Employee Services.

In all cases the headteacher must ensure that all other recruitment and vetting checks, including the Children's Barred List where relevant, have been carried out and the individual is appropriately supervised.

Appropriate supervision for staff who start work prior to the result of a criminal records disclosure being known should reflect what is known about the person concerned, their experience, the nature of their duties and the level of responsibility they will carry. For those with limited experience and where references have provided limited information the level of supervision required may be high. For those with more experience and where the references are detailed and provide strong evidence of good conduct in previous relevant work a lower level of supervision should be applied. It should be made clear to all staff without completed criminal records disclosures that they are subject to this additional supervision. The nature of the supervision should be specified and the roles of staff in undertaking the supervision spelt out. The arrangements should be reviewed regularly, at least every two weeks until the criminal records disclosure is received.

## **16 Policy on secure storage, handling, use, retention and disposal of disclosure information**

Anyone who receives disclosure information must abide by the DBS's own Code of Practice and obligations under the Data Protection Act 1998 and other relevant legislation. Failure to abide by that Code can be a criminal offence and the individual subject to a fine or imprisonment. The key points are

- **Storage and access**  
Disclosure information will be kept securely in lockable, non-portable storage containers with access strictly controlled and limited to those who are entitled to see it.
- **Handling**  
Disclosure information is only passed to those who are authorised to receive it in the course of their specific duties relevant to recruitment and vetting processes. No photocopy or other image of disclosure documentation may be taken.
- **Usage**

Disclosure information is only used for the specific purpose for which it was requested for which the applicant's full consent has been given.

- **Retention**

Disclosure information is not kept for any longer than is necessary once a recruitment (or other) decision is made. If, in very exceptional circumstances, it is considered necessary to keep disclosure information for longer than six months, the Council will seek permission from the criminal records and will give consideration to the data protection and human rights of the individual before doing so. Throughout this time the usual conditions regarding secure storage and controlled access will apply.

- **Disposal**

Once the retention period has elapsed any disclosure information will be immediately destroyed by secure means (shredding, pulping or burning). While awaiting destruction the documentation will not be kept in any insecure receptacle (for example, waste bin or confidential waste sack).

- **Record keeping**

Employee Services will keep a record of the disclosure detailing the date of issue, the name of the subject, the type of disclosure requested, the position for which the disclosure was requested, the unique reference number of the disclosure and the decision taken. Schools will retain relevant information as part of their single central record of recruitment and vetting checks.

- **Breaches of security**

Breaches of this policy may be subject to action under the County Council's or school's disciplinary procedure, as appropriate.

- **Acting as an umbrella body**

Before acting as an umbrella body (which countersigns applications and receives disclosure information on behalf of other organisations) the Council will take reasonable steps to satisfy itself that they will handle, use, store, retain and dispose of disclosure information in full compliance with the DBS's Code of Practice and in accordance with this policy. The Council will also ensure that the organisation has a written policy of its own and, if necessary, provide a model policy for the organisation to use or adapt for this purpose.

Revision Record of Issued Versions			
Author	Creation Date	Version	Status
Corporate HR	February 2002	1.0	Final version
Changed by	Revision Date		
Corporate HR (SK)	June 2008	2.0	Updated final version
School Support (SH)	23 December 2010	3.0	Updated final version agreed with trade union representatives
Northumberland HR for Schools (SH)	10 September 2012	4.0	Updated to reflect changes arising from Protection of Freedoms Act 2012, specifically volunteers and DBS
CHS Adopted	Autumn 2012		

## MONITORING, EVALUATION AND REVIEW

This policy will be reviewed annually and its effectiveness evaluated and amended in light of the findings of the evaluation.

Date of this policy: September 2015

Review date: September 2016

Policy approved by:

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Mrs Mead  
Head Teacher

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Mrs J Hall  
Chair of Governor

Date signed.....