



## **Unregistered Independent Schools Briefing Note: August 2016**

### **1.0 Background**

- 1.1 The Secretary of State is the regulatory authority in respect of independent schools and has the power to take action for offences under section 96 ESA 2008. The Local Authority's role relates to its overall responsibility for the safety of children residing in its administrative boundary. The LA is expected to show vigilance and share local intelligence with other agencies, including Ofsted, to ensure these establishments are identified and investigated as quickly as possible.
- 1.2 Where an individual has concerns that an unregistered school could be operating in Derby, they should contact the LA within 24 hours, who will then raise this immediately with the DfE. For concerns regarding unregistered schools, please email: [Education@derby.gov.uk](mailto:Education@derby.gov.uk) .
- 1.3 Any child safeguarding concerns in relation to an unregistered school should be raised within 24 hours with the Child Protection Manager on tel. 01332 642376 or via email: [Cypsafeguarding@derby.gcsx.gov.uk](mailto:Cypsafeguarding@derby.gcsx.gov.uk) .

### **2.0 The role of the Secretary of State for Education**

- 2.1 The Secretary of State for Education is the regulator of independent schools and maintains a register of these institutions. 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).
- 2.3 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.
- 2.4 The Secretary of State takes the decision on whether to consent to a prosecution of an unregistered independent school. The Secretary of State's approach to individual cases would depend on the particular circumstances of each case including consideration of the level of risk to the welfare of children,

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 DfE and whether the DfE has concerns about the suitability of the proprietor to be involved in providing education.

### **3.0 Procedures around Unregistered Schools**

3.1 The DfE becomes aware of suspected unregistered schools in a number of ways, such as:

- Reports from the police;
- Reports from local authorities;
- Complaints from members of the public or other schools;
- Media (TV & newspaper articles/leaflets);
- Information from Ofsted.

3.2 For any possible unregistered school, immediate steps will be taken by the DfE to establish whether the institution is providing full-time education and is operating unlawfully as an independent school. 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.

3.3 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 DfE the same day for follow-up action.

3.4 Where an institution is identified as operating unlawfully, the DfE (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 DfE considers is conducting/has conducted the unregistered independent school (section 96 ESA 2008).

3.5 The Secretary of State may take immediate steps to exercise her power to pursue a prosecution if it is considered appropriate to do so given the seriousness of particular circumstances. Where the DfE believes that prosecution should be the next step, depending on the circumstances, Ofsted may be asked to consider re-visiting the institution. The DfE will also consider prosecution in situations where a registered school has been subject to regulatory action that has resulted in the school being taken off the register. This would be on the basis

#### **4.0 Action that might be taken by other agencies in respect of unregistered schools**

4.1 Although the Secretary of State is the regulatory authority in respect of independent schools and has the power to take action for offences under section 96 ESA 2008, other regulatory agencies may also have a role to play. In some cases it might be possible for other agencies to take action to stop an unregistered school from operating or disrupt its operation and DfE will liaise with other agencies as appropriate. For example where there are child protection concerns the Local Authority (child protection services) may have a role to play in respect of individual pupils and their families, or if there are serious fire or health and safety hazards, the fire service or Health and Safety Executive can be asked to inspect.

#### Notes

The information in this briefing note has been taken from a Department for Education Policy Statement on Prosecuting Unregistered Independent Schools (January 2016). The full policy statement can be accessed by clicking on the link below:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/492965/Prosecuting\\_unregistered\\_independent\\_schools.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492965/Prosecuting_unregistered_independent_schools.pdf)

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