

GUIDANCE TO SCHOOLS CONCERNING DISQUALIFICATION
FROM CHILDCARE UNDER THE CHILDCARE ACT 2006

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LONDON BOROUGH OF HARINGEY

GUIDANCE TO SCHOOLS CONCERNING DISQUALIFICATION FROM CHILDCARE UNDER THE CHILDCARE ACT 2006

INTRODUCTION

1. A person who is disqualified from registration by OFSTED on the early years register or the general childcare register must not in a nursery, primary or secondary setting :-
 - Provide early years childcare. “Early years” covers the age range from birth until reception age (the 31st August following the child’s fifth birthday) .”Early years childcare” means any form of care for a child up to reception age. It will include education in nursery and reception classes and/or any supervised activity (such as breakfast clubs , lunchtime supervision and after school care provided by the school) both during and outside of school hours for children in the early years age range.
 - Provide later years childcare . “Later years” covers children who are above reception age but under the age of 8. “ Later years childcare” includes childcare provided outside of school hours. It does not include education or supervised activity for children above reception age during school hours (including extended school hours for co-curricular learning activities, such as the school’s choir or sports teams) but it does include before school settings, such as breakfast clubs, and after school provision.
 - Be directly concerned in the management of early years or later years childcare. The school’s Headteacher will be covered. Other members of the school’s staff (including the Senior Leadership Team, any other manager, any supervisor, leader or volunteer) will be covered if s/he is responsible for the day-to-day management of the childcare .
2. If a disqualified person breaches these requirements s/he commits a criminal offence under the Childcare Act 2006 (“ the Act”).
3. It is also a criminal offence under section 76 of the Act for a person to employ a disqualified person to provide early years or later years childcare or to be directly concerned in the management of early years or later years childcare. The word “employ” is not defined in the Act. However Government guidance – “Disqualification under the Childcare Act 2006” published in February 2015 <https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006> – which should be followed by schools says that volunteers ,casual workers and self-employed contractors who are directly concerned with the management of childcare provision, or who work on a regular basis, whether supervised or not, in relevant childcare, are to be treated as “employed” for the purposes of the Act. The

guidance also says that trainee staff who are salaried, for example on employment based teacher training programmes, are also to be treated as “employed “ for the purposes of the Act.

4. It is not necessary for the employer to know the person is disqualified for a criminal offence to be committed. However the employer will not be guilty of an offence if it proves that it did not know, and had no reasonable grounds for believing ,that the person whom it was employing was disqualified from registration.
5. This guidance aims to assist schools maintained by the Council in ensuring that this criminal offence is not committed by the employer of staff based at the school . In community, community special , voluntary controlled and maintained nursery schools the Council will employ those staff based at the school with a contract of employment, while the governing body will employ those staff based at the school without a contract of employment. In foundation, voluntary aided and foundation special schools the governing body will employ all staff based at the school, whether or not they have a contract of employment. This guidance also aims to help them in gathering information for this purpose to act proportionately and to minimise wherever possible the intrusion into the private lives of their staff and members of their staff’s households.

WHICH SCHOOL STAFF WILL NOT BE COVERED BY THE DISQUALIFICATION FROM CHILDCARE RULES?

6. School staff who work in the following roles will not be covered by the disqualification from registration rules, being staff who :-
 - only provide education , childcare or supervised activity during school hours to children above reception age; or
 - only provide childcare or supervised activities out of school for children who are aged 8 or over; and
 - have no involvement in the management of early years or later years childcare provision.
7. 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 Act.
8. Anyone 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 educational psychologists, are not covered by the Act.
9. Most staff who are only occasionally deployed and are not regularly required to work in relevant childcare will not automatically come within the scope of the legislation. If it is unclear whether a particular member of staff is covered by the Act schools should take

advice from the school's Human Resources provider or from the Local Authority Designated Officer (LADO).

ARE SCHOOL GOVERNORS COVERED BY THE DISQUALIFICATION FROM CHILDCARE RULES?

10. The Government guidance says that school governors are not covered by the legislation, unless they volunteer to work in relevant childcare on a regular basis, or they are directly concerned in the day-to-day management of such provision. However in its factsheet "Applying to waive disqualification : early years and childcare provision" published June 2015 OFSTED refers to a member of a school governing body as an example of a person directly concerned in the management of early years or later years childcare. The Government guidance should be preferred. It can be argued that the use of the word " directly" is intended to refer only to those directly concerned in the day-to-day management of childcare provision, and not to those like school governors who can be said be indirectly concerned in the day-to-day management of childcare provision, in that those staff managing the school's childcare provision on a day-to-day basis are accountable to the governing body for such management. It is extremely unlikely that a school governing body that followed the Government guidance would be prosecuted for breach of section 76 of the Act.

WHAT ABOUT STAFF WORKING AT THE SCHOOL WHO ARE EMPLOYED BY OR WORK FOR THIRD PARTIES?

11. There may be staff working at the school who are employed by or work for childcare providers who hire or rent school facilities or premises. Schools should ensure that such providers have appropriate policies and procedures in place in regard to safeguarding children, including policies and procedures that aim to ensure that such providers do not employ staff who are disqualified from registration to provide early years or later years childcare or to be directly concerned in the management of early years or later years childcare.
12. Where the school uses staff from any agency, or third party organisation, (such as supply teachers) to provide early years or later years childcare or to be directly concerned in the management of early years or later years childcare, then the school must obtain confirmation that the agency or organisation providing the staff has informed them :-
- that they will be committing a criminal offence if while disqualified from registration they provide early years or later years childcare or are directly concerned in the management of early years or later years childcare; and
 - that they tell the provider if they consider they could be disqualified from registration

13. Where there are centrally managed London or Haringey staff who are deployed at the school to provide early years or later years childcare, such as peripatetic music teachers or special needs teachers, then it will be the Council's responsibility to ensure that these staff do not, while disqualified, provide early years or later years childcare or to be directly concerned in the management of early years or later years childcare.
14. Where a training supplier, such as an initial teacher training provider, is placing a trainee or student at the school, and the trainee/student will be providing early years or later years childcare, then where the trainee/student is not on a salaried programme (i.e. fee or self-funded students), it will be the responsibility of the training provider to ensure the trainee/student is not disqualified.

WHEN WILL BE A PERSON BE DISQUALIFIED FROM REGISTRATION ?

15. The circumstances in which a person will be disqualified from registration can be broken down into two groups:-
 - (a) Circumstances in respect of which OFSTED can grant the disqualified person a waiver from disqualification
 - (b) Circumstances in respect of which OFSTED cannot grant the disqualified person a waiver from disqualification .

A full list of all the circumstances that disqualify people from registration and details of the circumstances concerning which OFSTED can grant the disqualified person a waiver, are set out in the Childcare (Disqualification) Regulations 2009. In cases where the waiver is refused by Ofsted, the applicant can appeal to the First-Tier Tribunal (Health, Education and Social Care Chamber) against that decision. The appeal must be made in writing within 28 days of the date of Ofsted's decision letter.

16. In summary, the circumstances in which a person will be disqualified from registration but concerning which OFSTED can grant the person a waiver from disqualification are :-
 - The person has been found to have committed certain violent or sexual criminal offences against children.
 - The person has been found to have committed certain offences against an adult; for example, murder, kidnapping, rape, indecent assault, or assault causing actual bodily harm.
 - The person has been found to have committed an offence overseas which would have disqualified him/her from registration if it had been done in any part of the United Kingdom.

- The person has been made subject to an order or a determination removing a child from his/her care or preventing a child from living with him/ her.
- The person has been previously refused registration as a childcarer or have had registration cancelled, unless the cancellation was only for non-payment of fees for continued registration after 1st September 2008.
- The person has been previously refused registration as a provider or manager of children's homes or have had registration cancelled.
- The person has been prohibited from private fostering.
- The person lives in the same household as another person who is disqualified from registration or lives in a household in which another person who is disqualified from registration is employed (this is known as "disqualification by association").

NB 1. "Found to have committed" includes not only being convicted but also, on or after 6th April 2007, being given a caution in respect of the offence by a police officer after admitting that offence.

NB 2. If the convictions , cautions, reprimands and warnings for household member / employees are "spent" for the purposes of the Rehabilitation of Offenders Act 1974 then the household member/employee is not disqualified from registration as a result of the conviction/caution/reprimand/warning.

17. In summary, the circumstances in which a person will be disqualified from registration but concerning which OFSTED cannot grant the person a waiver from disqualification are :-

- The person is included in the Protection of Children Act 1999 list of those considered unsuitable to work with children
- The Department for Education has made a direction that the person is prohibited from teaching in a school or from work which brings the person regularly into contact with children, or has made a direction that the person can only carry out such work in specified circumstances or subject to specified conditions. The direction must have been made on the grounds either that the person is included in the Protection of Children Act list, or that the person is unsuitable to work with children, or on grounds relating to the person's health
- The person is included in the list of those who are barred from working with children, held by the Disclosure and Barring Service

STEPS TO BE TAKEN BY SCHOOLS IN RECRUITING TO POSTS THAT PROVIDE EARLY YEARS OR LATER YEARS CHILDCARE OR WHICH ARE DIRECTLY CONCERNED IN THE MANAGEMENT OF EARLY YEARS OR LATER YEARS CHILDCARE

18. When advertising such posts, schools should make a statement in the advertisement to the effect that the school considers that the post is one in which it would be a criminal offence under the Childcare Act 2006 and the Childcare (Disqualifications) Regulations 2009 to employ staff who are disqualified from registration by Ofsted on the early years register or the general childcare register.

19. At the point in the recruitment process when a candidate has been offered the post subject to clearances, then the candidate should be asked to complete and return the self-declaration form in Appendix 1 . No unconditional offer of appointment to the post should be made prior to the School receiving the completed self-declaration form. The completed form should only be accessible to those members of staff who need to access it and should be stored securely.

20. In cases where the candidate has declared they are disqualified from registration, Ofsted have the power to waive the disqualification and they have a pending application to Ofsted to waive the disqualification, or where there is a pending appeal to the Tribunal against Ofsted's decision to refuse a waiver, those conducting the recruitment process will need to consider:-
 - (a) whether it would be appropriate to make an unconditional offer of appointment in the event that the waiver application is granted or the appeal is successful. It may be that the information disclosed is such that it would be inappropriate to employ the candidate even if the waiver is granted or the appeal is successful.

 - (b) Even if it would be appropriate to make an unconditional offer of appointment in the event that the waiver application is granted or the appeal is successful, whether they are willing to wait for Ofsted's / the Tribunal's decision before deciding whether to make an unconditional offer to the post. If a decision is made to await the decision, if the candidate subsequently confirms the waiver has been granted/ the appeal has been successful the candidate should be required to provide a copy of the decision relied on .

21. The self-declaration form and any attachments should be destroyed :-
 - (a) Six months after the candidate starts employment, or
 - (b) Six months after the conditional offer of employment to the candidate is withdrawnwhichever is applicable .

THE SINGLE CENTRAL RECORD

22. In the event the candidate is appointed, the School should record in the Single Central Record in respect of the candidate :-

- s/he is employed to work in or manage childcare as defined in the Childcare Act 2006.
- The date of completion of the disqualification check (i.e. the date the self-declaration form is countersigned by the member of staff who considered the self-declaration form)
- The name of the person who completed the disqualification check (i.e. the name of the countersignatory of the self-declaration form)
- Whether the candidate self-declared as disqualified

STEPS TO BE TAKEN BY SCHOOLS IN RELATION TO EXISTING STAFF WHO PROVIDE EARLY YEARS OR LATER YEARS CHILDCARE OR WHO ARE DIRECTLY CONCERNED IN THE MANAGEMENT OF EARLY YEARS OR LATER YEARS CHILDCARE

23. If schools have not already done so, they should make staff in relevant posts aware of the legislation. This could be done by circulating to those staff the following note with the Ofsted's factsheet published in June 2015 and with the self-declaration form at Appendix 2 :-

"The School considers that your post is one in which it would be a criminal offence under the Childcare Act 2006 and the Childcare (Disqualifications) Regulations 2009 to employ staff who are disqualified from registration by Ofsted on the early years register or the general childcare register"

"Please read the attached factsheet published by Ofsted in June 2015 which explains what disqualified people must not do, how do you know if you are disqualified , who can apply to Ofsted to waive their disqualification and the process of applying to waive a disqualification"

"The Government has also published in February 2015 guidance called "Disqualification under the Childcare Act 2006" (*insert link*) which you may find it helpful to read"

"If at any time you consider you are disqualified please complete the attached self-declaration form and return it as soon as possible to the Headteacher".

24. Following the circulation of note as mentioned in paragraph 23, the note should be sent :-

- to a member of staff at the school in a relevant post if at any time the School has concerns about that person's suitability to work with children

- to a member of staff at the school who has moved from a post which is not covered by the Act into work which is covered by the Act
- to members of staff at the school in relevant posts every three years.

At the same time as circulating the note the School should carry out a Fresh Disclosure and Barring Service check in respect of the member of staff.

25. The School should record in the Single Central Record in respect of the members of staff returning the self-declaration form :-

- The date of completion of the disqualification check (i.e. the date the self-declaration form is countersigned by the member of staff who considered the self-declaration form)
- The name of the person who completed the disqualification check (i.e. the name of the countersignatory of the self-declaration form)
- whether the member of staff self-declared as disqualified

26. Where the self-declaration form has been completed by a member of staff where the School has concerns about that person's suitability to work with children , or where s/he has moved from a post which is not covered by the Act into work which is covered by the Act , the self-declaration form and any attachments should be destroyed six months after they are returned to the School. In other cases the form and any attachments should be destroyed once the form has been countersigned and a record of the disqualification check has been made in the Single Central Record. In all cases the completed forms should only be accessible to those members of staff who need to access them and should be stored securely.

WHAT ACTION SHOULD BE TAKEN BY SCHOOLS ABOUT EXISTING STAFF IN RELEVANT POSTS WHO ARE DISQUALIFIED ?

27. Once the School has reasonable grounds for believing that a staff member in a relevant post is disqualified, it must ensure that the staff member is not permitted to provide early years or later years childcare or to be directly concerned in the management of such childcare, unless and until either the School is satisfied that the staff member is not disqualified or the individual receives a waiver from Ofsted covering the role that they wish to undertake. The School should seek advice from its current Human Resources provider or from the LADO concerning what further action it should take concerning the staff member.

28. Where the School is satisfied that a staff member working in a relevant post is disqualified, then it must inform Ofsted using disqualification@ofsted.gov.uk. The School should explain to the staff member:-

- That Ofsted has been informed
- The implications of disqualification, including whether they can apply to Ofsted for a waiver of disqualification
- What information the individual will need to share with Ofsted and why

29. If Ofsted has the power to grant a waiver and the staff member applies for a waiver, the School will need to consider whether it would be appropriate to allow the staff member to resume their role in the event that the waiver application is granted. It may be that the information disclosed is such that it would be inappropriate to allow the staff member to resume their role even if the waiver application is granted.

30. In cases where :-

- Ofsted do not have the power to grant a waiver; or
- The staff member decides not to apply for a waiver; or
- Ofsted refuses a waiver; or
- It would be inappropriate to allow the staff member to resume their role even if the waiver application is granted.

The School will need to decide whether it would be possible and appropriate for the staff member to be permanently redeployed to other posts within or outside the school, or whether steps should be taken to terminate the staff member's employment. In deciding whether it would be appropriate to seek to redeploy the staff member the school should take into account the risks of harm to the children concerned and safeguarding guidance such as the Department for Education's guidance "Keeping children safe in education" of March 2015.

31. Where the School decides that the staff member may resume his/her role if the waiver application is granted, the School will need to decide for the period whilst the waiver application is under consideration :-

- Whether it would be possible and appropriate to redeploy temporarily the staff member elsewhere in the school or in another school

- Could temporary adjustments be made in their role to avoid them providing early years or later years childcare or being directly concerned in the management of such childcare.
 - If such alternative arrangements cannot be made or it is inappropriate to do so, could the member of staff be granted a period of paid leave
32. There may be cases where it will be necessary to suspend the member of staff from their duties. This should be adopted as a last resort. As it will be a criminal offence for the member of staff while disqualified to provide early years or later years childcare, or to be directly concerned in the management of such childcare, the member of staff will not be entitled to be paid in respect of these duties while suspended, even if s/he is willing to carry out these duties.

APPENDIX 1

DISQUALIFICATION FROM EARLY YEARS OR CHILDCARE PROVISION

SELF-DECLARATION FORM (RECRUITMENT)

The School considers that the post for which you have applied is one in which it would be a criminal offence under the Childcare Act 2006 and the Childcare (Disqualifications) Regulations 2009 to employ staff who are disqualified from registration by Ofsted on the early years register or the general childcare register.

Please read the attached factsheet published by Ofsted in June 2015 which explains what disqualified people must not do, how do you know if you are disqualified , who can apply to Ofsted to waive their disqualification and the process of applying to waive a disqualification.

The Government has also published in February 2015 guidance called “Disqualification under the Childcare Act 2006” (<https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006>) which you may find it helpful to read.

Please answer the following questions by circling “YES” ,“NO” or by providing the requested information as appropriate :-

1. To the best of your knowledge, are you disqualified from registration by Ofsted on the early years register or the general childcare register ? YES / NO

If your answer to question 1 is “NO” you do not need to answer the questions below.

2. Does Ofsted have the power to waive the disqualification? YES/NO

If your answer to question 2 is “NO” you do not need to answer the questions below.

3. Have you applied to Ofsted to waive the disqualification ? YES/ NO

If your answer to question 3 is “NO” you do not need to answer the questions below.

4. Have Ofsted refused your application for the waiver ? YES/NO

If your answer to question 4 is “YES” you do not need to answer questions 8 to 9 below

If your answer to question 4 is “NO” you do not need to answer questions 5 to 7 below.

- 5. Have you appealed to the Tribunal against Ofsted’s refusal of your application for the waiver ? YES/NO

If your answer to question 5 is “NO” you do not need to answer the questions below.

- 6. Has the Tribunal rejected your appeal ? YES/NO

If your answer to question 6 is “YES” you do not need to answer the questions below

- 7. When do you expect to receive a decision from the Tribunal on your appeal ?

- 8. What was the date on which you applied to Ofsted to waive the disqualification ?.....

- 9. When do you expect to receive a decision from Ofsted on your application for a waiver?

10.

If you are waiting for a decision from Ofsted on your application for a waiver, please attach a copy of the form you completed which you sent to Ofsted applying to waive the disqualification.

If you are waiting for a decision from the Tribunal on your appeal against Ofsted’s refusal of your application for a waiver, please attach a copy of Ofsted’s decision and a copy of your appeal to the Tribunal .

Once you have completed this form, please return it and any attachments to (**insert the appropriate name and address**)

PLEASE NOTE THAT IF YOU GIVE ANY ANSWER(S) IN THIS FORM WHICH YOU KNOW OR BELIEVE TO BE UNTRUE , OR WHICH YOU KNOW OR BELIEVE MAY BE UNTRUE, THEN IN THE EVENT OF YOUR BEING EMPLOYED IN THE POST SUCH ANSWER(S) MAY RESULT IN YOUR BEING SUMMARILY DISMISSED FROM THAT POST ON THE GROUNDS OF GROSS MISCONDUCT

Date signed by candidate

Candidate’s signature

Date form considered by School

Signature of person who considered the form on behalf of the School

APPENDIX 2

DISQUALIFICATION FROM EARLY YEARS OR CHILDCARE PROVISION

SELF-DECLARATION FORM (EXISTING STAFF)

The School considers that your post is one in which it would be a criminal offence under the Childcare Act 2006 and the Childcare (Disqualifications) Regulations 2009 to employ staff who are disqualified from registration by Ofsted on the early years register or the general childcare register.

Please read the attached factsheet published by Ofsted in June 2015 which explains what disqualified people must not do, how do you know if you are disqualified , who can apply to Ofsted to waive their disqualification and the process of applying to waive a disqualification.

The Government has also published in February 2015 guidance called “Disqualification under the Childcare Act 2006” (*insert link*) which you may find it helpful to read.

Please answer the following questions by circling “YES” ,“NO” or by providing the requested information as appropriate :-

1. To the best of your knowledge, are you disqualified from registration by Ofsted on the early years register or the general childcare register ? YES / NO

If your answer to question 1 is “NO” you do not need to answer the questions below.

If your answer to question 2 is “YES” please answer the questions below and explain below why you are disqualified (you may provide the information on additional sheets if necessary or if you prefer) :-

.....
.....
.....
.....
.....

2. Does Ofsted have the power to waive the disqualification? YES/NO

If your answer to question 2 is "NO" you do not need to answer the questions below.

3. Have you applied to Ofsted to waive the disqualification ? YES/ NO

If your answer to question 3 is "NO" you do not need to answer the questions below.

4. Have Ofsted refused your application for the waiver ? YES/NO

If your answer to question 4 is "YES" you do not need to answer questions 8 to 9 below

If your answer to question 4 is "NO" you do not need to answer questions 5 to 7 below.

5. Have you appealed to the Tribunal against Ofsted's refusal of your application for the waiver ? YES/NO

If your answer to question 5 is "NO" you do not need to answer the questions below.

6. Has the Tribunal rejected your appeal ? YES/NO

If your answer to question 6 is "YES" you do not need to answer the questions below

7. When do you expect to receive a decision from the Tribunal on your appeal ?

8. What was the date on which you applied to Ofsted to waive the disqualification ?.....

9. When do you expect to receive a decision from Ofsted on your application for a waiver?

If you are waiting for a decision from Ofsted on your application for a waiver, please attach a copy of the form you completed which you sent to Ofsted applying to waive the disqualification.

If you are waiting for a decision from the Tribunal on your appeal against Ofsted's refusal of your application for a waiver, please attach a copy of Ofsted's decision and a copy of your appeal to the Tribunal .

Once you have completed this form, please return it and any attachments to (**insert the appropriate name and address**)

NB 1. Certain old and minor cautions and convictions are not required to be disclosed to employers. Therefore if you have these cautions and convictions you do not need to provide details of them in this form. Guidance concerning the old and minor cautions and convictions that do not need to be disclosed has been provided by the Disclosure and Barring Service at www.gov.uk/government/collections/dbs-filtering-guidance.

NB 2. You do not need to disclose the “spent” cautions or convictions of a person who lives or is employed in your household. Further information on when cautions and convictions become “spent” can be found at www.gov.uk/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974.

NB 3. PLEASE NOTE THAT IF YOU GIVE ANY ANSWER(S) IN THIS FORM WHICH YOU KNOW OR BELIEVE TO BE UNTRUE , OR WHICH YOU KNOW OR BELIEVE MAY BE UNTRUE, THEN SUCH ANSWER(S) MAY RESULT IN YOUR BEING SUMMARILY DISMISSED ON THE GROUNDS OF GROSS MISCONDUCT

Date signed by staff member.....

Staff member’s signature

Date form considered by School

Signature of person who considered the form on behalf of the School