

PERRYFIELDS PRIMARY PRU



DISQUALIFICATION BY ASSOCIATION POLICY AND PROCEDURE

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DISQUALIFICATION BY ASSOCIATION POLICY AND PROCEDURE

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DISQUALIFICATION BY ASSOCIATION

1.0 INTRODUCTION

- 1.1 The DfE has provided further statutory guidance about “Keeping Children Safe in Education” October 2014, which detailed a new requirement for childcare disqualification checks that must be carried out on all relevant employees working in relevant settings e.g. schools, academies and child care settings.
- 1.2 These checks arise from the Childcare (Disqualification) Regulations 2009, which in turn arose out of the Childcare Act 2006.
- 1.3 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.
- 1.4 It is a legal requirement that the Council / Schools (the employer) ascertain the suitability of its employees to work in such settings.

2.0 RELEVANT EMPLOYEES AND SETTINGS

- 2.1 The following categories of employees in nursery, primary or secondary school settings are covered by the Childcare (Disqualification) Regulations 2009:
- “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 including before school settings, such as breakfast clubs and after school provision;
 - staff who are directly concerned in the management of such early years or later years provision.”

The Regulations refer to employing a person “in connection with” these provisions and this would cover employees as follows:

- Infant and Nursery Schools - All employees covered
- Primary/Junior Schools – All employees are covered as it is unlikely in such settings that employees are exclusively working with those over that age of 8
- Secondary Schools – will need to undertake checks on relevant employees (including managers) where any services are provided where under 8s may be in attendance e.g. childcare facilities, before or after school clubs, holiday clubs etc.
- Children’s Centres – All employees covered
- Pupil Referral units (PRUs) – All employees where there are children under the age of 8 using the PRU
- Any other employees employed in work in connection with the provision of childcare services in relevant settings e.g. Escorts, Early Years Consultants.
- And any other employee that requires registration under the Childcare Act 2006.

2.2

Volunteers are not covered by statute but it is recommended that they are checked in the same way as employees when they are working on a regular basis and meet the frequency test of:

- once a week,

- or 4 times in a 30 day period,
- or overnight.

3.0 **WHO IS DISQUALIFIED?**

3.1 As stipulated by the regulations 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;
- That have had registration refused or cancelled in relation to childcare of children's homes or have been disqualified from private fostering;
- They live in the same household where another person who is disqualified lives or works ("disqualification by association"). It is accepted that employees may not necessarily know this information; the declaration from requires them to answer "to the best of their knowledge."

3.2 Full details of disqualification orders, offences etc. are contained in the **Schedules to the Regulations (Appendix A)**.

4.0 **PROCEDURE TO ASCERTAIN SUITABILITY (i.e. Disqualified or Not)**

- 4.1 All relevant employees in relevant settings must be issued with the **Employee Disqualification Declaration (Appendix B)** and asked to complete it and return it to their manager within a week of issue.
- 4.2 Completed forms that require no action i.e. the employee is not disqualified, should be filed on the employee's personal file.
- 4.3 Schools and services that hold a Single Central Record should add an extra column to this and record that the declaration has been completed in order to meet Ofsted's requirements.
- 4.4 New employees in relevant settings must be required to complete the declaration form as part of the Pre-Employment checks and Headteachers/Managers must check DBS certificates with reference to the list of offences as detailed in Appendix A.
- 4.5 If an employee refuses to comply with the request to complete and return the Employee Disqualification Declaration they should be removed from the setting and suspended in accordance with the Council's/School's Disciplinary procedure [*Link to procedure*]. Formal dismissal procedures need to be instigated on the grounds of failing to comply with the employer's reasonable request. The request is being made to ensure the employer complies with its legal responsibility.

PROCEDURE FOR DISQUALIFIED STAFF

5.0

Managers/Headteachers should contact their HR Business Partner / HR Provider immediately for advice if they:

5.1

- Know of anyone in their employment who is disqualified or may be disqualified;
- Receive a positive declaration from a member of staff.

5.2 Any employee who is disqualified will need to be immediately removed from the relevant setting and either redeployed into a post that does not require the completion of a declaration or placed on paid leave of absence. Managers/Headteachers must notify Ofsted, in writing, within 14 days of receipt of the positive declaration.

5.3 A **disqualified person can apply** to Ofsted for a waiver. A disqualified employee must apply for their waiver within 14 days of returning their declaration form and confirm to their manager/Headteacher that they have done so. Whilst a waiver application is under consideration the individual must not continue to work in these settings, i.e. continue to be redeployed or remain on paid leave of absence.

5.4 If a waiver is not granted or applied for then the employee will not be able to work in the setting and unless there are suitable redeployment options available then the dismissal procedure at 5.5 must be followed.

Dismissal Procedure

5.5 Guidance on the arrangements for a Dismissal Meeting can be obtained from your HR Business Partner / HR Provider. The meeting should be held using the format as outlined in **Appendix C Conducting a Dismissal / Appeal Meeting**.

The employee must be informed by their manager/Headteacher that their employment is likely to be terminated and that a Dismissal Meeting will be arranged with the relevant Head of Service. For school based employees the arrangements will depend on who the Governing Body has delegated the responsibility to in accordance with the Staffing Regulations 2009. The **Arrangements for the Dismissal Meeting letter (DBAL1)** should be used to invite the employee to the meeting and all the necessary arrangements should be made for the meeting to take place.

Following the **Dismissal Meeting** the Chair of the Panel will write to the employee confirming the outcome. If the decision is dismissal the employee would be dismissed for some other substantial reason and this would be confirmed along with their termination date using letter **Dismissal Outcome DBAL2**.

The employee has the **Right of Appeal** against the decision to dismiss and this is included in the Dismissal Outcome letter. The appeal against dismissal is heard by a panel chaired by the Service Director or Executive Director / nominated Governor. The employee has a period of 14 days from receipt of the Dismissal Outcome letter in which to submit a request for an appeal. If an employee informs the Chair of the Dismissal Meeting in writing of their intention to appeal they should inform the employee's manager/Headteacher who should make the necessary arrangements for the appeal to be heard.

Appeal Hearing Process

5.6 Upon receipt of a request for an Appeal the employee's manager/Headteacher should make the necessary arrangements for the appeal to be heard by an appeal panel chaired by the Service Director or Executive Director / nominated Governor. Guidance on the arrangements for an Appeal Hearing can be obtained from your HR Business Partner / HR Provider.

The appeal should be held using the format as outlined in **Appendix C Conducting a Dismissal/ Appeal Meeting**.

Following the **Appeal Hearing** the employee will be informed of the outcome in writing either confirming to uphold the decision to dismiss and their employment will terminate as previously notified (letter **Dismissal Outcome DBAL2**) or rescinding the employee's notice (letter **Notice Withdrawn – DBAL3**). It is anticipated that the rescinding of notice will only

take place in exceptional circumstances.

6.0 **AGENCY / SUPPLY STAFF**

- 6.1 Headteachers/managers must ensure that any external agency providing relevant employees in their relevant setting(s) carry out these checks prior to placing them in the school / Council service.
- 6.2 They must also ensure that the external agency checks all their existing employees.

7.0 **EQUALITY AND DIVERSITY**

- 7.1 This policy has been impact assessed by Human Resources, if on reading this policy you feel there are any equality and diversity issues, please contact your Directorate HR Business Partner who will if necessary ensure the policy is reviewed.

8.0 **INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

- 8 There is no tax or national insurance implications arising from this Policy.
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