

School Governors and British Values

A statement of concern, October 2015

Introduction

1. Several school governors or former school governors in Birmingham have recently received a letter from the Department for Education (DfE) informing them that the Secretary of State considers they have engaged in 'conduct aimed at undermining fundamental British values' and that in consequence they are to be disqualified from being a school governor in England.
2. The official who signed the letter is described in it simply as 'Director'. The DfE website, however, shows that the full title of this official is Director of the Due Diligence and Counter Extremism Group (DDCEG).
3. The letter is headed Section 128 of the Education and Skills Act 2008: Prohibition from taking part in the management of an independent school. It asserts that 'being barred from management of an independent school would also disqualify you from being a governor of a maintained school'. There is no reference to maintained schools in Section 128 of the Act, however, and the letter does not indicate the legal basis for its claim that Section 128 is relevant to maintained schools.
4. One of the 'fundamental British values' which recipients of the letter are alleged to have undermined is the rule of law. Principles of the rule of law include natural justice and due process: an accused must be able to answer charges against them, and must therefore know the precise nature of the charges, and of the evidence which supposedly supports these. The principles apply not only to criminal trials but also to all proceedings, administrative or judicial, which could result in significant prejudice.
5. In the threatened action, and in the way the allegations against the governors are framed, the DfE letter violates basic principles of the rule of law. The lack of precision as to what each individual governor is alleged to have done and the extent of their individual responsibility, and the reliance on anonymous hearsay evidential material, are causes for grave concern. There is an irony in the fact that the Department for Education is accusing people of conduct aimed at undermining fundamental British values when it is itself guilty of such conduct, and more obviously so.

Two reasons why someone may be disqualified

6. The reason why recipients of the letter are to be disqualified is that they have allegedly 'engaged in 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', or else have engaged in 'conduct that is so inappropriate that, in the opinion of the appropriate authority, it makes a person unsuitable to take part in the

management of an independent school'.

'Promoting, permitting or failing to challenge'

7. The letter explains in an annex that the recipient of the letter is considered unsuitable to be a school governor because they have been a member of a governing body where, as an individual, they 'promoted, permitted or failed to challenge' certain aspects of their school. There is a list of actions or failures which in this capacity they are alleged to have promoted, permitted or failed to challenge, for example:
 - 'failure to ensure fair and transparent recruitment processes'
 - 'inadequate teaching of sex and relationship education'
 - 'segregation of students within assemblies'
 - 'inadequate governance arrangements'
 - 'inadequate safeguarding procedures in place'
 - 'a primary focus on Islam'.
8. The letter does not indicate which of the fundamental British values (as cited in paragraph 6 above) is undermined by each of these alleged failures or actions. Nor does it indicate how any of the actions or failures could clearly be deemed to be aimed at undermining fundamental British values, as these are officially listed.

'Source documents'

9. The letter does not even cite any specific evidence for its claim that the recipient's governing body did any of the things it is alleged to have done, nor any specific evidence for its claim that the recipient of the letter 'promoted, permitted or failed to challenge' any of them.
10. The letter does, however, list various source documents which, it claims, contain supporting evidence for the allegations which it makes. These are the Clarke and Kershaw reports, the advice note which Sir Michael Wilshaw submitted to Michael Gove on 9 June 2014, and various Ofsted and Education Funding Agency reports on individual schools. These contained a range of unchecked and unsubstantiated references to hearsay and rumour, but very few references to verifiable and verified fact or to alternative perceptions and interpretations of events. Full bibliographical details and relevant web links are as follows:
 - Peter Clarke's Report into allegations concerning Birmingham schools arising from the 'Trojan Horse' letter can be accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/340526/HC_576_accessible_-_pdf
 - Ian Kershaw's report on the Trojan Horse letter can be accessed at the website of the [National Governors Association at http://www.nga.org.uk/News/NGA-News/May-Sept-14/Trojan-Horse-Review.aspx](http://www.nga.org.uk/News/NGA-News/May-Sept-14/Trojan-Horse-Review.aspx)

- Michael Wilshaw's letter to Michael Gove can be accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415115/Advice_note_on_academies_and_maintained_schools_Birmingham_toSoS_Education.pdf
11. But in March 2105 the Education Select Committee stated that it had studied the Clarke, Kershaw, Ofsted and EFA reports and had noted that 'no evidence of extremism or radicalisation, apart from a single isolated incident, was found by any of the inquiries'. Since the official definition of extremism is opposition to fundamental British values, it follows that the Select Committee found NO EVIDENCE in the Clarke, Kershaw, Ofsted and EFA reports of conduct aimed at undermining fundamental British values in Birmingham schools, whether by governors or by anyone else, apart from one isolated incident. Even the 'single isolated incident' was a reference to hearsay, not to verified fact, and did not appear in any of the published reports.
 12. The Education Committee report was entitled Extremism in Schools: the Trojan Horse affair and was published on 11 March 2015. It can be accessed at <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmeduc/473/473.pdf> The government's response to the report was published as a command paper (Cm 9094) on 26 June 2015.
 13. Since the so-called source documents contain no relevant evidence, it is not surprising that the DfE letter threatening disqualification from being a school governor does not draw attention to any specific pages, paragraphs or sections in them. It is, however, surprising that the DfE apparently expects recipients of its letter to:
 - search through the Clarke, Kershaw and Wilshaw reports to find out what exactly is said, if anything, about the school at which they are or were a governor
 - search also through the Ofsted and EFA reports concerning their own school to find possibly relevant statements, and assess whether the DfE letter accurately represents these and, if it does, whether the statements are or may be pertinent to the allegations that have been made
 - assess the extent to which they themselves, as individuals, 'promoted, permitted or failed to challenge' each of the failures or actions that have been alleged.
 14. The letter states that the recipient must respond within two months if they wish to challenge the Secretary of State's allegation that they have engaged in conduct 'aimed at undermining fundamental British values', and her consequent intention to disqualify them from being a governor of a school in England.

Comments

'Conduct'

15. Regulations under the Act empower the Secretary of State to issue a direction in the following situations: a) where someone has a relevant conviction; b)

where has been cautioned for a relevant offence after admitting guilt to police who decided a court disposal was unnecessary; c) where there has been a judicial finding in the context of someone unfit to stand trial; d) where they have 'engaged in relevant conduct', and in this connection have been found to be in breach of professional standards by a professional body, or else or have engaged in conduct which is so inappropriate that in the opinion of the appropriate authority makes them unsuitable.

16. All the criteria for disqualification apart from 'relevant conduct' require either an admission or a judicial finding of guilt. Within the rubric of 'relevant conduct', breach of professional standards must be proved to the satisfaction of a professional body. Applying ordinary principles of statutory construction, the other heads of relevant conduct relied on for disqualification – conduct aimed at undermining fundamental British values, or highly inappropriate conduct - would need either to be admitted by the person concerned, or to be proved to a high standard of proof. The conduct would also need to be defined sufficiently precisely to make it capable of adjudication.
17. But the conduct relied on in the DfE letter is incapable of fair adjudication, for both the charges and the evidence are extremely vague. There is no attempt to set out what each individual is alleged to have done, or to differentiate individual degrees of responsibility along the spectrum of 'promoting, permitting or failing to challenge'. The material relied on in the so-called source documents is redacted so as to anonymise complainants and some of those complained of, but it nevertheless appears that governors' meetings sometimes featured heated argument and governors were by no means unanimous in their decisions. It is not even clear that matters complained of – for example irregularities in school appointments, Islamic faith assemblies or gender segregation – were a result of governors' decisions.
18. These features make the allegations virtually impossible to rebut. If 'promoting' and 'permitting' cannot be proved, the fall-back position for the Secretary of State is presumably 'failing to challenge'. This is surely too low a threshold for disqualification, particularly in the light of the strong criticisms which the Clarke and Kershaw reports make of Birmingham City Council and of the Department for Education for failing to provide governors with support, training and guidance. Also, Sir Michael Wilshaw's note to Michael Gove of 9 June 2014 contains recommendations which imply severe criticism of the Department for Education in this respect.

'Intention'

19. A related issue is that the regulations require the impugned conduct to be 'aimed at' undermining fundamental British values. This imports a test of intention. It is not sufficient that in the Department's view the conduct was capable of undermining these values, or that it did in fact undermine them. What the Department needs to demonstrate is that the individual to whom the letter is addressed consciously intended to undermine the values. This interpretation is in line with the criminality required by the other criteria for disqualification. But there is a total lack of evidence to support the allegation that any individual's conduct had the necessary intent.

Responsibility

20. People who act as school governors do so in a voluntary and part-time capacity. Most do not have specialist knowledge or experience of education in general or of education law in particular. They therefore have to rely frequently on the advice, guidance, consultancy and training which they receive from full-time, qualified and salaried professionals. These include headteachers and other senior staff in schools; advisers, inspectors, officials and committee clerks in local authorities and academy chains; publications from Ofsted and the Department for Education; and consultancy services which they themselves commission. They are responsible, certainly, for the decisions which they take or neglect to take. But those who are paid to have a duty of care to advise them are also responsible. This was clearly recognised and emphasised in all the reports mentioned in paragraph 10 above.
 21. Shared responsibility was not, however, acknowledged in the DfE letter which is the subject of this statement of concern. The letter did not, for example, acknowledge that at the time of the conduct which it alleged had taken place there had been no published guidance issued by the DfE or by Ofsted about the nature and dangers of extremism in schools, other than a booklet published back in 2009 under a previous administration. Nor did it acknowledge that some of the neglect it criticised, for example in relation to collective worship on schools, had for a long time been ignored, and thus condoned, by itself.
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BACKGROUND

This draft statement of concern is a follow-up to two collective letters published in the Guardian about the Trojan Horse affair in summer 2014, and to a seminar on the same subject which took place at the Centre for Research in Race and Education, University of Birmingham, in autumn 2014.

The first letter to the Guardian was about the Ofsted reports which were about to be published and was reported in a front page news story on 3 June (<http://www.theguardian.com/education/2014/jun/03/education-experts-ofsted-trojan-horse-birmingham-schools>). Its actual text appeared at <http://www.theguardian.com/education/2014/jun/03/ofsted-credibility-at-stake-trojan-horse>.

The second letter was about the report by Peter Clarke and can be read at <http://www.theguardian.com/education/2014/jul/28/rights-and-wrongs-trojan-horse-birmingham>

A brief critique of the Clarke report, Hatred, hysteria and a Trojan Horse, was published in July 2014 at <http://www.irr.org.uk/news/hatred-hysteria-and-a-trojan-horse/>.