

Our Ref:  
Date: 10 March 2015  
Enquiries to: Schools' HR Casework Team  
Tel: 03456 066046 (option 3)  
Email: HR@schoolschoice.org

To: Heads of all Suffolk LMS Schools, PRUs and Highfield Nursery  
Chair of Governors

<b>LMS Document No. 2015/09</b>
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Dear Colleagues

### **Disqualification under the Childcare Act 2006**

At the end of February 2015, the DfE published revised guidance on: [Disqualification under the Childcare Act 2006](#) ("the revised guidance"). This statutory guidance replaces the earlier "Keeping children safe in education: childcare disqualification requirements – supplementary advice". All Headteachers should ensure they are familiar with the detail of the revised guidance and that it is brought to the attention of other staff in school that have responsibility for safeguarding (including maintenance of the school's Single Central Record), the school's leadership team and its governing body/trust. A brief update will be included in the next issue of The Knowledge.

The revised guidance is fairly comprehensive. This letter provides a summary of some of the most notable points and highlights action schools should take.

#### **There is no change to:**

- The requirement for schools to consider whether the Childcare (Disqualification) Regulations 2009, made under the Childcare Act 2006, apply to roles within their setting
- The application of the legislation to early years childcare and certain later years provision
- Where the legislation applies, the requirement to ensure the school does not knowingly employ staff who are disqualified, including 'by association'
- The criteria for disqualification
- The Waiver application process that may be completed for those disqualified and the requirement for schools to advise Ofsted when they become aware of information meeting the disqualification criteria.

**The following have been clarified/confirmed in the revised guidance:**

- **School governors and proprietors** are not covered by the legislation, unless they volunteer to work in relevant childcare on a regular basis, or they are directly concerned with the day-to-day management of such provision
- **Volunteers and casual workers** 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 within the scope of the legislation. The revised guidance also refers to legislation applying to those undertaking training in schools (both salaried and unsalaried). **If your school has not already undertaken checks for such individuals you should ensure they are completed without delay**
- Those 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 specifically excluded from the statutory definition of childcare, and are therefore not covered by the legislation. A copy of a recent letter from the Associate Director of Integrated Community Paediatric Services, Suffolk Community Healthcare, is included at the end of this letter (Annex B) for your information
- Where the school deploys a contractor who is **self-employed** to work in relevant childcare provision, the school must ensure that they are compliant with the requirements of the legislation. The Local Authority recommends self-employed workers are asked to confirm in writing that they are not disqualified, as necessary providing them with a copy of the revised guidance. Self-employed individuals should not be asked to complete a staff self-declaration form
- **Whilst any waiver application is under consideration**, schools can consider redeploying the member of staff elsewhere in the school or making adjustments to their role to avoid them working in relevant childcare or the management of that provision. The revised guidance states, “Where alternative arrangements cannot be made or it is not appropriate to do so, the school will need to consider whether to grant paid leave or similar, or as a last resort suspend the member of staff, while the waiver application is under consideration.” “Schools should consider taking advice from their HR provider, LADO, safeguarding lead officer or adviser...” Please see local contact details at the end of this letter. In all cases, including consideration of any on-going suspension put in place under the earlier DfE advice, the Local Authority recommends schools contact the Schools’ Choice HR Team in the first instance
- When considering disqualification ‘by association’, **spent criminal convictions, cautions or youth cautions of anyone living or employed in the household do not fall under the legislation and do not need to be disclosed**. Staff (including volunteers) still need to disclose their own spent convictions, cautions or youth cautions for relevant offences, in accordance with the Rehabilitation of Officers Act 1974 (Exemptions) Order 1975 (as amended in 2013)

- ‘By association’ includes not only those living in the same household but also **those employed in the household**. The legislation and revised guidance do not define “employed in” the household. However, Local Authority interprets this to mean employment with some degree of regularity and permanency. We do not expect occasional work (for example, window cleaning, household repairs, garden maintenance, etc) to be covered by the legislation. The nature of the staff member’s relationship with anyone living or employed in their household will determine the level of any enquiry they are able to make and staff are only required to provide information regarding third parties to the best of their knowledge
- Staff do not need to disclose **‘protected’ cautions or convictions**. These are typically minor and old offences that would be filtered out in any DBS disclosure, following the amendments to the exemptions from the Rehabilitation of Offenders Act made in 2013
- 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. The revised guidance explains, “Similarly most staff that are only occasionally deployed and are not regularly required to work in relevant childcare will not automatically come within the scope of the legislation. Schools and local authorities should exercise their judgement about when and whether such staff are within scope, evaluating and recording any risks and control measures put in place, and taking advice from the school or authority’s HR provider, Local Authority Designated Officer (LADO), safeguarding lead officer or adviser when appropriate. A record of the assessment should be retained on the employee’s personnel file.” The Local Authority recommends disqualification checks are made for any role involving regular work with Early Years and certain Later Years provision (see next two bullet points)
- **Early years childcare** is defined as covering the age range from birth until 1 September following a child’s fifth birthday and includes education, childcare and any supervised activity during or outside of school hours. The revised guidance also states **those providing education, childcare or supervised activity during school hours to children above reception age are not covered** by the legislation
- Relevant **later years provision** is defined as childcare provided by the school outside of school hours for children above reception age but who have not attained the age of 8. This does not include education or supervised activity for registered pupils of the school during school hours (including extended school hours for co-curricular learning activities, such as the school’s choir or sports teams) but **does apply to before school settings, such as breakfast clubs, and after school provision**

- There is no requirement to use a self declaration form to assess disqualification. However, the revised guidance refers to the requirement to gather 'sufficient and accurate information' and the Local Authority recommends schools continue to use a self-declaration form for this purpose. The recommended form will also ensure staff receive clear information about what they are and are not required to disclose before potentially sharing sensitive personal data. The Local Authority recommends that staff/applicants are provided with (or given access to) a copy of the revised guidance when completing their self declaration. **An updated self-declaration form is included at Annex A** and is available here: [Staff self-declaration form](#). The self-declaration form included in the template interview invite letter available in the Schools' Choice Recruitment and Selection toolkit has also been updated. **Schools do not need to repeat checks already completed using the earlier self-declaration form**
- It is vital that schools **do not ask staff or third parties to make requests for their criminal records** in connection with employment, as this will amount to an enforced subject access request which is an offence under section 56 of the Data Protection Act from 10 March 2015
- Schools must maintain a record of relevant posts and the date checks were completed, either on their Single Central Record or separately. We have updated the Single Central Record template (available here: [Single Central Record template](#)) in light of the revised guidance. **All records must be maintained in accordance with the Data Protection Act 1996.**

This letter and accompanying documents replace all earlier guidance on Disqualification under the Childcare Act 2006 and Childcare (Disqualification) Regulations 2009. We recognise this is a complex area of safeguarding and can involve highly sensitive data. Please do not hesitate to seek further advice from:

- Your named HR Caseworker or our Duty Officer on 03456 066046 (option 3), or;
- A Local Authority Safeguarding Officers: Janice Lee (01473 263940), Alison Jones (01284 758641) or Georgia Anglin (01502 674811), or;
- The Local Authority's Professional Advisor for safeguarding matters, Lorna Jackson (01473 260112).

Yours sincerely



**Libby Wragg**  
HR Casework Service Manager

**Annex A – begins overleaf**



# Disqualification under the Childcare Act 2006

## Staff self-declaration form

Version: 1.0  
Date: March 2015

### Introduction

Under the Childcare (Disqualification) Regulations 2009 (“the 2009 Regulations”), made under the Childcare Act 2006 (“the 2006 Act”), individuals may be disqualified from providing certain early and later years childcare or being directly concerned with the management of that provision, where they are included in the Children’s Barred List, have committed certain violent and sexual criminal offences or because of certain orders or determinations made in relation to the care of children, childcare and private fostering.

The criteria for disqualification are explained further in the following pages and in the Department for Education’s statutory advice [Disqualification under the Childcare Act 2006](#) (“the DfE statutory advice”), a copy of which is enclosed/available in the school office for your reference.

Schools are required to ensure relevant staff (including those undertaking training in schools (both salaried and unsalaried), casual workers and volunteers) are made aware of this legislation, including that they may be disqualified ‘by association’ where they live in the same household as a disqualified person or in a household in which a disqualified person is employed. Schools must ensure they do not knowingly employ a person who is disqualified.

You have been asked to complete this self-declaration form because your role is considered to be covered by the legislation. If you have any questions regarding the requirements of this form or relevant information, please talk to your school in the first instance. You may also seek advice from the Schools’ Choice HR Casework Team on 03456 066046 (option 3) or [hr@schoolschoice.org](mailto:hr@schoolschoice.org).



## Disqualification criteria

The criteria for disqualification under the 2006 Act and 2009 Regulations include:

- a. Inclusion on the Disclosure and Barring Service (DBS) Children's Barred List;
- b. Being found to have committed certain violent and sexual criminal offences against children and adults which are referred to in regulation 4 and Schedules 2 and 3 of the 2009 Regulations (note that regulation 4 also refers to offences that are listed in other pieces of legislation);
- c. Certain orders made in relation to the care of children which are referred to in regulation 4 and listed at Schedule 1 of the 2009 Regulations (*in relation to England, the only relevant order for these purposes is a Care Order under the Children Act 1989, or equivalent under previous legislation*);
- d. Refusal or cancellation of registration relating to childcare\*, or children's homes, or being prohibited from private fostering\*\*, as specified in Schedule 1 of the 2009 Regulations;
- e. Living in the same household where another person who is disqualified lives or is employed (disqualification 'by association') as specified in regulation 9 of the 2009 Regulations;
- f. Being found to have committed an offence overseas which would constitute an offence regarding disqualification under the 2009 Regulations if it had been done in any part of the United Kingdom.

Relevant offences and orders are listed in Table A and B of the DfE statutory advice. However, the above list and the DfE statutory advice are not comprehensive. Further details about the specific orders and offences which will lead to disqualification are set out in the 2009 Regulations: [The Childcare \(Disqualification\) Regulations 2009](#).

\*Except if the refusal or cancellation of registration is in respect of registration with a child minder agency or the sole reason for refusal or cancellation is failure to pay a prescribed fee under the 2006 Act (Regulation 4(1) of the 2009 Regulations).

\*\* Pursuant to legislation references in paragraph 17 of Schedule 1 to the 2009 Regulations.



## What you need to do

At the end of this form, you are asked to make a self-declaration regarding any disqualification under the Childcare Act 2006. Before completing this declaration, you should note **the following are not covered by the legislation and therefore do not need to be disclosed:**

### a. Cautions dated before 6 April 2007

### b. In relation to anyone living or employed in your household, spent criminal convictions, cautions or youth cautions

The Rehabilitation of Offenders Act 1974 (ROA) allows criminal convictions, cautions, and youth cautions (formerly reprimands and final warnings) to be considered spent after a specified period of time known as the rehabilitation period, which is decided by the sentence or disposal received. Such offences do not need to be disclosed in relation to anyone living or employed in your household.

Sentences of over 48 months and public protection sentences (regardless of the length of sentence) can never become spent and guidance on the ROA is available [here](#). The vast majority of roles in schools and relevant childcare settings are exempt from the ROA, under the Rehabilitation of Offenders Act 1974 (Exceptions Order 1975 (amended in 2013)). This means you should still disclose any relevant offences that you have committed which meet the disqualification criteria above.

### c. Protected cautions or protected convictions

Under an amendment to the ROA made on 29 May 2013, certain old and minor cautions and spent convictions are 'protected'. They are not subject to disclosure under the Exemptions Order and will not appear on any standard or enhanced disclosure certificate issued by the Disclosure and Barring Service (DBS). Generally, this covers convictions which are over 11 years old (or over 6.5 years old if committed under the age of 18) for which a custodial sentence was not ordered, and cautions which are over 6 years old (or over 2 years old if committed under the age of 18). However some serious offences, such as violent and sexual offences, will never be protected. Guidance provided by the DBS: [DBS Filtering Guide](#) will help you understand the old and minor cautions and convictions that do not need to be disclosed.

You should also note, in order for the school to consider any disqualification 'by association', you are asked to provide relevant information about anyone who lives or is employed in your household, to the best of your knowledge. The nature of your relationship with any person living or employed in your household will determine the level of any enquiry you are able to make. Information shared by a person living or employed in your household should only be provided to the school where it is relevant to the criteria for disqualification described above and having advised the person that the information will be shared with the school for the purposes of determining any disqualification 'by association' under the Childcare Act 2006.

The DfE statutory advice does not define "employed in" the household. We interpret this to mean employment with some degree of regularity and permanency. We do not expect occasional work (for example, window cleaning, household repairs, garden maintenance, etc) to be covered by the 2006 Act.

## Self-declaration:

I have read and understood the disqualification criteria and other information on this self-declaration form, referring to the DfE statutory advice and 2006 Act and 2009 Regulations as necessary, and confirm that:

*Please delete as appropriate, either:*

I am not disqualified under the 2006 Childcare Act, including 'by association'.

Or

I believe I may be disqualified under the 2006 Childcare Act, for the following reason(s):

*Please provide details of relevant offence, order or determination. You may wish to provide a copy of relevant documentation. However, this is not a requirement. If you are considering providing any additional documentation, please consider first whether this would result in you sharing additional sensitive personal data which is not relevant to the 2006 Act.*

I understand:

- I must notify my school immediately of any change in circumstances that may affect disqualification under the 2006 Childcare Act, including any new caution, reprimand or warning for a relevant offence
- That failure to complete this declaration accurately to the best of my knowledge or failure to notify the school of any relevant change in my circumstances is likely, for employees, to be regarded as gross misconduct and will be dealt with under the appropriate policy. In the case of volunteers/others, any such failure is likely to result in no longer being offered voluntary/casual work or other arrangements for training, etc
- That this form and any record of subsequent considerations regarding disqualification under the 2006 Act will be retained securely by the school and managed in accordance with the provisions of the Data Protection Act 1996. A note of the date and outcome of the school's check regarding any disqualification will be made on the school's Single Central Record. Any personal data I provide that is considered not relevant to the 2006 Act will be securely destroyed by the school.

Signed:

Name:

Role:

Date:

January 2015

Integrated Community Paediatric Services  
571 St Helen's House  
Heath Road  
Ipswich  
IP3 8LX

[www.suffolkcommunityhealthcare.com](http://www.suffolkcommunityhealthcare.com)

To All Children's Centres and Schools

Dear Sir or Madam,

Suffolk Community Healthcare has a policy in place to undertake appropriate DBS and safeguarding checks for ALL staff who work with children.

Our staff are not permitted to commence work until a check has been completed and a satisfactory DBS report received within the HR department.

All Suffolk Community Healthcare staff have photo ID which they carry with them at all times, you are at liberty to refuse access to your site if staff do not have a valid ID card.

Staff from the following NHS services in Suffolk Community Healthcare are employed by South Essex Partnership University NHS Foundation Trust and may access schools for the delivery of health care (as part of ongoing assessment or treatment for individual or groups of children).

- Community Paediatricians and members of the medical team (including Specialist Nurses and Audiologists)
- Paediatric Speech and Language Therapy
- Paediatric Occupational Therapy
- Paediatric Physiotherapy
- Child and Family Psychological Therapy Service
- Children's Community Nursing Team

A number of queries have been raised recently by schools as a result of the new childcare disqualification requirements. Advice has been sought from OFSTED and the local authority regarding this and the Schools Choice team in Suffolk County Council has also sent advice regarding this.

Schools and Early Years settings do not need to ask the above staff to complete a declaration from as part of the childcare disqualification requirements. Schools should ensure that the employing health organisation carries out relevant checks for its employees in the same way that it does for other agency staff or contractors and this letter serves to offer that assurance.

As an NHS employer we must assess whether or not the childcare disqualification regulations apply to the particular work its employees are undertaking in schools. Our understanding is that health care for a child is excluded from the definition of "childcare" under childcare disqualification requirements.

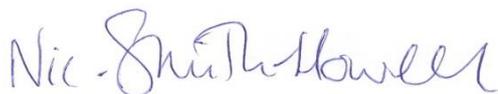
As our staff are providing health care only, when visiting the school, they will not be covered by the Regulations and as such we do not need to complete the disqualification questionnaire for our staff working in these settings.

If you have any general queries in relation to staff identity please contact the HR team on 01375 364507. You can also contact the service directly or Nic Smith-Howell on 01473 321253 if you would like further clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'G Brice'.

Gillian Brice  
**Human Resources Locality Manager**

A handwritten signature in blue ink, appearing to read 'Nic Smith-Howell'.

Nic Smith-Howell  
**Associate Director of Integrated Community Paediatric Services**  
**Suffolk Community Healthcare**