



Audit and Standards Committee Report

Report of: Gillian Duckworth, Monitoring Officer

Date: 17 May 2019

Subject: Childcare Disqualification

Author of Report: Kirsty Surtees, HR Service Manager

Summary:

This report

- Provides the Audit and Standards Committee with information on the changes to the Childcare Disqualification Regulations .
- Recommends an amendment to the Code of Conduct

Recommendations:

It is recommended that the Audit and Standards Committee:

- Note the information on the Childcare Disqualification Regulations changes since August 2018
- Accept the recommended changes to the Code of Conduct

Background Papers: Attached

Category of Report: OPEN

Statutory and Council Policy Checklist

Financial Implications
NO
Legal Implications
YES - Cleared by: Nadine Wynter
Equality of Opportunity Implications
NO
Tackling Health Inequalities Implications
NO
Human rights Implications
NO:
Environmental and Sustainability implications
NO
Economic impact
NO
Community safety implications
NO
Human resources implications
NO
Property implications
NO
Area(s) affected
None
Relevant Cabinet Portfolio Member
Councillor Olivia Blake, Cabinet Member for Finance
Is the item a matter which is reserved for approval by the City Council?
NO
Press release
NO

CHILDCARE DISQUALIFICATION

1. Introduction

The childcare disqualification arrangements apply to individuals working in childcare in schools and the private and voluntary sectors, up to and including reception classes, and in wraparound care for children up to the age of 8.

Under the Childcare (Disqualification) Regulations 2009, any individual who has committed a relevant offence as set out in the legislation, or who is in breach of other criteria is prohibited from working in childcare settings, this includes schools and other education settings.

The Regulations also included provisions that disqualified an individual from working in a childcare setting because of an offence committed by someone who lives or works in their household, this is disqualification 'by association'. This meant that a member of staff may be unable to work in childcare even though they themselves had not committed a relevant offence.

The Council has a Code of Conduct that sets out the minimum standards that all Council employees must keep to. This Code of Conduct is part of employees terms and conditions of employment. Section 16 covers criminal convictions and barring and sets out the requirements relating to Childcare Disqualification.

2. Background

The Code of Conduct sets out:

That certain cautions, convictions, care orders may mean that an employee is automatically disqualified from working in childcare roles as part of early or later years childcare provisions, or those directly involved in the line management of such provision. Employees may also be disqualified by association if any member of their household has such a caution, conviction or order.

The requirement for those working in a relevant childcare role to complete a childcare disqualification declaration in relation to themselves and anyone living or working in their household that confirms they are not disqualified from working in such provision either directly or 'by association'.

The requirement that employees advise their manager immediately if there are any changes either related to themselves or members of their household that would lead to their disqualification under the Childcare Disqualification Regulations 2009, either directly or by association.

3. Disqualification criteria

The criteria for disqualification under the 2006 Act and the 2018 Regulations include:

- Inclusion on the Disclosure and Barring Service (DBS) Children's Barred List

- 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 2018 Regulations certain orders made in relation to the care of children which are referred to in regulation 4 and listed at Schedule 1 of the 2018 Regulations
- Refusal or cancellation of registration relating to childcare (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 2018 Regulations)), or children's homes, or being prohibited from private fostering , as specified in paragraph 17 of Schedule 1 of the 2018 Regulations
- 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 2018 Regulations (note that regulation 9 only applies where childcare is provided in domestic settings, defined as 'premises which are used wholly or mainly as a private dwelling' in section 98 of the Act, or under a domestic premises registration, including non-domestic premises up to 50% of the time)
- Found to have committed an offence overseas, which would constitute an offence regarding disqualification under the 2018 regulations if it had been committed in any part of the United Kingdom

4. Reasons for amendments to the Code of Conduct

Where an individual is disqualified, either directly or by association they cannot work in childcare. Individuals can obtain a waiver from Ofsted against their disqualification. Employers must suspend or redeploy the individual until a waiver is granted, as individuals who are disqualified cannot work in childcare without an Ofsted waiver. These requirements led to concerns that the disqualification by association provision was having a detrimental impact on employers and employees, as well as family life. It was also perceived as having a negative impact on the rehabilitation of offenders.

In response to widespread concerns about the disqualification by association provision, the Department for Education undertook a public consultation on options for its reform. The consultation strongly favoured reform, and the majority of respondents advocated the removal of disqualification by association in non-domestic settings.

As a consequence the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 were implemented on 31 August 2018. This removed the disqualification by association where childcare is provided in non-domestic settings.

The disqualification by association provision however continues to apply where childcare is provided in domestic settings.

The changes now require the Council to remove any requirements for employees to provide any information in relation to disqualification by association from the Code of Conduct.

5.

Recommendations

It is recommended that the Audit and Standards Committee:

- Note the information on legislative changes
- Agree the proposed changes to the Code of Conduct as defined in Appendix A

Extract from the Code of Conduct with tracked changes

16.0 CRIMINAL CONVICTIONS/ BARRING

16.1 Before you started working for us, you must have told us about any unspent criminal convictions, formal cautions, warnings, reprimands, binding over or other orders, pending prosecutions or criminal investigations.

If you applied for a role, which involves working with children and vulnerable adults and your job is covered by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended by the 2013 Amendment Order. You must have told us about all convictions, formal cautions, warnings, reprimands, binding over or other orders, pending prosecutions or criminal investigations that are not 'protected' as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended by the 2013 Amendment Order, before you started working for us.

For information on which convictions are protected visit www.gov.uk/dbs and <http://hub.unlock.org.uk/knowledgebase/filtering-cautions-convictions/> If you do not have internet access or do not understand what this means to you please discuss this with your line manager.

You must tell us about :

- Cautions relating to [specified offences](#) as listed by Government
- Cautions given less than 6 years ago (where individual over 18 at the time of caution)
- Cautions given less than 2 years ago (where individual under 18 at the time of caution)
- Convictions relating to [specified offences](#) as listed by Government
- Convictions that resulted in a custodial sentence (regardless of whether served)
- Convictions given less than 11 years ago (where individual over 18 at the time of conviction)
- Convictions given less than 5.5 years ago (where individual under 18 at the time of conviction)
- Similar offences committed under the law of Scotland, Northern Ireland or laws relevant to the armed services.

16.2 If you are required, under the Act, to provide us with your Disclosure and Barring Service (DBS) Certificate, we will ask you to:-

- Complete a DBS Application Form
- Or give written permission for us to check your status on-line

- Or give permission for us to view your personal file of a previous/other role within the Council to check the outcome from a recent Enhanced DBS check.

You must bring in your DBS Certificate to show and discuss with us, when required

- 16.3 If you have been barred from working with children and/or vulnerable adults and you seek employment to do so, this is a criminal activity and against the law and you will be dismissed without notice and immediately reported to the Police Authority.
- 16.4 If your work involves driving, you must tell your manager about any driving offences, or pending driving offences.
- 16.5 If you use your own vehicle for Council Business and carry passengers, you must also tell your manager about any driving offences or pending driving offences.
- 16.6 When employed by us, you must tell your manager, if you have any criminal proceedings pending against you, if you are bound over, receive a conviction, formal caution, reprimand or warning.
- 16.7 Once employed by us, you must tell your manager immediately, if you know that you are on, or will appear on, one or both of the DBS barred lists.
- 16.8 If you do not tell us about these convictions, formal cautions, warnings, reprimands, binding over or other orders, pending prosecutions or criminal investigations, this may be treated as possible gross misconduct and might lead to disciplinary action – including the possibility of dismissal without notice.
- 16.9 If you work with young people or vulnerable adults and you believe that you are or might be thought of as a risk to these groups it is extremely important that you seek advice from your manager. If you do not disclose this, this may be treated as possible gross misconduct and might lead to disciplinary action – including the possibility of dismissal without notice.
- 16.10 If you work in a childcare role, as part of early or later years childcare provisions, or are directly involved in the line management of such provision, you must not be disqualified from working in such provision. Certain cautions, convictions, care orders may mean that you are automatically disqualified from such work.
- 16.11 You must complete a childcare disqualification declaration in relation to yourself and discuss with us when required.
- 16.12 You must tell your manager immediately, if you receive any convictions, cautions or other orders that may lead to your disqualification under the Childcare (Disqualification) Regulations 2009.

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