Disqualification by Association

Introduction

The DFE have now updated the supplementary guidance they issued to schools back in October 2014. This followed pressure from ATL and other unions after widespread misinterpretation of the original guidance by employers.

This briefing is aimed specifically at school leaders in England, and compliments the information set out in the recent ATL factsheet (ADV79) on this matter: http://www.atl.org.uk/publications-and-resources/factsheets/disqualification-by-association.asp

The relevant law is the Childcare Act 2006 and the Childcare (Disqualification) Regulations 2009. A copy of the updated guidance can be found here: https://www.gov.uk/government/publications/disqualification-under-the-childcare-act-2006

What is Disqualification by Association?

Members of school staff in certain categories covered by the Regulations will be unsuitable to work with children (i.e. they will be disqualified by association) if any of the following is true of someone in their household:

- has been cautioned for or convicted of certain violent and sexual criminal offences against children and adults (including offences committed overseas);
- is on the DBS children's barred list;
- is subject to certain orders made relating to the care of children (including where an order is made in respect of a child under the person's care);
- has had registration refused or cancelled (except where the sole reason is non-payment of fees) in relation to childcare or children's homes or has been disqualified from private fostering.

The purpose is to guard against an individual working with young children who may be under the influence of a person who lives with them and where that person may pose a risk to children 'by association'.

What are the relevant offences?

Relevant offences include murder, rape, manslaughter, kidnapping, false imprisonment, GBH, ABH, indecent assault and a number of sexual and violent offences against children. A list of the relevant offences and orders can be found in the updated guidance.

Which staff are covered by the regulations?

Staff (including volunteers) working in any of the following childcare settings are covered by the rules on disqualification by association:

- those who work in early years provision (including teachers and support staff working in school nursery and reception classes) for children up to 5 years of age by 1 September;
- those who provide any supervised activity to children up to 5 years of age during school hours, such as lunchtime supervision,
- those who provide any supervised activity outside of school hours for children who have not attained the age of 8 (including before school settings, such as breakfast clubs, and after school provision);
- those who are directly concerned in the management of the above (including school leaders).

Staff who do not provide childcare in any of these relevant settings, or who do not mange such provision, are not covered by the rules. This means that staff who are employed as caretakers, cleaners, office or catering staff who do not provide childcare are not covered by the rules.

Similarly, staff involved in health care provision, including school nurses, are not providing childcare so are not covered by the rules.

School governors or proprietors are not covered by the legislation unless they volunteer to work in a relevant childcare setting on a regular basis.

What does this mean for my school?

A school employer is responsible for ensuring that staff have had all the appropriate checks.

As a school leader, you need to be confident that your existing employees working in these relevant childcare settings have provided the relevant information, not only about themselves but also about a person who lives or works in the same household as them.

What should I do?

If you have not already done so, you should make your staff aware of the requirements. This can be done, for example, by making sure that your safeguarding policy includes information about disqualification by association; and drawing this to your staff's attention.

Staff should tell you, to the best of their knowledge, whether or not anyone in their household has any convictions for any of the relevant offences (see above). It is not necessary to ask your staff to complete a checklist or declaration form as this is not a legal requirement; and may result in non relevant information being provided that breaches the requirements of the Data Protection Act and/or the Rehabilitation of Offenders Act.

You should also ensure that your staff appointment procedures make clear the legal requirements.

If you ever use agency staff or other third party staff to work in a relevant childcare setting, then it is the responsibility of the organisation that provides the staff to ensure compliance with the legislation. However you still need to know they have done the appropriate checks by asking them for confirmation.

Keeping records

You must keep a record of the staff that work in a relevant childcare setting. This includes recording when staff were made aware of the rules, and who carried out the checks. Ofsted will check such records as part of their inspection process. However, you should take care not to store personal data about household members without their consent.

What about spent convictions?

Under the Rehabilitation of Offenders Act, convictions and cautions can be considered spent after a certain period of time, depending upon the offence. Employees cannot be asked to disclose spent cautions and convictions relating to individuals who live or are employed in the same household as them.

If someone is disqualified

If an individual meets the criteria for disqualification by association, you should:

- Inform Ofsted (using disqualification@ofsted.gov.uk)
- Inform the individual that Ofsted have been notified; and stop them from working in the relevant childcare setting (or managing such provision). This can be achieved by moving them to other duties or giving them special paid leave. You should not suspend anyone because they meet the criteria for disqualification by association.
- Explain that they can apply for a waiver of disqualification from Ofsted, making clear what information the individual will need to share. Further details about how to make an application for a waiver can be found in the Ofsted fact sheet: *Applying to waive disqualification: early years and childcare providers*.

If a waiver has been granted, the individual can return to their normal role. If a waiver is not granted then the possibility of permanent redeployment should be your first consideration, but clearly they must not be employed in a relevant childcare setting.

Sources of help

Further help on applying the law can be obtained from the Department for Education by sending an email to: mailbox.disqualification@education.gsi.gov.uk

Additional advice may also be available from your local authority designated officer (LADO).

For information on data protection you can contact the Information Commissioner's office: https://ico.org.uk/

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