

# BBP: Educational Guardianship

April 2021 Update

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# Background

1. Educational guardians have been a hidden but vital component of the UK education system for decades. In fact, such is the importance of educational guardians and homestay providers in terms of logistics and welfare that without them many pupils would not have been able to - and could not today - attend boarding schools at all. Despite this, educational guardianship remains unregulated and often misunderstood.
2. Fortunately, the position is changing. The value of international pupils to the UK economy combined with concerns about Brexit prompted the Department for Education (**DfE**) and Department for International Trade (**DIT**) to include educational guardianship in the International Education Strategy launched in 2019. In the same year, the Residential Schools investigation conducted by the Independent Inquiry into Child Sexual Abuse (**IICSA**) placed the spotlight on the adequacy of educational guardianship arrangements as a core component of safeguarding. In December 2020, two significant DfE consultations were launched, both including changes that reflect recognition of the importance of educational guardianship and the vulnerability of international pupils: the long awaited new *National Minimum Standards for Boarding* (**NMS**) and the latest update to *Keeping Children Safe in Education* (**KCSIE**). All of which makes this update to BBP3 timely.

# Introduction

3. Educational guardians are appointed by parents to accept delegated parental responsibility for children attending boarding schools in the UK. Some educational guardians are relatives or close family friends who operate in that capacity without necessarily being conscious of their status. Others are specialist educational guardianship businesses, usually incorporated as limited companies, and often known as Educational Guardianship Organisations (**EGOs**) which offer a wide range of services on a commercial basis. Many educational guardians provide accommodation directly in their own homes; others arrange it via homestays and may have a portfolio of families they have vetted based close to the schools the children attend. The vetting process is not prescribed but should provide evidence of identity and suitability to work with children. We would expect this to include Enhanced DBS checks for those aged 16 or over, references from nominated referees, house and vehicle inspections and re-visits and spot checks.

# What is an educational guardian?

4. Outside of the boarding education sector, few people understand what an educational guardian is. Even within the sector there is sometimes confusion, perhaps because most people have also heard the terms 'guardian' or 'legal guardian' and assume they are interchangeable. In fact there are important differences.
5. A guardian or legal guardian is a person appointed by court order under s.5 of the Children Act 1989 to care for a child because the parents (or guardians) have died. The process of becoming a legal guardian bestows parental responsibility for the child until they attain the age of 18, meaning the acquisition of the full range of rights and duties that a parent has by law in relation to their child and his or her property.
6. By contrast, an educational guardian is appointed by parents or legal guardians to accept parental responsibility on a temporary basis whilst a child attends an educational setting far from home. The act of delegating parental responsibility in this way does not extinguish the parents' rights and responsibilities but it does transfer a level of legal responsibility during those times that the child is in the care of the educational guardian.
7. In its simplest form, educational guardianship will be performed by a relative or family friend and no money may change hands beyond the payment of nominal expenses. Parents who do not have family or friends able to take on this role may turn to an EGO and pay fees for a service delivered under contract.
8. One common misconception is that an educational guardian always provides accommodation and day-to-day care for a child. In fact that may not be the case. EGOs typically outsource the provision of accommodation to homestays (also known as host families). Individuals who wish to provide homestay services will be vetted by the EGO, a reflection of the fact that it is the EGO that has accepted delegated parental responsibility and temporary legal responsibility for the pupil when s/he is in their care or the care of a third party it has appointed.

# Immigration issues

9. The majority of international pupils attending boarding schools in the UK, with parents living overseas, will hold a Child Student or Student visa. These visas (previously known as the Tier 4 immigration categories) cannot be granted without a Confirmation of Acceptance for Studies (CAS) from the school they will be attending, that CAS having been assigned using a Student Sponsor Licence granted to the school by the Home Office. Sponsoring schools are obliged to comply with the Student Sponsor Guidance which sets out the requirements for assigning CAS to international pupils and the ongoing duties they have in relation to those pupils while they are in the UK. While educational guardians are not referred to explicitly in the Sponsor Guidance (or the Immigration Rules which set out the requirements for Child Student and Student visas to be issued) certain duties are imposed in relation to the care of children under the age of 18. In many cases those duties are likely to be more easily discharged if an educational guardian is involved in the child's care while they are in the UK.
10. The principal duty relating to the care of pupils under the age of 18 is that the sponsoring school must ensure that there are 'suitable care arrangements' for those pupils throughout the time they are in the UK. This includes arrangements for their travel, reception on arrival in the UK and care generally, including those periods when the pupil is still in the UK but not at school. Schools which sponsor the visas of pupils under the age of 18 must ensure that there are suitable care arrangements for those pupils throughout the time they are in the UK. The word 'suitable' is crucial here and indicates that it is not enough to simply be told where a child will be staying when not in school; the school needs to be satisfied that the arrangements that have been made are appropriate for that particular child's circumstances. For example, a homestay arranged by a reputable educational guardian is likely to be suitable in most cases; staying with a sibling who lives in university halls of residence most probably will not.
11. In addition, the record-keeping duties with which sponsors are required to comply include a duty to retain a history of each sponsored pupil's contact details and to ensure that the record is kept up-to-date. To ensure compliance with this duty, schools should ensure that they know where sponsored pupils will be staying at all times when they are not in school - be that with an educational guardian, in a homestay, or some other arrangement - and retain those details for future inspection.

# Why should an educational guardian be appointed?

12. There is no legal requirement for parents to appoint an educational guardian in the UK. The practice arose originally from recognition that there are circumstances when a boarder will require time away from their school during or between terms and that their parents may live too far away to step in. Obvious examples include where a pupil is taken ill or suspended. Equally, pupils may need somewhere to stay during exeat or over half-term if returning to the family home is not practicable.
13. More recently it has been recognised that educational guardianship is about a lot more than looking after a boarder for a few days each year. Many arrangements now involve attending school meetings such as parents' evenings and providing them with the school's feedback, helping a pupil adapt to their new environment and taking an active part in their school life. Some deal with flight bookings, arrange transport to and from airports at the beginning and end of holiday periods and, during term time, are on call 24 hours a day in case of emergency.
14. In addition, as set out above, while there is no explicit requirement for schools which sponsor Student and Child Student visa applications to have an educational guardian in place, taking steps to ensure that a reputable educational guardian is appointed is consistent with the duty to ensure that a child's care arrangements when not in school are suitable.

# Frequently Asked Questions

## Who can be an educational guardian?

There are currently no legal requirements regarding who can be an educational guardian. There are, however, a number of things that an educational guardian must be able to provide in order to be effective.

One is proximity sufficient to enable attendance at the school at short notice. Another is availability such that it is possible to deal with both routine events such as parents' evenings and developments that occur without warning such as illness or disciplinary action.

Authority and reliability are essential if an educational guardian is to provide the requisite balance of supervision and sanctuary for children who may be far from home. Communication is key and it may be necessary for an educational guardian to bridge cultural

and linguistic barriers between the parents and the school. Being a permanent resident in the UK is expected.

It is also recognised that educational guardians can play more of a pervasive pastoral role, as a source of support and encouragement independent of both the school and parents. In practice this makes it easy to identify who should not act as an educational guardian. Adult siblings who are not yet 25 or are still in full time education themselves are unlikely to be appropriate. Equally, anyone who is unable or unwilling to commit to the role of educational guardian should not be appointed or should not remain in place if a change in circumstances means they are no longer able to be effective.

## Do educational guardians need to be accredited?

Whilst it is now widely acknowledged that the regulation of educational guardianship is necessary, it remains an unregulated activity in the UK and accreditation is not currently a legal requirement. However, in the absence of official oversight, a number of organisations have created and continue to develop their own accreditation, certification and validation schemes. More and more schools are themselves making it mandatory for parents to appoint an educational guardian which has been independently assessed for the quality and rigour of the service provided.

In 2020, the BSA launched its **Certified Guardian Scheme** for educational guardians. To become certified, EGOs must undergo an inspection process requiring evidence of adequate safeguarding arrangements, policies and procedures, insurance and data protection. Certification also requires commitment to the BSA Code of Conduct. Every three years, Certified Guardians are subject to an audit designed to ensure that the needs of international students continue to be met.

## When should an educational guardian be appointed?

Given the importance of having adequate educational guardianship arrangements in place, the appointment process should be completed before the pupil travels to the UK to take up their place. Many independent boarding schools include the appointment of an educational guardian as an integral part of the admissions process and make it an express contractual requirement for parents to have a suitable educational guardian in place.

To ensure that the issue of international pupils' care when not in school is considered before departure for the UK, schools may wish to consider insisting that parents demonstrate that appropriate arrangements have been made - such as the appointment of a reputable educational guardian - before issuing the CAS that the child requires in support of their Student or Child Student visa application.

### Who can appoint an educational guardian?

Educational guardians are usually appointed by parents because they are the party seeking to delegate parental responsibility for their child whilst they are in the UK but not at school. It then falls to the parents to satisfy themselves (and ideally also the school) that the arrangement is suitable. This is problematic in a number of ways, not least because parents are often unable to gauge the adequacy of the arrangement. In addition, some schools are understandably reluctant to become involved in the appointment process on the basis that doing so may be interpreted as an assumption of legal responsibility for it.

The unintended consequence of not being involved in the appointment process is that schools may find themselves dissatisfied with the arrangement parents have made for their child but unable (or unwilling) to intervene in case they are then held accountable should something go wrong. It is precisely because of this predicament that the work of accreditation, validation and certification organisations is so important. It is also why the proposed changes to the NMS include a new requirement for schools to take steps to ensure the safety of pupils living with educational guardians even if they have not been appointed by the school. Ultimately, the main priority must always be the welfare and happiness of pupils.

### Can schools appoint educational guardians?

Schools can and sometimes do appoint educational guardians (and/or arrange homestays) for children who may require care and accommodation when they are being educated in the UK.

This is not considered to be good practice in part because one of the roles of the educational guardian is to represent the interests of the child and the parents, if necessary against the school.

In addition, where this is the case, the school will have overarching responsibility for safeguarding and promoting the welfare of the pupils while s/he is in the care of the educational guardian, in the same way that the school is responsible whilst the pupil is in its care. In Scotland, any arrangement made by a school for a young person to spend weekends or holidays in a person's home is treated as being part of the service provided by the school and subject to inspection by the Care Inspectorate.

If something goes wrong during the arrangement, such as the child being involved in an accident, there is a risk the school will be held liable. A school taking this approach must also meet the relevant NMS by:

- carrying out adequate safeguarding checks on the educational guardian. Educational guardians appointed by schools are subject to the same recruitment checks as staff; and
- regularly monitoring the suitability of any arrangements the school makes for the appointment of educational guardians.

At present, the benefit of taking this approach is that the school will retain the power to terminate the arrangement if it considers it, at any point, to be unsuitable.

It is therefore best practice for schools to do the following when arranging educational guardianship, in addition to meeting the NMS requirements:

- put in place an Educational Guardianship Policy setting out clearly the responsibilities of the school, the parents, the pupil and the educational guardian;
- provide the educational guardian with guidelines setting out their role and responsibilities;
- provide the educational guardian with the school's child protection policy and provide adequate child protection training as a minimum;
- put in place a suitable formal agreement between the parents, educational guardian and the school.

The above all apply even where a school has arranged educational guardianship through an agency or other intermediary organisation, where that agency or intermediary is acting on behalf of the school rather than the parents.

Where the school also arranges accommodation for a pupil off-site e.g. in long-stay lodgings, which may be with an educational guardian or a host family, then additional requirements apply under the NMS:

- The accommodation must be inspected by the school before the pupil is allowed to stay;
- Adequate safeguarding checks must be carried out on all adults in the accommodation, including interviews, references and, for all members of the family aged over 16, DBS checks, before the pupil is allowed to stay;
- The accommodation must be regularly monitored, including checks at least annually;
- The accommodation provided must be at or above the standard of boarding accommodation provided by the school;
- There must be a satisfactory written agreement with each adult providing the accommodation;
- The school must provide satisfactory written guidance to the host families, including the school's policy on lodging pupils;

- At least once per term, a member of school staff must discuss the accommodation with each pupil accommodated in this way, recording this in writing and acting on any concerns.

As noted above, it is expected that under the new NMS schools will be required to take appropriate steps to ensure children are safe irrespective of whether educational guardians have been appointed by the school. This will include referring any concerns about the arrangement to the relevant agency and, if arrangement may constitute private fostering, referring it to the local authority (see below for more details).

### **Can school staff be appointed as educational guardians?**

Historically, school staff have been appointed to act as educational guardians for enrolled pupils. However, this has long been recognised as potentially problematic. As the role of an educational guardian is to represent the interests of the child and the parents, this creates the clear potential for a conflict of interest. We also advise against this approach due to the risk that it would leave a child without an independent person to talk to about personal problems or concerns at school, which is a requirement under the NMS.

One of the proposed changes to the NMS is that under no circumstances should school staff act as educational guardians for pupils. Staff are, however, not precluded from acting as a host family, notwithstanding that this may not be appropriate either.

### **What is the maximum period of time guardianship arrangements can be put in place for a child?**

This is an important question because it is possible for educational guardianship arrangements put in place for children staying with UK families could amount to “private fostering”.

Private fostering occurs when a child under the age of 16 (under 18, if disabled) is provided with care and accommodation by a person who is not a parent, person with parental responsibility for them or a relative in their own home for 28 consecutive days or more. As the Covid pandemic has demonstrated, schools and parents should be particularly mindful of these timelines when national restrictions (including partial school closures) and international travel restrictions are in place.

If any school arranges accommodation for any pupil (aged under 18) for more than 295 days in the year, the school has to register with Ofsted as a children’s home. School-arranged (but not parent-arranged) accommodation (even during holidays) counts towards this.

### **Does the school have additional responsibilities for privately fostered children?**

Even if a school has had no part in making these arrangements, if they are aware of a child being privately fostered, or a private fostering arrangement is in the process of being put in place, then it must notify the relevant local authority 6 weeks before the child arrives, or immediately if it has already begun. It is a criminal offence for people who are privately fostering, or have arranged private fostering, to fail to notify their local authority about the arrangements.

Privately fostered children are potentially vulnerable and all school staff should be vigilant about the possible need for early help for these children.

# Practical steps for schools

## What is the position in Scotland?

As a separate legal jurisdiction, Scotland has its own arrangements for vetting and barring and the inspection of boarding. The Protecting Vulnerable Groups (PVG) scheme is managed and delivered by Disclosure Scotland and operates like the DBS equivalent to help ensure those who are unsuitable to work with children do not engage in 'regulated work'. Schools that provide accommodation must be registered with the School Care Accommodation Service and submit to inspections by the Care Inspectorate.

Schools that choose to appoint educational guardians will have that provision included in their boarding inspection, which will check that any accommodation provided is safe and appropriate and continues to be so for the duration of the stay.

Where parents appoint an educational guardian or use an agency to do this, the educational guardian should normally be registered prior to providing care as a child minder under the Public Services Reform Act 2010. Where registered child minders are involved, the arrangement is subject to regulation by the Care Inspectorate. This will fall outside the School Care Accommodation Service and be scrutinised separately. However, this oversight will not be in place where certain conditions apply, such as when the educational guardian is a close relative of the child, the arrangement is not for reward

(beyond reasonable and necessary expenses) and the child is aged over 16. It is therefore good practice for schools to ensure that parents know that the Care Inspectorate does not have jurisdiction to check these arrangements, and that parents involve registered child minders where possible. The Care Inspectorate also suggests that schools provide parents with advice on topics such as expectations around child protection, behaviour management and medication and more generally about communication between the educational guardian and the school.

The importance of ensuring that all international pupils with parents overseas have educational guardians in the UK, and that these and any associated accommodation arrangements are suitable, is clear. Schools have a vital role to play in this process and will want to have mechanisms in place that provide clarity and reassurance. With that in mind, we suggest:

### **(1) Including an Educational Guardianship clause in the Parent Contract**

As the core document which sets out the mutual rights and responsibilities of independent schools and their fee paying parents, the parent contract should contain a clause regarding educational guardianship.

Taking this step enables the School to make it a contractual requirement for parents who usually reside overseas to appoint and retain an educational guardian for their child, irrespective of their child's age, for the duration of enrolment. The clause can also include suitability requirements, such as the educational guardian being recognised by an external organisation such as the BSA. Parents should be made aware of the significance of appointing an educational guardian themselves and of why the arrangement is considered to be so important for the safety, welfare and happiness of their child.

### **(2) Implementing an Educational Guardianship Agreement**

There is also an opportunity to ask all parents who usually reside overseas to sign an Educational Guardianship Agreement with the school. The Agreement can set out the specifics of the arrangements, contact details and the responsibilities and can be signed by the parents, the school and the educational guardian. This will help everyone to be clear as to who is responsible for what, and exactly what the parents expect the educational guardian to do (and equally what they should not do). In practice this would operate as an extension of the parent contract.

### **(3) Implementing an Educational Guardianship Policy**

Whether or not an educational guardianship agreement is implemented having a specific policy in place is an obvious way for a school to establish and share its stance on the importance of appropriate educational guardianship and home-stay arrangements for its pupils. The policy can be wide in scope, adding context and reasoning to the parent contract and any separate agreement. We would expect it to contain much of the information included in this briefing, such as key definitions, Home Office requirements and guidance regarding suitability. Schools may also wish to provide more information about external accreditation, validation and certification so that parents can make informed choices.



### **In Conclusion**

The absence of a legal requirement to appoint educational guardians does not diminish the pivotal role that they play in the lives of international pupils studying at boarding schools in the UK. Recent recognition of the importance of reputable and independently vetted educational guardians by IICSA, the IES and the DfE is a sign of welcome change. The proposed new NMS due in September 2021 contain enhanced provision for educational guardianship and future updates to Keeping Children Safe in Education are expected to acknowledge the vulnerability and additional needs of international pupils and integrate them into the wider safeguarding regime.

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