**DISQUALIFICATION or RISK BY ASSOCIATION**

Children Act 2006 (section75)

and the

Childcare (disqualification) regulations 2009 (updated 2018)

Disqualification under the Child Care Act still applies to staff themselves who work in a childcare capacity, whether paid, volunteer or are on work placements. This also includes staff who are self-employed or peripatetic.

Relevant staff are those working in childcare, or in a management role because they are: working with reception age children at any time; or working with children older than reception until age eight, outside school hours.

Employers are to address the disqualification criteria if the member of staff is living in the same household where another person who is disqualified i.e., convicted of an offence included in the 2009 regulations, lives or is employed. Any other staff member that does not fall into the early years (until age eight) criteria are not to be asked if they live in the same household as anyone who has been disqualified or convicted of a relevant offence. Employers are to ensure safe recruitment processes and code of conduct expectations are in place.

An employee will be disqualified if: -

1. They have been cautioned for, or convicted of certain violent or sexual offences against adults and any offences against children

2. They are the subject of an Order, direction or similar in respect of childcare, including orders made in respect of their own children

3. They have had registration refused or cancelled in relation to childcare of children’s homes or have been disqualified from private fostering

A person who is disqualified may not:

• Provide relevant childcare provision;

or

• Be directly concerned with the management of such provision

If a member of staff falls under one of the disqualification criteria they can apply to Ofsted for a waiver of disqualification. Whilst the application is submitted and until Ofsted have responded the member of staff must not work directly with children.

Risk in relation to safeguarding concerns involving family members and/or associates of individuals to which disqualification by association applies should be fully assessed. (For example, someone who works in a school whose partner has sexual convictions involving a child). Reporting such concerns to the organisation where the person works, or a LADO, will ensure that enquiries are undertaken to review whether the association poses any risk towards children through their work.

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| **DISQUALIFICATION or RISK BY ASSOCIATION**  **RISK ASSESSMENT** |
| Name of Member of staff and role: Date of assessment:  Person completing assessment and role:  Setting details: |
| 1. Record the details of who and how this member of staff in connected to someone who poses a risk to children within their workplace. (record context e.g., how you were informed and circumstances) |
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| 2. Detail what the risks are and the response from the MOS (e.g. record conviction/date, when MOS became aware and insight) |
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| 3. Evaluate the risks and outline any mitigating factors (e.g. refer to code of conduct, view of MOS record, awareness of impact on role, reputational risk for setting and safety plans e.g. no info at home) |
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| 4. Analysis of your findings and risk management (e.g. able or unable to safeguard appropriately, make sound judgements and follow procedure) |
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| 5. Outcome and rationale |
| **Substantiated** – there is sufficient identifiable information to prove the allegation – this did happen. Employer to refer to DBS  **False** – there is sufficient evidence to disprove the allegation  **Malicious** – there is clear evidence to prove there has been a deliberate act to deceive and the allegation has been entirely false  **Unfounded** – there is no evidence or proper basis which supports the allegation being made. It might indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively, they may not have been aware or all the circumstances  **Unsubstantiated** - An unsubstantiated allegation is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence. |
| 5. Recommendations |
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| 6. Member of staffs comments regarding the findings of the risk assessment. |
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| 7. Signatures and Review date |
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