

HAZELDENE SCHOOL

Childcare (Disqualification) Regulations Policy

Introduction

1. On 4 July 2014 the Borough Council published Circular BBSIC/14/27 to which was attached an updated version of the Code of Practice for Recruitment and Selection (Chapter 2, Section 2 of the Personnel Handbook for School Based Staff). This advice incorporated guidance with regard to the Department for Education document “Keeping Children Safe in Education”. The child protection arrangements in place for pupils, including the checks which schools must make to identify risks to children and to make informed decisions about the suitability of individuals to work in schools are set out in “Keeping Children Safe in Education” and the Borough Council’s Code of Practice provides amplification.
2. The DfE has now published advice as a supplement to the ‘Keeping Children Safe in Education’ document and has drawn specific attention to The Childcare Act 2006 and the Childcare (Disqualification) Regulations 2009. The Regulations place separate and additional requirements on schools. At the point that an individual is convicted of, or cautioned for, a criminal offence of a specified type and category, or where they meet other disqualification criteria set out in the Regulations, the effect of the Act and the Regulations is to disqualify staff from:-
 - providing early years childcare or later years childcare to children who have not attained the age of eight years; or
 - being directly concerned in the management of that childcare.
3. In addition to inclusion on the Children’s Barred List the wider disqualification criteria include:-
 - being cautioned for or convicted of certain violent and sexual criminal offences against children and adults;
 - grounds relating to the care of children (including where an order is made in respect of a child under the person’s care);
 - having registration refused or cancelled in relation to childcare or children’s homes or being disqualified from private fostering;
 - living in the same household where another person who is disqualified lives or works (disqualification “by association”).

The grounds for disqualification can be found in the childcare legislation details of which are at paragraphs 8 and 9 of this Circular.

Relevant Staff and Settings

4. The following categories of staff in nursery, primary and secondary school settings are covered by the Childcare (Disqualification) Regulations:-
 - Staff who work in early years provision (including teachers and support staff working in school nursery and reception classes);
 - Staff working in later years provision for children who have not attained the age of 8 years (including before and after school settings);
 - Staff who are directly concerned with the management of such early or later years settings.
5. The Regulations refer to employing a person “in connection with” these provisions and it is the advice of the Borough Council that
 - In nursery, lower and primary schools all staff are covered by the Regulations on the grounds that staff are unlikely to be working exclusively with children of 8 years and over;
 - In middle, upper and secondary schools it will be necessary to identify relevant staff (including managers) where services are provided to children under 8 years of age such as child care facilities or pre and after school clubs.

Disqualification

6. **The Regulations prohibit anyone who is disqualified themselves under the Regulations, or who lives in the same household as a disqualified person from working in a relevant setting, including schools.**
7. A person is disqualified if any of the following apply:-
 - They have been cautioned for, or convicted of certain violent or sexual criminal offences against adults and any offences against children.
 - They are the subject of an Order, direction or similar in respect of childcare, including Orders made in respect of their own children.
 - They have had registration refused or cancelled in relation to childcare, children’s homes or they have been disqualified from private fostering.
 - They live in the same household where another person who is disqualified lives or works (disqualification “by association”). This means that the householder has an Order, restriction, conviction, caution etc set out in the legislation. It is

understood that staff may not necessarily know this information – the declaration (see attached) requires them to answer “to the best of their knowledge”.

8. Full details of what constitutes “disqualification” are set out in the Schedules to the Regulations at:-

www.legislation.gov.uk/ukxi/2009/1547/contents/made

Action Required

9. The Borough Council advice is that schools need to take the following action:-

- (a) All relevant staff in the relevant settings must be asked to complete a declaration as soon as possible, affirming that they are not disqualified. A declaration form is attached. Schools should print the Schedules to the Regulations which detail the disqualification orders, offences etc and make these available to staff (either with each form or in a central place for reference.) The links are

www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made

www.legislation.gov.uk/ukxi/2009/1547/schedule/2/made

www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made

- (b) Head teachers should contact the School’s HR service provider immediately if they
- (i) know of anyone in the employment of the School who is or may be disqualified
- (ii) receive a positive declaration from any member of staff.
- (c) Anyone who is disqualified will need to be removed from the relevant setting (probably by means of formal suspension from employment) and Ofsted must be notified within 14 days.
- (d) In respect of recruitment, all shortlisted candidates must be required to complete the declaration with immediate effect and DBS certificates should be checked with reference to the list of relevant offences (see Schedules 2 and 3 at paragraph 9(a) above).
- (e) Schools must ensure that any external agency providing relevant staff in relevant settings carry out these checks prior to placing them in a school.

10. The Borough Council will update the Code of Practice for Recruitment and Selection at Chapter 2, Section 2 of the Personnel Handbook for School Based Staff in the light of the Regulations.

11. Schools should set a reasonable but short deadline for the return of the declarations from current employees. The view of the Borough Council is that 7 calendar days is

reasonable. Staff failing to return forms should be contacted and given a revised deadline for submission. Continued failure to return the form may make it necessary to remove the employee from the setting by formal suspension. Schools are strongly advised to seek advice from the school's HR provider in these circumstances.

12. This Circular has been subject to consultation with trade unions and the teachers' professional associations.

Disqualified Workers

13. A disqualified worker can apply to Ofsted for a waiver at www.ofsted.gov.uk/resources/applying-waive-disqualification-early-years-and-childcare-providers.
14. Ofsted may grant a full or partial waiver, including a waiver that would allow an individual to work in a relevant school setting. While a waiver application is under consideration the individual must not continue to work in the relevant setting. In the event that a waiver is not granted, it is likely to be necessary to terminate the contract of employment unless alternative options are available (such as redeployment). **Schools are strongly advised to contact their HR service providers in these circumstances.**

Conclusion

15. Attached to this Circular are a series of frequently asked questions with regard to the Childcare (Disqualification) Regulations. Also attached is a Staff Disqualification Declaration.
16. Bearing in mind the pre-employment checks currently in place the probability is that very few staff will be disqualified in line with the updated advice from the DfE. In drafting this advice the Borough Council has worked closely with trade union and professional association representatives as well as colleague Head teachers. Where disqualification does arise it is the strong advice of the Borough Council that early contact with the Schools HR service provider is essential.
17. Schools will wish to note that the advice available from the DfE regarding the Childcare (Disqualification) Regulations remains fluid and may be subject to revisions. The Borough Council will, of course, keep schools in touch with developments and offer further guidance accordingly. It is likely that once a definitive position is established that the Code of Practice on recruitment and selection at Chapter 2, Section 2 of the Personnel Handbook will need to be revised.



Staff Disqualification Declaration

| | |
|---------------|-------------------------------|
| School | Hazeldene Lower School |
|---------------|-------------------------------|

The Department for Education (DfE) has issued an update to its Statutory Guidance “Keeping Children Safe”.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/362919/Keeping_children_safe_in_education_childcare_disqualification_requirements_-_supplementary_advice.pdf

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. Reference:

<http://www.legislation.gov.uk/ukxi/2009/1547/schedule/3/made>

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 required 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 | Post |
|---|----------|
| 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 Regulations? Available from the school office or at the link below: http://www.legislation.gov.uk/ukxi/2009/1547/schedule/1/made | YES / NO |
| Are you barred from working with Children (Disclosure and | YES / NO |

| | |
|---|----------|
| Barring (DBS))? | |
| 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: | |
| <ul style="list-style-type: none"> Any offence against or involving a child? (A child is a person under the age of 18)? | YES / NO |
| <ul style="list-style-type: none"> Any violent* or sexual offence against an adult? *a violent offence in this context is murder, manslaughter, kidnapping, false imprisonment, ABH, GBH | YES / NO |
| <ul style="list-style-type: none"> Any offence under the Sexual Offences Act? | YES / NO |
| Any other relevant offence? Available from the school 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 similar offence in another country? | YES / NO |
| Section 3 – Disqualification by association | |
| To the best of your knowledge, is anyone in your household* disqualified from working with children under the Regulations? *household – includes family, lodgers, house-sharers, household employees This means does anyone in your household have an Order or Restriction against them as set out in Section 1 or have they been cautioned, reprimanded, given a warning for or convicted of any offence in Section 2. | YES / NO |
| Section 4 – Provision of Information | |
| If you have answered YES to any of the questions above you should provide details below in respect of yourself, or where relevant the member 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. | |
| The date(s) of these | |
| The relevant court(s) or body(ies) | |
| 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: | |
| <ul style="list-style-type: none"> 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 |



Childcare (Disqualification) Regulations

Frequently Asked Questions

Q1 Why has advice been published in 2014 when the Regulations date from 2009?

A1 This matter has been raised with the Department for Education. The response from the DfE was “The Department has been asked to clarify what the position was for schools and it became clear that some supplementary advice to sit alongside “Keeping Children Safe in Education” would be helpful for schools.

Q2 Given that the Regulations have been in place since 2009, has the DfE taken legal advice about the risk of dismissing a member of staff based on these Regulations when the employee has been in post for a number of years?

A2 The DfE response was “The Regulations have been in force for a number of years and the Department expects that schools will take appropriate action where individuals may be subject to the requirement, or where they are made aware that someone working at the school should be disqualified.”

The legal advice available to the Borough Council is that the Regulations must be enforced and schools will need to seek advice from their HR service provider when taking action with regard to positive declarations.

Q3 For existing staff, is the self declaration sufficient or is it expected that schools will seek to verify self declarations where possible (for example, by obtaining a further DBS clearance certificate)?

A3 There is no process for verifying whether someone has a childcare order or other restriction against them. Self declarations are acceptable. For new staff (ie as part of an appointment procedure) the employee should sign a declaration and the DBS certificate should be checked against the list of offences in the Schedules (although, of course, other offences may lead to non employment under the normal DBS assessment process).

Q4 How can schools check on “householders”?

A4 The DfE response was “It is not the employer’s role to carry out a check on individuals other than those they employ. However, employers should have effective systems in place to ensure that staff are suitable to work in childcare. Employees who work in the specified provision should be asked to provide the necessary information about any person who lives in the same household as

them”.

Q5 How do the Regulations relate to the Data Protection Act, particularly with regard to sensitive personal data relating to someone not employed at the school (for example, a householder) and the requirement for the school to pass the information to Ofsted?

A5 The DfE has indicated that information must be processed in accordance with the Data Protection Act (see Chapter 3, Section 21 of the Personnel Handbook). The Childcare (Disqualification) Regulations require employers to pass information to Ofsted and such statutory duties are allowed under the Data Protection Act. Clearly schools must handle and store information carefully in accordance with the provisions of the Data Protection Act.

Q6 How long will it take to process an application for the disqualification waiver?

A6 The DfE has said “It is a matter for Ofsted who have the responsibility for granting a waiver. The time it will take to process the waiver application will vary from case to case. Many will be straight forward but others will be complex and may take time to resolve.

Q7 The DfE guidance refers to “staff who work in the relevant provision” – who is covered by the Regulations?

A7 The DfE has said ‘The Childcare Act stipulates that a disqualified person should not be employed in connection with early or later years childcare and that they should not be directly concerned in the management of that provision. A person who sometimes works in the relevant childcare provision would be included in this definition; however, decisions need to be taken by schools on a case-by-case basis subject to their individual circumstances.’

In the light of the DfE advice, the guidance of the Borough Council is set out below:-

- (a) Governors – The DfE has confirmed that the Regulations do not apply to governors. A governor cannot be prevented from holding office under the Childcare (Disqualification) Regulations. The School Governance Regulations 2012 already set out the factors that may exclude a person from becoming a governor, including being barred from any regulated activity relating to children and being disqualified from working with children or from registering for childminding or providing day care.*
- (b) Volunteers – The DfE has confirmed that the Childcare (Disqualification) Regulations 2009 do not apply to volunteers. This means that schools are not required to ask existing or new volunteers to complete a disqualification declaration form and that volunteers are not, by statute, disqualified from*

working in a school by virtue of the 2009 Regulations.

It must be noted, however, that the document “Keeping Children Safe in Education states “..... governing bodies should prevent people who pose a risk of harm from working with children by adhering to statutory responsibilities to check staff who work with children, taking proportionate decisions on whether to ask for any checks beyond what is required; and ensuring volunteers are appropriately supervised.”

Accordingly, where governing bodies wish to ask volunteers to complete a disqualification declaration this could be viewed as “a proportionate decision” because the school will apply the same standard of safeguarding checks to volunteers as to their employees.

Any such information provided by volunteers or prospective volunteers should be assessed in line with the guidance issued in relation to employees. Ofsted will not consider a waiver application in respect of a volunteer (because the Regulations do not apply) and it will be for the school to determine whether to allow the individual to continue to volunteer. Schools are strongly advised to carry out a risk assessment having regard to the information provided on the declaration, the nature of the activities undertaken and the level of supervision place.

- (c) *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.*

Q8 What constitutes ‘Childcare outside the normal school day’?

- A8 *Childcare includes breakfast clubs, homework clubs, nursery and crèche provision provided by the school. Where activities are run by other providers on school premises but not managed by the school (for example, lettings, football club etc) these are not covered as they are not childcare provision managed by the school.*

Q9 Has the Borough Council checked Borough Council staff (for example, peripatetic music teachers)?

- A9 *The Borough Council is currently engaged in taking the necessary action and the advice remains that staff with Borough Council identity passes can be admitted to work in schools.*

Q10 At what stage in the recruitment process should the disqualification declaration be completed?

A10 *The advice of the Borough Council is that the disqualification declaration should be given to shortlisted candidates to complete. If a candidate declares relevant information which would mean they are disqualified or disqualified by association this would need to be considered and discussed with the candidate. The school could decide not to proceed with the application on the basis that the employee is disqualified. Alternatively, the school could proceed with the application and if the person becomes the preferred candidate a conditional offer could be made and a waiver applied for. In the event that the waiver is not granted the conditional offer can be withdrawn. The Borough Council will update the advice on recruitment and selection at Chapter 2, Section 2 of the Personnel Handbook in due course.*

Q11 Where a care order was put in place in respect of someone's children because of the actions of their partner and, either the care order is no longer in place or the partner is no longer living in the household, do the Regulations apply?

A11 *Where the care order has been removed or the partner is no longer living at the household then these individuals would not be covered by the Regulations. If the partner moved back into the household then the Regulations would apply again.*

Q12 What cautions and convictions have to be declared and where are the disclosable offences set out?

A12 *The relevant offences are listed in Schedules 2 and 3 to the Regulations (see paragraph 9(a) of the Circular. The schedules can be complex to understand. The key offences are those that result in a caution (including reprimands, warnings and youth cautions) issued post 2007 or conviction and relate to:-*

- *any offence by an adult against or involving children*
- *any sexual offence by an adult or a child against an adult or a child*
- *murder, manslaughter, kidnapping, false imprisonment, ABH or GBH.*

Q13 Why is there a reference to burglary in Schedule 2?

A13 *This refers to burglary under the 1968 Theft Act which was burglary involving rape so would only be applicable if someone was charged with this specific offence.*

Q14 Schedule 2 refers to repealed statutory offences; does this mean they do not apply?

A14 *No. "Repealed" in this context does not mean the offences no longer apply. It means they have been superseded by other legislation but would still be a cause*

for disqualification if someone has been convicted of or cautioned for any of these offences.

Q15 What happens if a person is unsure whether they have a relevant offence?

A15 Employees should be asked to declare anything they think might be relevant and schools can check with the DfE at

Mailbox.disqualification@education.gsi.uk

Q16 What is the position with cautions before April 2007?

A16 The DfE have confirmed that anyone who was issued with a relevant caution (including reprimands and warnings) before 6 April 2007 is not disqualified.

Q17 Are employees required to ask their householders if they're disqualified?

A17 No. Staff are asked to declare "to the best of their knowledge" and schools can accept the declaration at face value.

Q18 Does this check need to be on the Single Central Record?

A18 There is no statutory requirement that the check should be recorded on the Single Central Record but the advice of the Borough Council is that it is advisable for schools to keep a record of completed checks and therefore an update to indicate a satisfactory check on the SCR is best practice. Satisfactorily completed means no relevant information is declared or that a waiver has been obtained from Ofsted where relevant.

Q19 What should schools do with disqualification declarations once an employee has returned it?

A19 These forms should be placed on the employee's personal file (which must be kept in a secure place). For volunteers the forms should be retained in the same single central location that would be appropriate to other sensitive personal data held about volunteers.

Q20 Who will check that schools comply with the Regulations?

A20 This is unclear at present. It is anticipated that Ofsted will include this as part of the overall safeguarding checks (and hence the advice with regard to the Single Central Record – see Q18 above).