

Disqualification (including by association): a summary

25th Feb 15

What is the current position?

The childcare disqualification requirements set out in the Childcare Act 2006 and the Childcare (Disqualification) Regulations 2009 were extended to include primary schools on 1 September 2014. This legislation places obligations on affected schools to check that staff members are not disqualified from working with children. Many schools are still unsure of the requirements and how they should be managed, practically.

The Department for Education (DfE) have promised to issue further guidance to help clarify the position for schools, but it is currently unclear when this guidance will be issued.

A staff member can be disqualified directly, on the basis of their own acts, but also by association if someone who lives or works in their household is disqualified from working with children. A staff member could therefore be disqualified because of their parents, grandparents, siblings, children, housemates (including those in professional house shares), au pairs etc or anyone else who lives or works in their household. This has a very wide scope.

We recommend that schools act now. It is a criminal offence to knowingly employ a person who is disqualified, including by association. Ofsted will make enquiries about disqualified staff members and will expect that all affected schools have at the very least started the process of asking staff members to disclose relevant information.

Which staff members may be affected?

Those:

1. Providing early years childcare, defined as "any care for a child from birth to 1 September following the child's fifth birthday, including education and any other supervised activity" (i.e. before and after school clubs and lunchtime activities);
2. Providing later years childcare to children who have not attained the age of eight (i.e. before and after school clubs; this does not include the provision of education); and
3. Directly concerned in the management of that childcare.

This is a very wide definition and applies to all staff members coming into contact with children in school, nursery and reception classes. This will include teachers, teaching assistants and potentially volunteers and lunchtime supervisors, in addition to a school's senior leadership team. It may also cover administration staff, catering staff, premises staff and cleaners, depending on the facts and circumstances of their roles. For example, if a staff member would tend to a child if they saw the child fall over and hurt themselves, they are likely to fall within the definition.

How can a staff member become disqualified?

Where they or someone living or working in their household:

1. Are on the children's barred list;
2. Have been cautioned for or convicted of certain violent and sexual criminal offences against children and adults;
3. Have had any care orders made in respect of a child under the person's care; or

4. Have had registration refused or cancelled in relation to childcare or a children's home or where they are disqualified from private fostering.

Disqualification is automatic on the occurrence of one or more of the criteria. A staff member could therefore be disqualified (including by association) without knowing it. If you would like further advice on whether a particular offence may disqualify a staff member, including by association, please contact us.

What should you do about this now?

Schools should be addressing this now. We advise schools to:

1. Alert staff members to the DfE's advice on disqualification and encourage them to contact the Head teacher where they think they are disqualified directly or by association;
2. Audit personnel files to see whether a staff member is disqualified because of a relevant conviction, caution or set of circumstances;
3. Identify all current staff members who fall within the statutory definition and ask them to complete a disqualification declaration form on behalf of themselves and anyone who lives or works in their household, within a specified timeframe. We can provide an example disqualification declaration form, if required;
4. Review the disqualification declaration forms and take appropriate action; and
5. Update the school's Single Central Record.

We also recommend that schools:

1. Update their recruitment process and build in the disqualification declaration requirements;
2. Review employment contracts and where appropriate, amend these to place a contractual obligation on staff members to notify head teachers where their circumstances change and they become disqualified directly or by association; and
3. Update policies and procedures, in particular the school's safer recruitment and safeguarding policies.

What should you do if a staff member is disqualified?

1. The school has a duty to notify Ofsted within 14 days.
2. Consider whether a staff member's work could be managed in such a way that would prevent them working within early years provision, later years provision or the management of either.
3. Suspend the staff member if this is the only feasible option. Suspension should be a last resort.
4. Tell the staff member that they must personally apply for a waiver from Ofsted.
5. If Ofsted refuse to waive a staff member's disqualification the school will then need to go through its usual processes to dismiss the staff member, in order to avoid the potential risk of a claim from any affected staff member. If you require further advice on dismissing a staff member in these circumstances please contact us.

Muckle LLP have prepared a comprehensive guidance note and a webinar on the subject to assist schools. If you would like a copy or further information or advice please contact Amy Sergison on 0191 211 7995 or email her amy.sergison@muckle-llp.com.