

Nominations & Remuneration Committee

Date of Meeting	Friday 13 October 2017
Paper Title	GCRB and Protection of Vulnerable Groups Legislation
Agenda Item	14
Paper Number	NRC2-J
Responsible Officer	Penny Davis, Board Secretary
Status	Disclosable
Action	For Consideration and Decision

1. Report Purpose

1.1 To draw Committee Members' attention to relevant aspects of the Protection of Vulnerable Groups (Scotland) Act 2007 (PVG Act) and seek agreement on next steps.

2. Recommendations

2.1 The Committee is invited to **consider** requirements in relation to the PVG Act and to **agree** next steps to ensure compliance with relevant legislation and best practice.

3. Background

3.1. The PVG Act has implications for GCRB in relation to:

- a) Non-Executive appointments to Assigned College boards;
- b) Appointments to GCRB itself;
- c) GCRB staff.

3.2. The following outlines those implications and proposes next steps.

4. Detail

4.1. With regard to non-executive appointments to Assigned College boards, the Scottish Government's guidance on appointments states at paragraph 5.13:

It is an offence under section 35(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 for a regional strategic body to appoint a person to an assigned incorporated college board if that individual is barred from regulated work¹. By virtue of paragraph 18 of schedule 2 to that Act, regulated work with children includes being a member of the governing body of an assigned college board. Under section 35(7) of that Act, a regional strategic body can offer a college board appointment subject to it being satisfied that

¹ Section 91(2) of, and Schedule 2 to, the PVG Act define "regulated work with children" and section 92 sets out when an individual is "barred from regulated work".

the individual is suitable, e.g., by requesting a PVG scheme record (see also paragraph 5.41). It is an offence under section 34 of that Act for any person who is barred from regulated work with children to seek to be a board member.

and at paragraph 5.41:

A Protecting Vulnerable Groups Scheme check does not have to be carried out before any preferred candidates are put forward to the regional strategic body. This is something that could be done in the period before the regional strategic body makes an appointment. An appointment can also be made subject to the regional strategic body being satisfied that the individual is suitable.

It is therefore incumbent on GCRB to ensure that its procedures provide for a satisfactory PVG to have been carried out prior to appointment or for appointments to be made subject to a satisfactory PVG check.

- 4.2.** With regard to members of Regional Boards, the Scottish Government’s appointments guidance states at paragraph 4.10:

A board member of a Regional Board will not be doing regulated work with children simply by virtue of their position on the board. It would be for the Regional Board to consider whether their duties as a board member required them to do regulated work with children and whether a PVG scheme record should be requested to determine whether they are suitable in respect only of those duties involving regulated work with children.

While Schedule 2 to the PVG Act refers to members of a governing body of an FE institution and specifically includes in the definition of an FE institution “a college of further education which is assigned to a regional strategic body”, it does not include the regional strategic body itself in that definition.

The Board may wish to take account, however, of the equivalence in terms of the type of work carried out between a Regional Strategic Body and an Assigned College Board. The most relevant area of regulated work would likely be the potential for unsupervised contact with children or vulnerable adults.

Given GCRB’s unique status in the sector as a governing body that does not directly govern an institution, however, the Committee may wish to consider the matter further and seek legal or other advice before making a recommendation to the Board.

- 4.3.** As an employer, GCRB must also consider whether it requires its staff to be PVG checked. This matter could be progressed in the context of the action plan for employer status, and there may be scope to adopt or amend policy and procedure currently in place at Clyde College.

4.4. Recommended Next Steps

- a) In making recommendations to the Board to approve Assigned College non-executive appointments, the Nominations and Remuneration Committee should seek assurance, going forward, that satisfactory checks have been carried out or recommend that appointments are approved subject to satisfactory checks.

- b) To ensure it has a clear understanding of the legislation, given GCRB's unique status as a governing body which does not directly govern an institution, it is recommended that the Committee seeks further advice including, if appropriate, legal advice on whether its own board members should undergo PVG checks. Thereafter it may recommend a suitable approach to the Board.
- c) In progressing GCRB's status as an employer, it is recommended that further advice is sought, from HR staff at Glasgow Clyde College, and others as appropriate, to determine the applicability of the legislation and, if necessary, a suitable approach to PVG scheme participation.

5. Risk Analysis

- 5.1** While there is not a clear legislative imperative, it is appropriate for GCRB to consider and reach a position with regard to PVG checks for its board members and staff in relation to Risk 0012: there is a breach of legislation/guidance/code of practice and this results in a failure of governance.

6. Legal Implications

- 6.1.** Further legal advice may be sought.

7. Resource Implications

- 7.1.** There may be resource implications of administering PVG checks for GCRB Board Members and staff including (modest) cost implications of participation in a PVG scheme.

8. Strategic Plan Implications

- 8.1.** Robust governance arrangements are the essential to the effective determination and delivery of strategic ambitions.