

## The Childcare Disqualification Requirements and Employees' Duty to Disclose Information Guidance for Staff

In February 2015, the government issued statutory guidance called "Disqualification under the Childcare Act 2006" which replaced the former October 2014 document and clarifies the position with regard to schools. This guidance builds on the Childcare (Disqualification) Regulations 2009.

The Regulations prohibit anyone who is disqualified under the Regulations from working in a relevant setting, including in schools.

On 31st August 2018, new DfE guidance regarding the application of the childcare disqualification regulations took effect. Under the amended regulations, schools can no longer ask whether a member of staff covered by the regulations is disqualified 'by association' i.e. as a result of living in the same household as someone who is disqualified.

However, it remains the case that **all staff** (regardless of whether or not they are covered by the regulations) do have a responsibility to disclose close personal relationships and associations which may present a 'risk by association' to the safeguarding of children.

### Who is covered under the regulations?

The Disqualification regulations do not apply to all Employees and are relatively narrow in their scope.

However, **all Employees** do have a broader duty to immediately disclose any change in their circumstances or any information which may affect or is likely to affect the suitability of the Employee to undertake their job role or work with children/ young people or in a School setting.

The rules in relation to disqualification apply to the following: -

- Staff working directly with children under 5 years of age within the Early Years Foundation Stage
- Those providing 'wrap around' care (after school and breakfast clubs) with children up to 8 years of age.

	During School Hours	Outside School Hours*
Reception age or younger	Covered	Covered
Older than Reception age until age 8	Not Covered	Covered
8 years or older	Not Covered	Not Covered

\*Outside school hours does not include school clubs e.g. Choir or sports' team, or detentions, but does include breakfast clubs or after-school provision.

Staff such as caretakers, cleaners, drivers, transport escorts, catering and office staff, who are not employed to directly provide childcare, are NOT covered by the legislation.

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 NOT covered by the legislation.

School governors and proprietors are NOT covered by the legislation unless they directly manage work or volunteer in a relevant provision.

### **Who meets the criteria for disqualification?**

An employee will be disqualified if: -

1. They are included on the Disclosure and Barring Service (DBS) Children's Barred List
2. They have been cautioned for, or convicted of certain violent or sexual offences against adults and any offences against children
3. They are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children
4. They have had registration refused or cancelled in relation to childcare of children's homes or have been disqualified from private fostering
5. They have committed an offence overseas, which would constitute an offence regarding disqualification under the 2018 regulations if it had been committed in any part of the United Kingdom

A full list of the relevant convictions and cautions which can lead to disqualification under criteria 2 above can be found in the Disqualification under the Childcare Act 2006 statutory guidance which can be found at [www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006](http://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006)

### **What are Employees' Responsibilities?**

- All new staff covered by the Regulations have a duty to inform the Head Teacher, in confidence, immediately if they meet any of the criteria for disqualification.
- Existing staff covered by the Regulations have a duty to inform the Head Teacher, in confidence, immediately if their circumstances change so that they meet any of the criteria for disqualification.
- All staff have a responsibility to immediately disclose any change in their circumstances or any information which may affect the suitability of the Employee to:
  - undertake their job role or
  - work with children/ young people or
  - work in a School setting.

This includes a responsibility to disclose close personal relationships and associations which may present a 'risk by association' to the safeguarding of children.

- All staff must ensure that they understand the content of this guidance and seek further information or ask for further guidance if necessary, depending upon their circumstances.

### **What are the School's Responsibilities?**

The School will meet its obligations under the disqualification regulations by:

- Drawing the guidance to the attention of their staff including (a) who is covered (b) the criteria for disqualification & (c) staff responsibilities for disclosing information to the 'best of their knowledge'
- Getting staff to sign a declaration that they understand the guidance and their responsibilities to disclose information.
- Recording these checks, including the date that information is provided to staff.
- Ensuring that new staff are given the same information as existing staff, as soon as possible after their appointment.
- Informing staff about references to the disqualification guidance, and wider responsibilities for all staff to disclose information, in other school policies and procedures:
  - Discipline and Conduct Policy; Appendix A, Disciplinary Rules.
  - Safeguarding Policy
- Creating a culture and environment so that staff feel comfortable, where it's appropriate, to discuss matters outside of work, which may have implications for the safeguarding of children in the workplace. These discussions can help the school to safeguard employees' welfare and identify whether arrangements are needed to support these staff, as well as to manage children's safety.

### **What happens when an employee is disqualified?**

Disqualified employees can apply to Ofsted for a waiver and Ofsted have the ability to grant a full or partial waiver which may allow that individual to work in a relevant school setting.

Whilst a waiver is being considered, the school may redeploy staff away from relevant age groups or adjust their role. Where this is not possible, the school will need to place the employee on special paid leave or suspend them whilst the waiver is considered.

In cases where the member of staff decides not to apply for a waiver or where a waiver is declined, the school will have to decide whether the person could be permanently redeployed or whether dismissal would be appropriate.

The school is committed to its duty of care to all employees and will seek to manage these difficult situations in a sensitive and supportive manner.

## What happens when an employee who is NOT covered by the regulations makes a disclosure?

The Regulations only apply to staff working directly with younger children. However, the guidance states that school policies must be clear about the expectations placed on **all** staff, including where their relationships and associations within and outside of the workplace (including online) may have implications for the safeguarding of children in school.

If it is perceived that **any** member of staff poses a risk of harm to children, either by themselves or by association, then this will be considered within the LADO allegations management framework.

The school will decide whether it is necessary to redeploy the member of staff or adjust their role, to place the employee on special paid leave or to suspend them while the matter is investigated.

In cases of risk 'by association' a risk assessment will be undertaken to establish whether there is any action that can be taken by the school or the individual to mitigate the risk of harm to children. If it is not possible to mitigate the risks, then the school will have to decide whether the person could be permanently redeployed or whether dismissal would be appropriate.

The ages of the children should be immaterial in these circumstances as risk is based on presenting evidence with management strategies being applied with reason, proportionality and transparency.

The school is committed to its duty of care to all employees and will seek to manage these difficult situations in a sensitive and supportive manner.

## Childcare Disqualification Requirements / Disclosure of Information Declaration

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**As part of the Schools duty to safeguard pupils, we are required to gather sufficient and accurate information about whether any member of staff in a 'relevant' childcare setting is disqualified by association.**

In signing the declaration below I can confirm that:

- I understand my responsibilities to safeguard children in accordance with the Childcare Act 2006 and Childcare (Disqualification) Regulations 2009.
- Where the Disqualification regulations apply to me in my role/s at Meadowfield School I accept my duty to make my employer aware of circumstances where I believe I meet the disqualification criteria.
- Where the Disqualification regulations apply to me in my role/s at Meadowfield School I understand and accept that failure to disclose 'to the best of my knowledge' could result in disciplinary action which could lead to my dismissal
- Regardless of whether the Disqualification regulations apply to me or not, I understand and accept my responsibility to disclose any change in my circumstances or any information which may affect my suitability to undertake my job role, work with children/ young people or work in a School setting. This includes a responsibility to disclose close personal relationships and associations which may present a 'risk by association' to the safeguarding of children. I accept that failure to disclose relevant information could result in disciplinary action which could lead to my dismissal.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_