EALING, HAMMERSMITH AND WEST LONDON COLLEGE

DECLARATION OF ELIGIBILITY FOR GOVERNORS

2018-19

From 1 August 2018 there were changes made to the current rules on the automatic disqualification of charity trustees. These are relevant for governors and senior employees of further education corporations as they introduce further restrictions on who can be a trustee of a charity and, importantly, have a related effect on the ability of disqualified trustees to work in a senior management position at the Corporation.

Section 178 of the Charities Act 2011[[1]](#footnote-1) sets out circumstances in which a person is automatically disqualified from acting as a charity trustee. These are mainly related to bankruptcy and also include unspent convictions for crimes involving dishonesty or deception. Currently, an individual is also automatically disqualified if they are not allowed to act as a company director. It is usually an offence for a person to act as a charity trustee whilst they are disqualified.

On 15 January 2018, the Charities (Protection and Social Investment) Act 2016 (Commencement No. 2 and Transitional Provision) further amended this.

# EHWLC INSTRUMENT 7 STATES:

**Persons who are ineligible to be members**

(1) No one under the age of 18 years may be a member, except as a student member.

(2) The Clerk may not be a member.

(3) A person who is a member of staff of the institution may not be, or continue as, a member, except as a staff member or in the capacity of Principal.

(4)(a) Paragraph (3) does not apply to a student who is employed by the Corporation in connection with the student's role as an officer of a students' union.

(4)(b) Paragraph (3) does not apply to a student whose employment with the Corporation takes the form of an apprenticeship, for which they are enrolled as a student at the College. Such a student would cease to hold office as soon as their student status ceased, even where their employment with the College continued.

(4)(c) Paragraph (3) does not apply to a student who also works part-time for the College for fewer than 10 hours a week.

(5) No one who has been disqualified from acting as a charity trustee under the Charity Act 2011, as amended from time to time may be a member.

(6) Upon a member of the Corporation becoming disqualified from continuing to hold office under paragraph 5 the member shall immediately give notice of that fact to the Clerk.

Please would you review the statements above and complete the reply slip overleaf. An appendix with the full details of the disqualifications of the Charities Act is attached.

I confirm that I **am eligible** to be a Governor of the Board in accordance with the requirements of the Statutory Instrument and the Charities Act 2011.

NAME (IN CAPITALS):

SIGNED:

DATE:

Please return these at your earliest convenience to: Esther Mato Rial at [e.matorial@wlc.ac.uk](mailto:e.matorial@wlc.ac.uk)

Appendix

#### Charities Act 2011 – Section 178 Persons disqualified from being charity trustees or trustees of a charity

(1)A person (“P”) is disqualified from being a charity trustee or trustee for a charity in the following cases—

* Case A

P has been convicted **[**[**F1**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-7db74102c676269e34455353591fbea0)of any offence involving dishonesty or deception.**]** **[**[**F1**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-7db74102c676269e34455353591fbea0)of—

(a) an offence specified in section 178A;

(b) an offence, not specified in section 178A, that involves dishonesty or deception.**]**

* Case B

P has been **[**[**F2**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-eaf2a965ad5b6a5a22df5718323b3cc0)made**]** bankrupt or sequestration of P's estate has been awarded and (in either case)—

(a) P has not been discharged, or

(b) P is the subject of a bankruptcy restrictions order or an interim order.

* Case C

P has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it.

* Case D

P has been removed **[**[**F3**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-a02de8671234e41b0cdf94e0533ca419)from the office of charity trustee or trustee for a charity**]** **[**[**F3**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-a02de8671234e41b0cdf94e0533ca419) as a trustee, charity trustee, officer, agent or employee of a charity **]** by an order made—

(a) by the Commission under section **[**[**F4**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-d07db2a242f2d4ea47cc977835f62d7f)79(4)**]** or by the Commission or the Commissioners under a relevant earlier enactment (as defined by section 179(5)), or

(b)by the High Court,

on the ground of any misconduct or mismanagement in the administration of the charity for which P was responsible or **[**[**F5**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-6f8c1e3058557fa0a406069d8078783a)which P knew of and failed to take any reasonable step to oppose,**]** or which P's conduct contributed to or facilitated.

* Case E

P has been removed, under section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) (powers of the Court of Session) or the relevant earlier legislation (as defined by section 179(6)), from being concerned in the management or control of any body.

* Case F

P is subject to—

(a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986 or the Company Directors Disqualification (Northern Ireland) Order 2002 (S.I. 2002/3150 (N.I.4)), or

(b) an order made under section 429(2) of the Insolvency Act 1986 (disabilities on revocation of county court administration order).

* **[**[**F6**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-841ddb646ef1382dfaa687695570faf1)*Case G*

P is subject to—

(a) a moratorium period under a debt relief order under Part 7A of the Insolvency Act 1986; or

(b) a debt relief restrictions order or interim order under Schedule 4ZB to that Act**]**

* **[**[**F7**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-3a192f857423c339e327e94c3f8b9fb7)*Case H*

P has been found to be in contempt of court under Civil Procedure Rules for—

(a) making a false disclosure statement, or causing one to be made, or

(b) making a false statement in a document verified by a statement of truth, or causing one to be made.

* *Case I*

P has been found guilty of disobedience to an order or direction of the Commission on an application to the High Court under section 336(1).

* *Case J*

P is a designated person for the purposes of—

(a) Part 1 of the Terrorist Asset-Freezing etc Act 2010, or

(b) the Al-Qaida (Asset-Freezing) Regulations 2011.

* *Case K*

P is subject to the notification requirements of Part 2 of the Sexual Offences Act 2003.**]**

(2)Subsection (1) is subject to sections 179 to 181.

**[**[**F8**](https://www.legislation.gov.uk/ukpga/2011/25/section/178#commentary-key-7facbe122742fefef321cd9ecfc60bf1)(3)While a person is disqualified under this section in relation to a charity, the person is also disqualified from holding an office or employment in the charity with senior management functions.

(4)A function of an office or employment held by a person “(A)” is a senior management function if—

(a)it relates to the management of the charity, and A is not responsible for it to another officer or employee (other than a charity trustee or trustee for the charity), or

(b)it involves control over money and the only officer or employee (other than a charity trustee or trustee for the charity) to whom A is responsible for it is a person with senior management functions other than ones involving control over money.**]**

1. https://www.legislation.gov.uk/ukpga/2011/25/section/178 [↑](#footnote-ref-1)