

Millbrook Primary School and Nursery



Safer Recruitment and Selection Policy including Volunteers

Date policy created: February 2022

Policy review period: 1 year

Date of next review: January 2023

CONTENTS

- 1. Aims**
 - 2. Advertising**
 - 3. Application forms**
 - 4. Shortlisting**
 - 5. Seeking references and checking employment history**
 - 6. Interview and selection**
 - 7. Pre-appointment vetting checks**
 - 8. New staff**
 - 9. Existing staff**
 - 10. Agency and third-party staff**
 - 11. Contractors**
 - 12. Trainee/student teachers**
 - 13. Volunteers**
 - 14. Governors**
 - 15. Staff working in alternative provision settings**
- Appendix 1 – Recruitment of ex-offenders**
- Appendix 2 – Information about recruitment checks**
- Appendix 3 – Childcare Disqualification Requirements**

1. Aims

The aim of this policy is to ensure that we recruit suitable people to work with children and young people here at Millbrook Primary School and Nursery, and to ensure that those involved in the recruitment and employment of staff to work with children have received appropriate safer recruitment training. This policy is fully compliant with Keeping Children Safe in Education 2021.

We have put the following steps in place during our recruitment and selection process to ensure we are committed to safeguarding and promoting the welfare of children.

2. Advertising

When advertising roles, we will make clear:

- Our school's commitment to safeguarding and promoting the welfare of children
- That safeguarding checks will be undertaken
- The safeguarding requirements and responsibilities of the role, such as the extent to which the role will involve contact with children
- Whether or not the role is exempt from the Rehabilitation of Offenders Act 1974 and the amendments to the Exceptions Order 1975, 2013 and 2020. If the role is exempt, certain spent convictions and cautions are 'protected', so they do not need to be disclosed, and if they are disclosed, we cannot take them into account (refer to Appendix 1 for further details)

We will use the following statement in all posts involving regulated activities with children:

"Millbrook Primary School & Nursery is committed to safeguarding and promoting the welfare of children and young people and expects all staff and volunteers to share this commitment. Appointment to this post is subject to an enhanced Disclosure and Barring Service check as well as other pre-appointment checks outlined in Keeping Children Safe in Education (September 2021). Please note that all positions within the school are exempt from the provisions of the Rehabilitation of Offenders Act 1974. All applicants must therefore declare all previous convictions and cautions, including those which would normally be considered "spent" except those received for an offence committed in the United Kingdom if it has been filtered in accordance with the DBS filtering rules. Please refer to our Safer Recruitment Policy (Appendix 1) for further details."

3. Application forms

We are required to use the application form provided by Telford and Wrekin Council. This form should:

- Include a statement saying that it is an offence to apply for the role if an applicant is barred from engaging in regulated activity relevant to children (where the role involves this type of regulated activity)
- Include a copy of, or link to, our child protection and safeguarding policy and a link to our Safer Recruitment Policy

The application form will include:

- personal details, current and former names, current address and national insurance number
- details of their present (or last) employment and reason for leaving
- full employment history, (since leaving school, including education, employment and voluntary work) including reasons for any gaps in employment

- qualifications, the awarding body and date of award
- details of referees/references (see below for further information); and
- a statement of the personal qualities and experience that the applicant believes are relevant to their suitability for the post advertised and how they meet the person specification.

We will not accept copies of curriculum vitae in place of an application form.

If the application has been completed electronically, the shortlisted candidates will be asked to wet sign their application at interview.

4. Shortlisting

We have a robust shortlisting process in place, which always involves at least 2 people and will:

- Consider any inconsistencies and look for gaps in employment and reasons given for them
- Explore all potential concerns
- Identify if the applicant meets the criteria e.g., minimum experience requirement, qualification requirement and tailored application showing an understanding of the school/working with children
- Consider whether an applicant has had multiple jobs in a short space of time
- Explore rationale for significant changes in role and/or pay scale
- Check the application has been fully completed
- Evidence provided relating to the job description and person specification

Once we have shortlisted candidates, we will ask shortlisted candidates to:

- Complete a self-declaration (also known as a self-disclosure form) of their criminal record or any information that would make them unsuitable to work with children, so that they have the opportunity to share relevant information and discuss it at interview stage. The information we will ask for includes:
 - If they have a criminal history
 - Whether they are included on the barred list
 - Whether they are prohibited from teaching
 - Information about any criminal offences committed in any country in line with the law as applicable in England and Wales
 - Any relevant overseas information
- Sign a declaration confirming the information they have provided is true. Where there is an electronic signature, the shortlisted candidate should physically sign a hard copy of the application at the point of interview.
- The purpose of a self-declaration is so that candidates will have the opportunity to share relevant information and allow this to be discussed and considered at interview.

Those who are responsible for shortlisting will also be part of the interview panel.

5. Seeking references and checking employment history

We aim to obtain references before interview. Any concerns raised will be explored further with referees and taken up with the candidate at interview.

References are obtained and provided in accordance with paragraphs 204-205 KCSIE 2021. When seeking references, we will:

- Not accept open references
- Liaise directly with referees and verify any information contained within references with the referees
- Ensure any references are from the candidate's **current employer** and completed by a senior person. Where the referee is school based, we will ask for the reference to be confirmed by the headteacher/principal as accurate in respect to disciplinary investigations
- Obtain verification of the candidate's most recent relevant period of employment if they are not currently employed
- Secure a reference from the relevant employer from the last time the candidate worked with children if they are not currently working with children
- Ask whether aware of any behaviour that may give rise to concern in regards to suitability to work with children
- The reason for the candidate leaving their post is obtained from their referees
- Compare the information on the application form with that in the reference and take up any inconsistencies with the candidate
- Contact referees to clarify content where information is vague or insufficient information is provided
- Always verify any information with the person who provided the reference
- Resolve any concerns before any appointment is confirmed
- Electronic references will be verified.

We will always ask referees to confirm whether they are satisfied with the applicant's suitability to work with children and provide the facts (not opinions) of any substantiated safeguarding allegations but should not include information about allegations which are unsubstantiated, unfounded, false, or malicious.

6. Interview and selection

We adopt selection techniques that help us to identify the most suitable person for the post. When interviewing candidates, we will pre-set a selection of questions and possible answers, which will be scored accordingly. Our questioning structure will always include the following:

- what attracted the candidate to the post
- motivation for working with children
- explore their skills relevant to role, probing gaps in employment or frequent changes to employment or location.

We will also:

- Probe any gaps in employment, or where the candidate has changed employment or location frequently, and ask candidates to explain this
- Explore any potential areas of concern to determine the candidate's suitability to work with children

- Record all information considered and decisions made

All potential areas for concern are explored at interview.

Where possible, pupils are involved in the recruitment processes.

All offers of appointment are conditional until satisfactory completion of the mandatory pre-employment checks (see below). Candidate's identification is verified, including, where possible, checking the name on their birth certificate.

Any decision not to appoint somebody because of their conviction(s) will be clearly documented. This decision will be made in line with our safer recruitment policy on ex-offenders (see appendix 1).

7. Pre-appointment vetting checks

We will record all information on the checks carried out in the school's single central record (SCR). Copies of these checks, where appropriate, will be held in individuals' personnel files. We follow requirements and best practice in retaining copies of these checks, as set out below. To find out more about the checks carried out, please refer to appendix 2 and 3.

8. New staff/volunteers

All offers of appointment will be conditional until the receipt of cleared enhanced DBS and satisfactory completion of the necessary pre-employment checks. When appointing new staff, we will:

- Verify their identity
- Obtain (via the applicant) an enhanced DBS certificate, including barred list information for those who will be engaging in regulated activity (see definition below). We will obtain the certificate before appointment commences. Currently, Telford and Wrekin Council do not accept a DBS check via the update service. We will not keep a copy of the certificate for longer than 6 months, but when the copy is destroyed, we may still keep a record of the fact that vetting took place, the result of the check and recruitment decision taken
- Verify their mental and physical fitness to carry out their work responsibilities
- Verify their right to work in the UK. We will keep a copy of this verification for the duration of the member of staff's employment and for 2 years afterwards
- Verify their professional qualifications, as appropriate
- Ensure they are not subject to a prohibition order if they are employed to be a teacher
- Carry out further additional checks, as appropriate, on candidates who have lived or worked outside of the UK. Where available, these will include:
 - For all staff, including teaching positions: [criminal records checks for overseas applicants](#)
 - For teaching positions: obtaining a letter of professional standing from the professional regulating authority in the country where the applicant has worked

We will ensure that appropriate checks are carried out to ensure that individuals working in EYFS, wraparound care and extended provision, are not disqualified under the 2018 Childcare Disqualification Regulations and Childcare Act 2006. Where we take a decision that an individual falls outside of the scope of these regulations and we do not carry out such checks, we will retain a record of our assessment on the individual's personnel file. This will include our evaluation of any risks and control measures put in place, and any advice sought. For further information about Childcare Disqualification requirements, please refer to appendix 3.

Regulated activity means a person who will be:

- Responsible, on a regular basis in a school or college, for teaching, training, instructing, caring for or supervising children; or
- Carrying out paid, or unsupervised unpaid, work regularly in a school or college where that work provides an opportunity for contact with children; or
- Engaging in intimate or personal care or overnight activity, even if this happens only once and regardless of whether they are supervised or not

9. Existing staff

In certain circumstances we will carry out all the relevant checks on existing staff as if the individual was a new member of staff. These circumstances are when:

- There are concerns about an existing member of staff's suitability to work with children; or
- An individual moves from a post that is not regulated activity to one that is; or
- There has been a break in service of 12 weeks or more

We will refer to the DBS anyone who has harmed, or poses a risk of harm, to a child or vulnerable adult where:

- We believe the individual has engaged in [relevant conduct](#); or
- We believe the individual has received a caution or conviction for a relevant (automatic barring either with or without the right to make representations) offence, under the [Safeguarding Vulnerable Groups Act 2006 \(Prescribed Criteria and Miscellaneous Provisions\) Regulations 2009](#); or
- We believe the 'harm test' is satisfied in respect of the individual (i.e. they may harm a child or vulnerable adult or put them at risk of harm); and
- The individual has been removed from working in regulated activity (paid or unpaid) or would have been removed if they had not left

We will consider referring a case to the Secretary of State if we dismiss or cease to use the services of a teacher because of serious misconduct. We will also consider a referral if we might dismiss them, or cease to use their services should they have not left first.

10. Agency and third-party staff

We will obtain written notification from any agency or third-party organisation that it has carried out the necessary safer recruitment checks that we would otherwise perform. We will also check that the person presenting themselves for work is the same person on whom the checks have been made.

11. Contractors

We will ensure that any contractor, or any employee of the contractor, who is to work at the school has had the appropriate level of DBS check (this includes contractors who are provided through a PFI or similar contract). This will be:

- An enhanced DBS check with barred list information for contractors engaging in regulated activity
- An enhanced DBS check, not including barred list information, for all other contractors who are not in regulated activity but whose work provides them with an opportunity for regular contact with children

We will obtain the DBS check for self-employed contractors.

We will not keep copies of such checks for longer than 6 months.

Contractors who have not had any checks will not be allowed to work unsupervised or engage in regulated activity under any circumstances.

We will check the identity of all contractors and their staff on arrival at the school.

For self-employed contractors such as music teachers or sports coaches, we will ensure that appropriate checks are carried out to ensure that individuals are not disqualified under the 2018 Childcare Disqualification Regulations and Childcare Act 2006. Where we decide that an individual falls outside of the scope of these regulations and we do not carry out such checks, we will retain a record of our assessment. This will include our evaluation of any risks and control measures put in place, and any advice sought.

12. Trainee/student teachers

Where applicants for initial teacher training are salaried by us, we will ensure that all necessary checks are carried out.

Where trainee teachers are fee-funded, we will obtain written confirmation from the training provider that necessary checks have been carried out and that the trainee has been judged by the provider to be suitable to work with children.

In both cases, this includes checks to ensure that individuals are not disqualified under the 2018 Childcare Disqualification Regulations and Childcare Act 2006.

13. Volunteers/work experience placements

We will:

- Never leave an unchecked volunteer/visitor unsupervised or allow them to work in regulated activity
- Obtain an enhanced DBS check with barred list information for all volunteers who are new to working in regulated activity
- Carry out a risk assessment when deciding whether to seek an enhanced DBS check without barred list information for any volunteers not engaging in regulated activity. We will retain a record of this risk assessment
- Ensure that appropriate checks are carried out to ensure that individuals are not disqualified under the 2018 Childcare Disqualification Regulations and Childcare Act 2006. Where we decide that an individual falls outside of the scope of these regulations and we do not carry out such checks, we will retain a record of our assessment. This will include our evaluation of any risks and control measures put in place, and any advice sought

14. Visitors

The school has a policy for visitors.

The school does not request DBS checks or barred list checks, or ask to see existing DBS certificates, for visitors such as children's relatives or other visitors attending events.

Visitors who attend in a professional capacity have their ID checked and assurance is sought that the visitor has had the appropriate DBS check (or confirmation is sought from the visitor's employers that their staff have appropriate checks).

Consideration should be given to the suitability of any external organisations visiting the setting.

The Headteacher uses their professional judgment about the need to escort or supervise visitors.

15. Governors

All governors are required to undertake regulated activities with children, and therefore will have an enhanced DBS with barred list checks, which also includes a Section 128 (as a section 128 direction disqualifies an individual from being a maintained school governor).

All proprietors, trustees, local governors and members will also have the following checks:

- Identity
- Right to work in the UK
- Other checks deemed necessary if they have lived or worked outside the UK

16. Staff working in alternative provision settings

Where we place a pupil with an alternative provision provider, we obtain written confirmation from the provider that they have carried out the appropriate safeguarding checks on individuals working there that we would otherwise perform. The school remains responsible for the safeguarding of that pupil.

APPENDIX 1 – RECRUITMENT OF EX-OFFENDERS – POLICY AND PROCEDURE

The school will not unfairly discriminate against any applicant for employment based on conviction or other details disclosed. The school makes appointment decisions based on merit and ability. If an applicant has a criminal record this will not automatically bar them from employment with the school. Each case will be decided on its merits in accordance with the objective assessment criteria.

All positions within the school are exempt from the provisions of the Rehabilitation of Offenders Act 1974. All applicants must therefore declare all previous convictions and cautions, including those which would normally be considered "spent" except those received for an offence committed in the United Kingdom if it has been filtered in accordance with the DBS filtering rules.

A failure to disclose a previous conviction (which should be declared) may lead to an application being rejected or, if the failure to disclose is discovered after employment has started, may lead to summary dismissal on the grounds of gross misconduct.

A failure to disclose a previous conviction may also amount to a criminal offence.

It is unlawful for the school to employ anyone who is barred from working with children.

It is a criminal offence for any person who is barred from working with children to apply for a position at the school.

The school will make a report to the Police and / or the DBS if:

- it receives an application from a barred person
- it is provided with false information in, or in support of an applicant's application; or
- it has serious concerns about an applicant's suitability to work with children.

Assessment criteria In the event that relevant information (whether in relation to previous convictions or otherwise) is volunteered by an applicant during the recruitment process or obtained through a disclosure check, the School will consider the following factors before reaching a recruitment decision:

- whether the conviction or other matter revealed is relevant to the position in question
- the seriousness of any offence or other matter revealed
- the length of time since the offence or other matter occurred
- whether the applicant has a pattern of offending behaviour or other relevant matters
- whether the applicant's circumstances have changed since the offending behaviour or other relevant matters; and the circumstances surrounding the offence and the explanation(s) offered by the applicant

If the post involves regular contact with children, it is the school's normal policy to consider it a high risk to employ anyone who has been convicted at any time of any of the following offences:

- Rape
- Incest
- Unlawful sexual intercourse
- Other serious sexual offences
- Indecent assault
- Gross indecency
- Taking or distributing indecent photographs
- Violent behaviour towards children or young people
- A sexual, or otherwise inappropriate relationship with a pupil (regardless of whether the pupil is over the legal age of consent)
- A sexual offence against someone over the age of 16

- Murder
- Manslaughter
- Grievous bodily harm
- Any offence involving serious violence
- Drug trafficking and other serious drug related offences
- Stealing school property or monies
- Deception in relation to employment as a teacher or at a school, for example false claims about qualifications, or failure to disclose past convictions
- Any conviction which results in a sentence of more than 12 months imprisonment
- Repeated misconduct or multiple convictions unless of a very minor nature.
- Robbery
- Burglary
- Theft
- Fraud

If the post involves access to money or budget responsibility, it is the School's normal policy to consider it a high risk to employ anyone who has been convicted at any time of robbery, burglary, theft, deception or fraud.

If the post involves some driving responsibilities, it is the School's normal policy to consider it a high risk to employ anyone who has been convicted of drink driving [within the last ten years].

Assessment procedure

In the event that relevant information (whether in relation to previous convictions or otherwise) is volunteered by an applicant during the recruitment process or obtained through a disclosure check, the school will carry out a risk assessment by reference to the criteria set out above. The risk assessment must be discussed and agreed with Human Resources before a position is offered or confirmed.

If an applicant wishes to dispute any information contained in a disclosure, they may do so by contacting the DBS.

In cases where the applicant would otherwise be offered a position were it not for the disputed information, the school may, where practicable and at its discretion, defer a final decision about the appointment until the applicant has had a reasonable opportunity to challenge the disclosure information.

Retention and security of disclosure information

The school's policy is to observe the guidance issued or supported by the DBS on the use of disclosure information. In particular, the school will:

- store disclosure information and other confidential documents issued by the DBS in locked, non-portable storage containers, access to which will be restricted
- not retain disclosure information or any associated correspondence for longer than is necessary, and for a maximum of six months.

The school will keep a record of the date of a disclosure, the name of the subject, the type of disclosure, the position in question, the unique number issued by the DBS and the recruitment decision taken;

- ensure that any disclosure information is destroyed by suitably secure means such as shredding; and prohibit the photocopying or scanning of any disclosure information without the express permission of the individual to whom the disclosure relates.

If a DBS Certificate reveals any convictions, the person concerned will be invited to attend an interview with the Headteacher and, where appropriate HR, to discuss the conviction(s) and circumstances. Following this meeting a risk assessment will be carried out and a decision made and communicated back to the person concerned. For safer recruitment purposes, until this decision has been made the applicant should not commence employment.

It may be necessary at times to update the records of existing employees. Existing employees who are found to have criminal records will not be dismissed as a matter of course. Each case will be considered on its merits, and an assessment of risk and relevance will be involved.

The school has adopted the Disclosure and Barring Service's Code of Practice on the use and handling of Disclosure information, and will adhere to it under all circumstances.

A copy of the code is available from Schools HR on request.

APPENDIX 2 – INFORMATION ABOUT RECRUITMENT CHECKS

DBS

What is it?

An enhanced Disclosure and Barring Service (DBS) check is a check on someone's **criminal** record.

It includes:

- Spent and unspent convictions
- Cautions
- Reprimands
- Final warnings

It also includes any other information local police consider relevant to working in a school.

Enhanced DBS checks don't include a barred list check unless you specify that you need one – see the section below for more on this.

Why do we need it?

DBS checks help you:

- Determine whether someone is allowed to work with children (through the barred list)
- Comply with childcare disqualification requirements (more on this below)
- Find out whether someone has committed offences that suggest they aren't suitable for a role

Read our article to find out who needs a DBS check.

How do we do it?

If you do **fewer than 100** checks a year, you need to use an 'umbrella body'.

If you do **100 or more** checks a year, you can use an umbrella body **or** register with the DBS.

If a candidate needs a DBS check, you must obtain it before you appoint them, or as soon as you can afterwards. This includes when you're using the DBS Update Service (see below for more on this).

To conduct the check:

1. Ask your umbrella body or the DBS for an application form
2. Give the form to the applicant to fill in
3. Collect the completed form from the applicant, along with documents proving their identity
4. Send the completed application to the umbrella body or DBS
5. Ask the applicant to show you the DBS certificate (it will be sent to them directly)

Can we use the DBS Update Service?

It's good practice to require new staff to join the DBS Update Service.

If the applicant is already subscribed to the service, you can use it to conduct a status check if you:

- Have seen their original DBS certificate
- Have confirmed their identity
- Have their consent to conduct the check
- Are conducting the same type and level of DBS check as they've had before

Individuals can join the service before or during their DBS application process, or just after their certificate is issued.

If they do, you'll be able to use the service later in their employment if you need to (for example, to help you do a childcare disqualification check). To help someone join the service:

- Direct them to the Update Service website
- Give them their application form reference number or application e-reference number (for applications submitted electronically)
- Send the completed application within 28 days of the applicant joining the service; or
- Tell the applicant they can join the service with their DBS certificate number up to 30 days from the date the certificate was issued

This is set out in the [DBS Update Service employer guide](#).

Barred list

What is it?

The DBS maintains lists of people who are barred from working with children and vulnerable adults.

A barred list check looks at whether someone is included on the barred list relevant to your setting. In most schools, this will be the children's barred list.

Why do we need it?

Barred list checks **must** be carried out on anyone at your school who:

- Is engaging in regulated activity
- Has worked in a post in a school or college that brought them into regular contact with children or young people which ended 3 months or less before they were appointed

See our article linked to above for more information on this.

It's an offence to employ someone to carry out regulated activity if they're on the barred list.

Because only certain kinds of convictions automatically lead to barring, a serious offence listed on a DBS certificate doesn't necessarily mean that person is barred. You need to conduct both checks on relevant people to make sure you're compliant.

How do we do it?

You can conduct a barred list check:

- As part of an enhanced DBS check
- Separately, through your umbrella body or the [DBS](#)

Prohibition from teaching

What is it?

A [prohibition from teaching check](#) shows whether a teacher:

- Is prohibited from teaching (permanently or temporarily)
- Is subject to sanctions or restrictions (these usually prevent a teacher from working in **maintained** schools, according to the [Teaching Regulation Agency](#))

[Teacher Services](#) enables you to do this check, and also shows whether a teacher:

- Has the right qualifications for the role
- Has qualified teacher status (QTS)

- Failed probation or induction
- Was subject to a misconduct investigation that **did not** result in a prohibition order

Why do we need it?

You're required to conduct prohibition from teaching checks on any member of staff appointed to carry out teaching work (as per paragraph 213 and 235 of [Keeping Children Safe in Education](#)).

Teachers in maintained schools and non-maintained special schools **must** have [QTS](#). Checking also makes sure you comply with this requirement.

A key aspect of this check is to do with **professional misconduct and suitability**, so it helps you make a fully informed decision about whether someone is right for your school.

How do we do it?

To conduct the check:

- Confirm the applicant's identity
- Log on to the Teacher Services section of the DfE's [Sign-in portal](#)

You can search for records in 2 ways:

- Using a teacher reference number and date of birth
- Searching alphabetical lists of teachers and others with current prohibitions, restrictions and/or sanctions, or who have failed induction/probation

Childcare disqualification

What is it?

A check to make sure that people who have committed relevant offences aren't:

- Providing childcare or education to children in the early years (including reception classes), or managing such childcare or education
- Providing before or after-school care to children under the age of 8, or managing such provision

Information about childcare disqualification, and a list of relevant offences, is [available here](#).

Why do we need it?

It's an offence to employ someone in a relevant role if they're disqualified.

Childcare disqualification information **isn't** noted on a DBS certificate in the same way as barring information, and not every offence that leads to childcare disqualification will necessarily lead to barring. So you won't know if someone is disqualified unless you do a separate check.

How do we do it?

Cross-reference the results of a DBS check with the list of relevant offences (see the appendices document at the link above), even for internal candidates.

If an applicant has subscribed to the DBS Update Service, you can use that (with their permission – see the first section of this article for more about this service) – cross-reference their original certificate against the relevant offences and use the status check to check for any since then.

Section 128

What is it?

A section 128 check identifies people who are subject to a section 128 direction.

People with a section 128 direction can't:

- Hold a management position in an academy, free school or independent school (as an employee)
- Be an academy or free school trustee or member
- Be a governor on any academy or free school board that has delegated responsibilities
- Be a governor or member of the proprietor body of an independent school
- Sit on the governing board of a maintained school

Why do we need it?

Academy trusts **must** conduct them on certain people.

KCSIE also says that maintained schools **should** carry out checks on their governors. However, we recommend you treat this as a 'must'.

We explain why, and set out how these checks complement DBS checks, in [another article](#).

How do we do it?

The article linked above explains how to conduct a check for:

- New appointments that require a barred list check
- New appointments that **don't** require a barred list check
- Existing staff, governors, trustees and members

APPENDIX 3 – CHILDCARE DISQUALIFICATION REQUIREMENTS

People who have been convicted of certain offences are disqualified by law from providing child-care.

You must make sure that you're not recruiting, or redeploying, someone who's disqualified into a role regulated by the childcare disqualification regulations. It's an offence if you knowingly do so.

Which offences disqualify someone?

The list of offences and orders that result in disqualification is included in guidance published by the DfE (see the appendices for a full list).

Disqualification by association no longer applies in schools

Previously, people working in schools could be disqualified by association if they lived with someone who was disqualified. Since 31 August 2018, this no longer applies to schools.

You shouldn't ask staff questions about cautions or convictions of someone living or working in their household.

If you've previously collected information about disqualification by association from staff, you no longer have a legal basis to hold this information and should dispose of it securely.

Who the regulations apply to

The regulations apply to all staff in all schools who work in, or are directly concerned with managing:

- Early years provision (birth until 1 September following a child's fifth birthday)
 - It covers staff who provide any care for a child up to and including reception age
 - It includes education in nursery and reception classes, and/or any supervised activity (such as breakfast clubs, lunchtime supervision and after-school care provided by the school) both during and outside school hours for children in the early years age range
- Later years provision (for children under 8)
 - It covers staff who work in childcare provided by a school outside school hours for children under 8, including before-school settings such as breakfast clubs, and after-school provision
 - It does not include education or supervision during school hours, or extended school hours for co-curricular learning activities such as the school's choir or sports teams

Use your judgement to determine who's included in the management aspect of the criteria. It will always include the headteacher, and could include other members of the leadership team and any manager, supervisor, leader or volunteer responsible for the day-to-day management of the provision. It doesn't include governors or trustees.

The regulations also apply to:

- Volunteers and casual workers who regularly work in, or manage, these settings, whether they're supervised or not
- Any self-employed contractors (such as music teachers or sports coaches) in relevant settings
- Any salaried trainee teachers (training providers are responsible for conducting the relevant checks on unsalaried trainees)

They don't apply to:

- Staff who only provide education, childcare or supervision for children above reception age during school hours
- Staff who only provide childcare or supervision out of school hours for children aged 8 or over
- Most staff who are not employed to directly provide childcare such as caretakers, cleaners, drivers, catering and office staff
- Most staff who are only occasionally deployed and not regularly required to work in the relevant settings
- People involved in any form of health care provision, including school nurses and speech and language therapists

If a member of staff takes on new duties that involve child care in the relevant settings you will need to run a childcare disqualification check. Review this with your designated safeguarding lead (DSL) or HR provider on a case by case basis.

Third-party staff

Where you use third-party staff, you must get confirmation from the agency you use that it has:

- Informed its own staff it's an offence to work in a relevant setting, or be involved in its management, while disqualified from doing so
- Asked its own staff (where the staff will be working in a relevant setting in the school) to inform the agency if they consider that they could be disqualified

The local authority is responsible for making sure any of its staff who are deployed to work in settings covered by the regulations are not disqualified, including peripatetic music teachers and specialist special educational needs teachers.

How to conduct a childcare disqualification check

New staff

- Ask for an up-to-date enhanced DBS certificate (with barred list check for those who will engage in regulated activity)
- Conduct any other relevant recruitment checks (such as checks for staff who have lived or worked overseas)
- Cross-reference the results of the checks with the list of relevant offences that would disqualify someone

Your safer recruitment lead should be trained to help you spot red flags in the recruitment process. Our Safeguarding Training Centre has a 1-hour safer recruitment eLearning module designed to help you run robust and compliant recruitment rounds (you may have to upgrade your membership to get access).

Existing staff

If you're redeploying existing staff into roles regulated by the childcare disqualification requirements:

- You may need to conduct updated recruitment checks and cross-reference the results with the list of relevant offences that would disqualify someone. You could use the DBS Update Service to get updated checks (if the staff member is registered)

KCSIE 2021 (paragraph 327) says that if a staff member is moving from a post that was not regulated activity with children into work which is regulated activity with children, you must carry out the appropriate checks.

How to prevent unsuitable candidates from applying

Reduce the risk that someone who is disqualified will apply for a regulated role in your school by:

- Making clear on your application form what recruitment and safeguarding checks will be conducted
- Explaining to the applicant what the safeguarding responsibilities of the post are, and the school's commitment to safeguarding
- Explaining to applicants that it's an offence to provide or manage childcare covered by these regulations if they're disqualified
- Displaying your child protection policy, and policy on employment of ex-offenders on your school's website, or in the application pack
- Seeking references before the interview so that you have a chance to discuss any areas of concern with the candidate
- Asking shortlisted candidates to complete a self-declaration of their criminal record or information that would make them unsuitable to work with children, before the interview

Our template application form includes sample wording you can use.

How to maintain your records once you've recruited someone

Keep a record of when you completed childcare disqualification checks, and process these records in line with data protection regulations (i.e. you have to have a legal basis for processing the data and all processing must be in line with the data protection principles).

You don't have to include these checks on your single central record, though many schools choose to do so.

What to do if someone is disqualified

If you learn that someone working in a relevant setting or role is disqualified you should:

- Remove them from that role immediately
- Inform Ofsted at disqualification@ofsted.gov.uk
- Tell the staff member that they can apply to Ofsted for a waiver unless:
 - They're on the children's or adult's barred lists
 - They committed an offence against a child as defined by section 26(1) of the Criminal Justice and Courts Services Act 2000 and the court has ordered that they're disqualified

Tell them that when they apply for a waiver, they should provide Ofsted with the following information (if they know it):

- Details of the grounds for disqualification under the 2018 regulations (including any orders, determinations, cautions, or convictions)
- The date of the order, determination, caution, or conviction, or the date when the other ground for disqualification arose
- The body or court which made the order, determination, caution or conviction, and the sentence imposed (if any)
- A certified copy of the relevant order

The individual must not continue to provide early or later years childcare provision or provide or be directly concerned in the management of such provision until they have received a waiver.

While you wait for someone to apply for their waiver, take advice from your HR provider, your LA designated officer and safeguarding lead on:

- Whether it's appropriate to redeploy staff elsewhere in the school, or to make adjustments to their role to avoid them working in regulated roles or settings
- Where you can't make alternative arrangements, whether to grant paid leave or similar, or suspend the member of staff while waiting for the waiver (this should be a last resort)

If they don't apply for a waiver, or a waiver is declined

Consider and make decisions about:

- Whether the person can be permanently redeployed
- The appropriateness of redeployment
- Whether steps should be taken to legitimately terminate their employment

The information above is taken from DfE guidance on the Childcare Disqualification Act 2006 and Ofsted's guidance on applying to waive disqualification.

