

ATL ADVICE



Disqualification by Association

The DfE has amended its guidance on disqualification by association, also known as disclosure by association, with effect from February 2015. This factsheet aims to explain that guidance

The Department for Education's original guidance was issued in October 2014 and stated that those working with children under eight in a school environment can be disqualified from doing so because of certain issues with members of their household, an extension of provisions relating to the disqualification of childcare providers. It is possible to apply to Ofsted for a waiver from disqualification.

ATL accepts that in some situations a person may be unsuitable to work with children because a person close to them may have excessive (and potentially harmful) influence over that individual, thus potentially exposing children to a risk of harm. However, in the vast majority of cases the convictions, warnings or cautions of a partner or other member of a household has no bearing whatsoever on the suitability of someone to work with children.

The document issued by the DfE is statutory guidance.

This factsheet is intended to explain the current position. If you have concerns about your own situation please contact the ATL London office (details below) to speak to a member adviser or speak to your local ATL representative. We appreciate that often the information involved is highly sensitive and any query will be treated with the utmost confidence.

What is the guidance?

The guidance – Disqualification under the Childcare Act 2006 – was published in February 2015. It applies to members of school staff who:

- teach or provide childcare during and outside school hours for children up to the age of five.
- provide childcare in a school setting, but outside of school hours, for children up to the age of eight.

However, the guidance doesn't apply to someone working with over-fives and under-eights if they are just teaching them.

School staff covered by the guidance may be judged unsuitable to work with children (as defined above) if the following is true of someone in their household:

- They have been convicted/cautioned for certain sexual and/or violent offences (see relevant offences below).
- Their children have been subject to certain court orders.
- They have been disqualified from private fostering.

Essentially, if someone in your household is disqualified or would be from registration as a childcare provider you may also be disqualified by association.

The legislation applies to agency staff and volunteers as well as staff employed by a school. With regard to agency staff, the obligation to have fulfilled the requirements of the legislation is on the agency that employs them. Schools must obtain confirmation that agencies have done so.

The legislation does not apply to governors.

Will I have to complete a declaration form?

It is not a specific requirement of the guidance that declaration forms are completed. Paragraph 21 of the guidance states:

“It is not necessary for schools to ask staff to complete a self-declaration form to obtain this information and about whether a staff member is disqualified.”

The DfE make it clear that if such forms are used the questions posed must be relevant and limited to the requirements of the legislation. Employees cannot be required to disclose spent convictions or cautions (see below) relating to individuals who live in the same household as them. Further, information can only be provided to the best of the employee's knowledge. If you have concerns about a form you have been asked to complete please contact ATL's London office or your local ATL representative.

If my employer does ask me to complete a form can I refuse to complete it?

First, you should draw your employer's attention to the guidance and, specifically, paragraph 21 quoted above. If the school insists on you completing a form, our advice is to do so, otherwise you may be disciplined for failing to follow a reasonable management instruction. If you do not know the answer to a question, mark it as 'don't know'. The declaration should state that the information is correct "to the best of my knowledge".

Schools must also comply with the Data Protection Act 1998. Any information must be kept to a minimum, be accurate and stored for the minimum period necessary. Substantive details of criminal records checks should not be retained and information that is not relevant should be destroyed.

What is meant by household?

The guidance is unclear but taking the natural meaning of the word it would include someone you house-share with. Ofsted has indicated that they consider a person to live on particular premises when that is their sole or main residence.

My partner was convicted of a relevant offence 20 years ago. Do I still have to declare it?

The Rehabilitation of Offenders Act 1974 provides that spent convictions do not have to be declared by prospective employees. Those in education are specifically outside the act but employees cannot be required to disclose spent convictions or cautions relating to individuals who live in the same household.

What are the relevant offences?

Relevant offences include murder, rape, manslaughter, kidnapping, false imprisonment, grievous bodily harm (GBH), actual bodily harm (ABH), indecent assault and a number of sexual and violent offences against children. A comprehensive list can be found in tables 4 and 5 of Ofsted's handbook available at: www.gov.uk/government/publications/compliance-investigation-and-enforcement-handbook-childcare.

What happens if I am disqualified under these provisions?

If you are disqualified by association you can apply to Ofsted for a waiver. The guidance states that your employer should look to redeploy you, even moving you to another school; if appropriate and possible. If an employee cannot be redeployed they should be placed on special paid leave – **not** suspended.

The guidance is available at:

www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006.



Need advice?

Your first point of contact is the ATL rep in your school/college. Your local ATL branch is also available to help, or you can contact ATL's member advisers on 020 7930 6441, email info@atl.org.uk. Don't forget there's lots more advice on ATL's website at www.atl.org.uk.

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