

<b>Policy Title:</b>	<b>Disqualification by Association Guidance</b>	
<b>Version:</b>	Version 1 – April 2020	
<b>Date of Issue:</b>	Spring Term 2021	
<b>Date of Review:</b>	Autumn Term 2022	
<b>Author &amp; Role</b>	County Model Procedure Adopted	
<b>Ratified by:</b>	Governors Policy Committee	
<b>Responsible signatory:</b>	<b>Chair</b> H McCann	<b>Vice Chair</b> W Blundell
<b>Date:</b>	17.05.2021	
<b>Amendments / Comments</b>	Model Policy – amendments unknown.	
<b>Outcome:</b>	This Guidance: The guidance sets out the responsibilities of local authorities and schools, what they need to do to comply with the legislation, who is covered and the circumstances where staff should be directed to apply to Ofsted to waive disqualification.	
<b>Cross Reference:</b>	Child Protection and Safeguarding Code of Conduct Policy Volunteers Policy	

### **EQUALITY AND DIVERSITY STATEMENT**

Astley Park School is committed to the fair treatment of all in line with the Equality Act 2010. An equality impact assessment has been completed on this policy to ensure that it can be implemented consistently regardless of any protected characteristics and all will be treated with dignity and respect.

### **POLICY REVIEW**

To ensure that this policy is relevant and up to date, comments and suggestions for additions or amendments are sought from users of this document. To contribute towards the process of review, please contact the author of the policy.

Astley Park School

## LANCASHIRE COUNTY COUNCIL

### DISQUALIFICATION UNDER THE CHILDCARE ACT 2006

#### GUIDANCE FOR SCHOOLS AND FAQs (APRIL 2020)

In August 2018, the DfE updated its statutory guidance, detailing the obligations on schools and local authorities under the Childcare Act 2006 and the application of the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018. The guidance sets out the responsibilities of local authorities and schools, what they need to do to comply with the legislation, who is covered and the circumstances where staff should be directed to apply to Ofsted to waive disqualification. The guidance is available on the Gov.uk website [here](#).

**The Regulations prohibit anyone who is disqualified under the Regulations, from working in a relevant setting, including in schools, unless the individual in question has been granted a waiver by Ofsted for the role they wish to undertake.**

An employer commits an offence where it allows a disqualified individual to be employed in connection with a relevant childcare setting, unless the employer did not know or had no reasonable grounds for believing the person was disqualified.

#### **1. What are relevant staff and relevant settings?**

The following categories of staff in nursery, primary or secondary school settings are covered by the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 :

- a) Staff/volunteers who work in early years' provision, providing care for a child up to and including reception age i.e. from birth until 1 September following a child's fifth birthday. This includes education in school nursery and reception classes and/or any supervised activity (e.g. breakfast clubs, lunchtime supervision and after school care provided by the School) both during and outside of school hours;
- b) Staff/volunteers working in later years' provision provided by the School for children who are above reception age but who have not attained the age of 8. This includes before school settings, such as breakfast clubs, and after school provision but not education or supervised activities during school hours (including extended school hours for co-curricular learning activities such as the school's choir or sports teams).
- c) Staff/volunteers who are directly concerned with the management of such early or later years provision, whether supervised or not. This includes the Headteacher, and may also include other members of the School's Leadership Team, and any manager, supervisor, leader or volunteer (including Governors) responsible for the day-to-day management of the provision.

The Local Authority's advice is that schools should:

1. Identify the relevant childcare settings within the school
2. Identify staff/volunteers employed in connection with those settings
3. Identify staff/volunteers involved in day to day management of those settings.
4. Carry out the required checks in relation to those identified.

It is important that schools are able to demonstrate that they have clearly considered who is in scope and their reasons for the conclusions reached. Schools should take advice from their HR Manager, Local Authority Designated Officer (LADO) or Safeguarding Officer.

For example:

Infant and Nursery Schools - All staff involved in the provision of care or management are covered (as described in 1a above).

Primary/Junior Schools - All staff employed within or involved in the management of reception classes (including mixed classes) are covered as well as those involved in before and after school childcare for children up to the age of 8 years.

**Consideration should also be given to those not employed specifically in such settings but who may be required to substitute for someone who is. However, the guidance specifically states that the check should not be undertaken 'just in case.' There must, therefore be a real chance of an employee who is not specifically employed in the relevant setting being deployed to such a setting for the check to be undertaken.**

Secondary Schools - will only need to undertake checks on relevant staff (including managers) where any services are provided by the school where under 8s may be in attendance e.g. childcare facilities, before or after school clubs

#### Other childcare providers using school premises

In relation to staff employed by childcare providers (not employed by the school or local authority) who hire or rent school facilities or premises (for example a private, voluntary or independent childcare provider), schools should ensure that such providers have appropriate policies and procedures in place in regard to safeguarding children, including under the 2018 regulations.

#### Agency/third-party employees

Where schools use staff from any agency, or third-party organisation (for example a supply teacher, music teacher or sports coach) to work in relevant childcare provision, or contract out such childcare, they must obtain confirmation that the agency or organisation providing the staff has undertaken appropriate checks in advance of them being placed in school.

Appendix Q (see link below) of the Recruitment and Selection Guidance which is recommended for use in schools, can be used to obtain confirmation that the agency make such checks on members of staff who are assigned to work in a relevant setting.

[https://schoolsportal.lancsngfl.ac.uk/view\\_sp.asp?siteid=5792&pageid=32576#anchor152281](https://schoolsportal.lancsngfl.ac.uk/view_sp.asp?siteid=5792&pageid=32576#anchor152281)

#### Self-employed staff

Where the school engages a person who is self-employed (for example a music teacher or sports coach) to work in relevant childcare provision, the school must ensure that they are compliant with the requirements of the legislation explained in this guidance.

**Caretakers, cleaners, drivers, transport escorts, catering and office staff**, who are not employed to directly provide childcare, are generally not covered by the legislation.

**Governors** are not covered by statute, unless they volunteer to work in relevant childcare on a regular basis, or they are directly concerned with the day-to-day management of such provision.

Schools may wish to consider whether undertaking such a check is appropriate depending upon the role of these individuals in school.

Anybody involved in any form of **health care provision for a child**, including school nurses, and local authority staff, such as speech and language therapists and education psychologists, are specifically excluded from the statutory definition of childcare, and are therefore not covered by the legislation.

## 2. Who is disqualified?

The criteria for disqualification under the 2006 Act and the 2018 Regulations include those set out below:

- a. inclusion on the Disclosure and Barring Service (DBS) Children's Barred List,
- b. being found to have committed certain violent and sexual criminal offences against children and adults (e.g. murder/manslaughter, kidnap, rape, cruelty to persons under 16, indecent photographs of children, indecent assault or assault causing actual bodily harm), which are listed in Table A of the 2018 statutory guidance document

Schools may find it useful to keep an up to date copy of Table A for use by staff when they are asked to make any declaration.

- c. certain orders made in relation to the care of children, including orders made in respect of their own children, listed in Table B of the 2018 statutory guidance document

Schools may find it useful to keep an up to date copy of Table B for use by staff when they are asked to make any declaration.

- d. refusal or cancellation of registration relating to childcare or children's homes, or being prohibited from private fostering;
- e. being found to have committed an offence overseas which would constitute an offence regarding disqualification under the 2018 Regulations if it had been done in any part of the United Kingdom.

The above list is only a summary of the criteria that lead to disqualification. Further details about the specific orders and offences which will lead to disqualification are set out in the 2018 Regulations.

**NB The disqualification criteria relating to living in the same household where another person who is disqualified lives or is employed (disqualification 'by association') only applies where childcare is provided in domestic settings, defined as 'premises which are used wholly or mainly as a private dwelling.' It does not apply to schools.**

## 3. What should schools do?

Schools must ensure that they are not knowingly employing a person who is disqualified under the 2018 Regulations. They must also ensure that they do not apply these arrangements to individuals who do not fall in scope or are specifically excluded. In gathering information to make

these decisions schools must ensure that they act proportionately and minimise wherever possible the intrusion into the private lives of their staff.

Schools are responsible for ensuring that anyone who falls within the relevant categories of staff described above is made aware of the legislation.

Schools must make these staff aware of what information will be required of them and how it will be used to make decisions about disqualification. Schools are free to decide how to bring these requirements to the attention of their staff.

The following actions are required:

- I. Schools need to put in place some system to seek the required disclosure from new employees prior to the commencement of employment. Whilst it is not a requirement to use a **self-declaration form**, the Authority has drafted a suitable form which schools may wish to use, which can be found on the Schools Portal [here](#).
- II. Should a declaration be made and it is not clear whether the individual should be allowed to work in a relevant care setting, advice should be sought on whether a 'relevant' offence has been committed from Ofsted at: [disqualification@ofsted.gov.uk](mailto:disqualification@ofsted.gov.uk).
- III. Anyone who is disqualified will not be permitted to work in or manage a relevant setting. Should a declaration be made by an existing member of staff who is already working within a relevant setting, they will need to be immediately removed from that setting (through suspension or re-deployment in the case of employees) and Ofsted must be notified within 14 days. The employee should be advised that Ofsted has been informed, told what information they will need to share with Ofsted and why and provided with an explanation as to the implications of disqualification.
- IV. Should the school need to consider suspending an employee from work, the matter should be discussed with a member of the Schools HR Team before any action is taken.
- V. Schools may wish to use the **Annual Confirmation Form** [here](#) to seek confirmation that there has been no change to employee's circumstances, in addition to seeking confirmation with regard to other safeguarding/conduct matters on an annual basis.
- VI. Schools must keep a record of the date on which disqualification checks were completed. Schools may choose to keep this information as part of the single central record, or maintain a record separately. Ofsted and the independent inspectorates will check this as part of the normal school inspection process.
- VII. Schools must be certain that the information provided is adequate, accurate and relevant to their enquiries and where information is provided in error, or is not relevant e.g. an unspent caution/conviction which is not listed as a relevant offence, it should be destroyed.

Schools must ensure that any external agency providing relevant staff in relevant settings carries out these checks prior to placing them in the school.

#### 4. **Disqualified Workers**

A disqualified person can apply to Ofsted for a waiver. Guidance on the procedure to be followed to apply for a waiver is located on the DfE website [here](#). Any enquiries regarding the waiver application process should be made to Ofsted at [disqualification@ofsted.gov.uk](mailto:disqualification@ofsted.gov.uk).

Whilst a waiver application is under consideration schools will need to decide whether it is appropriate to delay appointing new staff/redeploy existing/new staff elsewhere in the school, or make adjustments to their role to avoid them working in relevant childcare. Advice can be sought from the Schools HR Team, LADO or Safeguarding Officer. Where alternative arrangements cannot be made or it is not appropriate to do so, the school will need to consider whether to suspend the member of staff while the waiver application is under consideration.

Where an individual decides not to apply for a waiver, or a waiver is declined, schools will have to consider and make decisions about whether the individual could be permanently redeployed, the appropriateness of redeployment (taking into consideration the risk of harm to children), or whether steps should be taken to legitimately terminate their employment/withdraw their conditional offer of employment. In these circumstances advice should be sought from the Schools HR Team.

#### **Frequently Asked Questions**

1. **Is the advice that a self-declaration is sufficient or is any declaration expected to be verified wherever possible, for example by viewing a current DBS certificate or obtaining a new one, and are employers expected to verify the absence of any Orders or restrictions**

It is not a requirement to use a self-declaration form. Schools need to ensure that they put in place a system to seek to get the required disclosure.

It is not appropriate to re-check a DBS certificate or seek a new one, without justification for doing so. Grounds for re-checking DBS are outlined within Keeping Children Safe in Education 2019.

Should an employee make a declaration regarding a childcare order or other restriction against them, advice may be sought from the LADO/Schools Safeguarding Officer regarding the relevance of such an order and how such orders/restrictions might be verified.

New staff should follow the School's agreed system of disclosure, and the DBS certificate should be checked against the list of offences in the Schedules. Of course, other offences may also lead to non-employment under normal DBS assessment processes.

2. **How do these Regulations sit with the Data Protection Act (DPA) and the General Data Protection Regulation (GDPR), particularly in respect of sensitive personal data and the school passing information to Ofsted?**

When processing personal information it should be used fairly, lawfully and kept secure. It should be kept to a minimum, be accurate and kept up-to-date and stored for the minimum period necessary, restricted only to those who need it and for the purpose it was gathered (in this case safeguarding and child protection).

Additionally schools will need to keep under review any historic data collected and destroy any information which is no longer required. This does not extend to records which contain information about allegations of sexual abuse or other such safeguarding concerns which schools have an obligation to preserve in line with the requirements of the inquiry into child sexual exploitation, and other child protection requirements.

Schools should ensure that they are asking staff to complete a declaration which complies with the latest guidance (and does not ask for information regarding those living in the same household) and also seeks permission for the information to be retained on their personal file.

Schools should ensure that any declarations/information previously provided regarding individuals living in the same household, should only be retained if it is still relevant e.g. if there is concern regarding the influence they might have on an employee in school, it may be decided to retain the information on the grounds that it is in the public interest to keep records of people who may be a risk to children. Any information provided previously that is no longer relevant should be confidentially destroyed.

Personal data, including any details of an individual's criminal record, and historic information collected on those living in the same household as an employee, should not be held without consent from the individual. In instances where an individual does not consent to their personal data being held, schools should only record the date the declaration was made, details of any additional safeguarding restrictions, and whether or not an Ofsted waiver has been granted. For this reason, the template declaration form provides employees with the opportunity to confirm that they give permission for the declaration to be retained.

The Childcare (Disqualification) Regulations require employers to pass relevant information to Ofsted and such statutory duties are allowed under the DPA/GDPR. It is therefore acceptable for such information to be forwarded to Ofsted, providing that the employee is informed of the reason for doing so.

### 3. **What about contractors and agency staff?**

Employers are responsible for ensuring that persons caring for children are suitable to work with children. In the case of workers that are supplied by an agency or third party organisation, schools should ensure that the agency or organisation has carried out the relevant checks.

Schools may wish to use Appendix Q to the Recruitment and Selection Guidance which can be found [here](#) to assess whether the contractor/agency's systems and procedures for the recruitment and selection of supply staff, are in line with the established safer recruitment and selection best practice that is employed within School, and what checks have been undertaken by that contractor/agency

### 4. **How long will it take to process an application for a disqualification waiver?**

The DfE have stated that it is a matter for Ofsted who have the responsibility for granting a waiver or not. The time it will take to process a waiver application will undoubtedly vary from case-to-case; whilst many should be straightforward, others will be more complex and take more time to resolve.

### 5. **Does this check need to be recorded on the Single Central Record (SCR)?**

There is no statutory requirement that the check should be recorded on the Single Central Record. However, it is advisable that schools keep a record that all the checks have been

completed as Ofsted will check this as part of the normal school inspection process. Therefore our best practice advice is that schools should record that a check has been satisfactorily completed, and the date when the check was made, on their single central record. Satisfactorily completed means no relevant information is declared or that a waiver has been obtained where relevant.

Further advice can be sought from the Schools HR Team, the LADO or the School's Safeguarding Officer

