Childcare workers: changes to disqualification arrangements

Response of the Association of School and College Leaders

1 The Association of School and College Leaders (ASCL) represents more than 18,500 education system leaders, heads, principals, deputies, vice-principals, assistant heads, business managers and other senior staff of state-funded and independent schools and colleges throughout the UK. ASCL members are responsible for the education of more than four million young people in more than 90 per cent of the secondary and tertiary phases, and in an increasing proportion of the primary phase. This places the association in a strong position to consider this issue from the viewpoint of the leaders of schools and colleges of all types.

2 ASCL welcomes this consultation as we understand that the current childcare disqualification arrangements have led to a significant number of staff in school and other non-domestic registered settings being suspended for issues completely unrelated to child safety. This has included long serving staff who pose no risk to children. It seems that this is because the legislation was designed for people caring for children in their own homes not for schools.

3 In canvassing opinion to make this consultation response we emailed our elected Council of serving school and college leaders; 100% of the 16 members who replied said they were in support of Option 1.

4 **We strongly support Option 1 to remove disqualification by association for all childcare workers in schools and non-domestic registered settings.**

5 We support Option 1 because:

- The Childcare Act 2006 was not designed with schools in mind but to protect children cared for by child minders in their own homes and the current arrangements are clearly not appropriate in the school context.
- The current arrangements have not been shown to make children any safer and are actually diverting time and resources away from the real job of safeguarding children.
- Schools should be using their resources to tackle the real safeguarding threats to the children and young people in their care.

6 We do not think that 'childcare' for the purposes of the Act should have been defined to include education. It is our understanding that there is no record of Parliament ever debating the impact this would have on schools when passing the Act which is confirmed by the fact that these duties were not picked up until 2014. Similarly the Childcare (Disqualification) Regulations 2009, were also designed not for schools.

7 The link as to how children will be further protected has not been made. The effect of these arrangement is that innocent staff, regardless of their length of service, who have already been risk-assessed by school leaders and who have demonstrated no risk to children, are being suspended for issues completely unrelated to child protection. In many cases the headteacher will already be aware of the background

and will have carried out a full risk assessment; others relate to historic cautions or convictions of a partner, adult, child, parent, lodger or flatmate where the link to children is tenuous.

8 Since it was discovered that these rules related to school staff in 2014 hundreds of innocent staff – including teachers – have been or are currently suspended from their jobs while they wait for Ofsted to consider their case for a waiver. We understand that some staff have chosen to resign rather than face the embarrassment of suspension and subsequent waiver application process. This is diverting much needed time and resources from the real safeguarding issues in schools.

9 While suspended staff wait for Ofsted to issue waivers schools have to redeploy or suspend staff on full pay which again diverts much needed funds away from schools.

With reference to your specific questions

Question 1
Do you consider the current disqualification by association arrangements to be unfair and disproportionate to the risk to children?

10 Yes.

Question 2
Which of the three options set out in this consultation, if any, do you think best achieves the objective of protecting children whilst making the regime fairer?

11 Option 1

Question 3
Do you support the proposal in option 1, that we should remove completely disqualification by association for childcare workers in non-domestic registered settings?

12 Yes

In the event that Option 1 is not successful we make the following points:

13 The guidance should not use the word ‘suspension’ for staff applying for a waiver. Staff that cannot be redeployed should be put on special paid leave. A ‘suspension’ could have negative impact on their reputation in the school and within the community and may also show up in future requests for references etc.

14 The requirement to “ask staff” should be removed from statutory guidance. The legislation does not require schools to actively make enquiries of staff (verbally or in writing) and the statutory guidance should not over-extend the law. We would expect staff to declare only if they know of any reasons why they may be disqualified.

15 Ofsted waivers should be portable from institution to institution. Once an individual is granted a waiver it should be portable, for historic cautions/convictions.

16 ‘Relevant information’ needs greater clarity. Exactly what information schools require should be specified in the guidance, for example does the relevant individual in the household need to be named? We are concerned that if the name is required schools

will be holding sensitive personal data of a third party for which they will require the consent of that third party.

17 The list of offences covered is long and complex and ranges from convictions for serious sexual offences against children to cautions for offences against adults. Similarly the rules for determining which cautions and convictions are exempt is extremely complex. The guidance should add a definitive and clear list of offences as an appendix rather than referring to Ofsted. The link opens up a series of documents and it is confusing.

18 Greater clarity on spent and unspent convictions is required and guidance on how schools deal with this information. The law on this is really complicated and a clear explanation is required. We are also concerned that schools will not be entitled to know about some unspent convictions but staff or third parties may not know if a conviction is spent or not. Clarity on what schools must do with information about a spent conviction once they know about it is also needed.

19 Clarity on which staff are “employed” is needed. It is still not clear which staff are included. For example supply teachers are often not technically employed, although some will be. Schools need to be able to make clear distinctions.

20 Clarity on the meaning of ‘directly managed’. This is very unclear and needs to be properly defined. We need to understand the position of the executive head of a trust, the headteacher of secondary school federated with a primary school, a headteacher of a primary school and any others in managerial positions within each school. We think the guidance should make clear that ‘directly manage’ means those persons in regular direct contact with children.

21 Clarity is required on what constitutes 'after school care'.

22 Paragraphs 13 to 21 make a further case for Option 1; these difficult issues will not need to be resolved if option 1 is adopted and the requirement removed for schools and other non-domestic settings. Such a removal will not weaken safeguarding – on the contrary, by refocussing efforts onto areas that actually do make a difference to child safety it would strengthen safeguarding.

23 I hope that this is of value to your consultation, ASCL is willing to be further consulted and to assist in any way that it can.

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