

Disqualification under the Childcare Act 2009 **(Update March 2015)**

Attached in the link below is the revised, updated and much more detailed Department for Education (DfE) guidance on the issue of disqualification and disqualification by association.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/414345/disqual_stat-guidance_Feb_15_3_.pdf

The good news is that the interpretation of the last set of guidance was not too far from this revision but importantly there is some clarification around a number of issues which were very much left as a 'grey' area through the previous guidance.

I would urge everyone to read the guidance carefully and keep the list of relevant offenses available for all effected staff to read. For my part in this update I hope to try and provide some clarity on the areas which were left open to interpretation and bring to your attention any areas where there have been changes made to the initial guidance.

Firstly, staff covered by the guidance:

Only staff who fall into any of the areas below should be asked to provide information in relation to these regulations.

- Staff who are employed to provide care (and education) for a child or children up to and including reception age (so children who fall into the age range from birth to 1st September of the child's 5th birthday). This includes supervised activity such as breakfast clubs and after school clubs both during and after school hours for children in the early years range.
- Staff involved in later years provision for children who have not yet attained the age of eight. This relates to provision out of school hours, after school clubs, breakfast clubs but does not include education or supervised activities such as the school choir or sports teams.
- Staff who are directly concerned with the management of early years or the later years provision are covered but schools have some discretion to determine for themselves who this applies to but it must include the Headteacher and may also include other members of the school leadership team, the Manager, Supervisor, Leader or Volunteer responsible for day to day management of the provision.
- Volunteers and casual workers who are directly involved with the management of childcare provision or who work on a regular basis, whether supervised or not in the relevant childcare setting.
- Self-employed contracts deployed to relevant childcare settings are covered by the guidance.



Who is not covered by the guidance?

- Governors and Proprietors of schools and settings are not covered unless they volunteer to work in the relevant setting on a regular basis or they are directly concerned with day to day management of the setting.
- Staff who only provide education, childcare or supervised activity during school hours to children over reception age.
- Staff who only provide childcare or supervised activities out of school hours to children over eight.
- Individuals who have no involvement in the management of the relevant provision.
- Staff such as caretakers, cleaners, drivers and escorts catering and office staff who are not directly employed to provide childcare. This includes any individuals who are only deployed in relevant settings. Schools have some discretion and should exercise judgement or take advice from the LADO where they are unsure.
- School health nurses and certain other Local Authority staff are not covered by the legislation. In particular language therapists and education psychologists are excluded.
- Where the local authority or third party organisation deploy staff to a relevant setting on a regular basis it is for the third party employer to ensure that those covered by the guidance are aware of the legislation and are compliant. Schools only need to seek assurances from the 3rd party employers that the 3rd party staff have all been checked to ensure they are not disqualified under the regulations. This includes training suppliers such as teacher training providers, where schools should seek confirmation from the provider that they comply with the regulation.

Important points to note

- Schools must ensure that they are not employing a person who is disqualified under the 2009 regulations.
- In collecting the relevant information schools must act proportionately.
- Schools must ensure that they handle related data sensitively and lawfully in line with the Data Protection Act (1998), the Rehabilitation of Offenders Act (1974) and Human Rights Act (1998).
- Schools must make staff aware of what information is required of them and how this will be used.
- Schools are free to decide how the requirements of the guidance are brought to the attention of their staff. This can be done by adding a section to the schools safeguarding policy and/or by adding the expectation into new staff members' contracts. We recommend that this should be made an integral part of the recruitment process for all new staff in relevant settings.
- Although there is no requirement for staff to complete a self-declaration about the relevant offenses. We do recommend that this template is used to collect the information.
- It is crucial however, whether using the self-declaration or not, that only those staff covered by the legislation (outlined earlier) are asked to disclose this information.



- It is equally important that staff only disclose information relating to relevant convictions or cautions covered by the scope of the regulations. We do not want to know about anything outside those offenses outlined in the DfE guidance.
- Do not ask 3rd party organisations and providers for disclosures on 3rd party employed staff. This responsibility lies with the direct employer.
- Schools must keep a record relating to those staff covered by the legislation and record the date on which the declaration was completed. We recommend this be kept as part of the schools central record, with an additional column titled 'Childcare Regulations 2009' or 'Childcare Declaration'. In this column a simple yes or no with a date should be entered. Any detailed information should be stored securely on the staff members personnel file.
- When asking staff about whether the relevant legislation applies through association with anyone they live with, staff only need to provide information 'to the best of their knowledge'. Staff should not seek to obtain this information from an unknown 3rd party who they may happen to live with but have no direct association.
- When adding the expectations through the 2009 regulations to any school policy all staff must be made aware of the update.

Where a disclosure is made

- If a member of staff makes a relevant disclosure schools must inform Ofsted (using disqualification@ofsted.gov.uk)
- Staff should be informed that the matter has been brought to the attention of Ofsted, what the implications could be and that they can apply for a waiver to Ofsted (in some but not all cases).
- Schools must not continue to employ an individual who is directly disqualified or by association. This does not mean that they staff member could not be redeployed however to a different part of the school not covered by the regulations. Redeployment decisions should be risk assessed and considered with HR advice. Where alternate deployment is not a possibility schools should consider whether to grant paid leave, or similar and only as a last resort suspend the member of staff pending an outcome of any waiver application to Ofsted.
- Where a waiver is not granted or where a member of staff decides not to apply for a waiver or refuses to provide the required information schools will have to consider whether to permanent redeployment or take steps to legitimately terminate employment.

If you need further advice, please contact either:

- 1) Barry Armstrong on 01865 815956 or barry.armstrong@oxfordshire.gov.uk
- 2) DfE on 01325 340409 or mailbox.disqualifications@education.gsi.gov.uk
- 3) Your Schools HR officer on 01865 797588



**Staff Disqualification Declaration
ONLY TO BE USED BY STAFF COVERED BY THE CHILDCARE REGULATIONS 2009**

School	
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In October 2014, the Department for Education (DfE) issued an update to its Statutory Guidance "[Keeping Children Safe in Education](#)"

This update requires schools which provide care for pupils under the age of 8, to ensure that staff and volunteers working in these settings are not disqualified from doing so under the Childcare (Disqualification) Regulations 2009.

A person may be disqualified through

1. having certain orders or other restrictions placed upon them
2. having committed certain offences
3. living in the same household as someone who is disqualified by virtue of 1 or 2 above (this is known as disqualification by association)

You are asked therefore to sign the declaration below confirming that you are not disqualified under those Regulations from working in this school.

If you fail to complete and return the form, this will be regarded as a disciplinary matter for staff, which may result in dismissal and in the case of volunteers (where required to sign), may mean that you can no longer work at the school.

A disqualified person is not permitted to continue to work in a setting providing care for children under age 8, unless they apply for and are granted a waiver from OFSTED. Reference: <http://www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcareproviders>. Support will be provided with this process.

Name of staff:

Name of Manager:

Please circle one option for every question

Section 1 – Orders or other restrictions	
Have any orders or other determinations related to childcare been made in respect of you?	YES / NO
Have any orders or other determinations related to childcare been made in respect of a child in your care?	YES / NO



Have any orders or other determinations been made which prevents you from being registered in relation to child care, children's homes or fostering?	YES / NO
Are there any other relevant orders, restrictions or prohibitions in respect of you as set out in the Schedule 1 of the Childcare Regulations 2009? Available from the school office or at this link: http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made	YES / NO
Are you barred from working with Children (Disclosure and Barring (DBS))?	YES / NO
Are you prohibited from Teaching?	YES / NO

Section 2 – Specified and Statutory Offences	
Have you been cautioned (including a reprimand or warning) since 6 April 2007 or have you ever been convicted of:	
Any offence against or involving a child? (A child is a person under the age of 18)?	YES / NO
Any violent* or sexual offence against an adult where there is an element of sexual motivation? <i>*a violent offence in this context is murder, manslaughter, kidnapping, false imprisonment, assault with intent to rape</i>	YES / NO
Any offence under the Sexual Offences Act?	YES / NO
Any other relevant offence? Available from the schools office or at the links below: http://www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made	YES / NO
Have you ever been cautioned, reprimanded, given a warning for or convicted of any relevant offence in another country?	YES / NO

Section 3 – Disqualification by association	
<p>To the best of your knowledge, is anyone in your household* disqualified from working with children under the Regulations? <i>*household – includes family, lodgers, house-sharers, household employees</i></p> <p>This means does anyone in your household have an Order or Restriction against them as set out in Section 1 or have there been cautioned, reprimanded, given a warning for or convicted or any offence in Section 2.</p>	YES / NO



Section 4 – Provision of Information	
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If you have answered YES to any of the questions above you should provide details below in respect of yourself, or here relevant the members of your household. You may supply this information separately if you so wish, but you must do so without delay.

Details of the order, restriction, conviction, caution etc.

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The date(s) of these	
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The relevant court(s) or body(ies)	
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You should also provide a copy of the relevant order, caution, conviction etc. In relation to cautions/convictions a DBS Certificate may be provided.

Section 5 - Declaration

In signing this form, I confirm that the information provided is true to the best of my knowledge and that:

- I understand my responsibilities to safeguard children
- I understand that I must notify my Headteacher immediately of anything that affects my suitability including any pending court appearances, cautions, warnings, convictions, orders or other determinations made in respect of me or a member of my household that may render me disqualified from working with children

Signed			
Print Name		Date	

