

Applying to waive disqualification: early years and childcare providers

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Introduction

Some people are disqualified from providing, being involved in the management of, or being employed in, early years provision and childcare. These people may, in some circumstances, apply to Ofsted for a decision to waive their disqualification. This factsheet sets out how we deal with requests to waive disqualification. In particular, it sets out:

- when people may apply to us to waive their disqualification
- the process for doing this and;
- how to appeal if we refuse an application to waive disqualification.

What a disqualified person must not do

A person who is disqualified must not:

- provide, or be directly concerned in the management of, any early years or childcare provision; this includes childminders, childcare providers, schools who offer such provision
- register, manage, have a financial interest in or be employed at a children's home
- foster a child privately.

It is an offence for someone who provides early years or childcare provision to knowingly employ someone who is disqualified.

How do I know if I am disqualified?

You **may** be disqualified from registration if you, or a person who lives with you, have been:

- found to have committed a relevant offence against a child¹
- made subject to an order or determination removing a child from your care or preventing a child from living with you

¹ Found to have committed means a person has been a) convicted of an offence; b) found not guilty of an offence by reason of insanity; c) found to be under a disability and to have done the act charged against them in respect of such an offence; or d) on or after 6 April 2007, given a caution in respect of an offence by a police officer after admitting that offence. A person is found to have committed an offence that is 'related to' an offence if that person has been found to have committed an offence of a) attempting, conspiring or incitement to commit that offence; or b) aiding, abetting, counselling or procuring the commission of that offence (The Childcare (Disqualification) Regulations 2009). 'Given a caution' includes a reprimand or warning for an offence (Childcare Act 2006, section 75(6)).

- found to have committed certain offences against an adult; for example, murder, kidnapping, rape, indecent assault, or assault causing actual bodily harm
- charged with certain offences against an adult, or an offence that is related to another offence, and had a relevant order imposed
- included on the list of those who are barred from working with children, held by the Disclosure and Barring Service
- made the subject of a disqualifying order
- previously refused registration as a childcarer or have had registration cancelled, unless the cancellation was only for non-payment of fees for continued registration after 1 September 2008
- refused registration as a provider or manager of children's homes or have had registration cancelled.

You are disqualified if we refuse your application to register with us, or we cancel your registration, for any reason other than not paying your annual fee for continued registration. In these circumstances, you or any person making up the organisation that provides or intends to provide early years and childcare, will be disqualified, regardless of any waiver that we have previously granted. You can apply again to us to waive your disqualification, at any time, if you wish to register or perform other activities in the future from which you are otherwise disqualified in connection with childminding or childcare.

You are also disqualified if you live in the same household as another person who is disqualified or if you live in a household where a disqualified person is employed.

A full list of all the circumstances that disqualify people from working with children is available in the Childcare (Disqualification) Regulations 2009.² If you think that you, or a person connected to your provision (including potential employees), may be disqualified, you can contact us by email at disqualification@ofsted.gov.uk.³ We may be able to tell you if you are disqualified straightaway; if not, we may send you a form to fill in asking you for more information to allow us to decide.

Who can apply to us to waive their disqualification?

If you have been disqualified you can apply to us to waive the disqualification, if you:

- provide early years or childcare provision such as childminding, childcare on domestic or non-domestic premises, or such provision in a maintained or independent school or in an academy

² The Childcare (Disqualification) Regulations 2009 are available from: <http://www.legislation.gov.uk/uksi/2009/1547/contents/made>.

³ This email address is only for queries about disqualification; please do not use it to talk to us about anything else.

- are an employee of such a person
- want to join an organisation providing early years and childcare such as a committee member, director or partner.

You cannot apply if you:

- are included on the relevant list of those barred from working with children and vulnerable adults held by the Disclosure and Barring Service
- have committed an offence against a child within the meaning of section 26(1) of the Criminal Justice and Courts Services Act 2000 **and** the court has ordered that you are disqualified from working with children (under sections 28 (4) and 29, of the same Act).

We do not have the power to waive disqualification in these circumstances.

We also do not have power to waive the disqualification of people who work on early years and childcare premises, but who are not employed by the organisation running the provision.

Information for applicants for registration who are disqualified

If you know that you are disqualified and want to apply for registration as a childminder or childcare provider, we will only consider your application for registration if we have already decided to waive your disqualification. You must submit an application for registration at the same time as an application to have your disqualification waived.

If we decide to waive your disqualification, this does not automatically mean that we will grant your registration or that you are suitable to look after, or be in regular contact, with children. We will refuse to grant registration if, after carrying out our checks, we do not think you are suitable to provide childcare. This may be because of other factors or information unconnected with your disqualification.

Information for employers/potential employees who are, or who become, disqualified

If you want to become an employee of an organisation running early years or childcare provision, and you are disqualified, you must apply to us to waive your disqualification.

If you are an employer who wishes to employ someone who is disqualified, or you discover that an employee has become disqualified, then the disqualified person, not you as their employer, must apply to us to have their disqualification waived.

If you are an employee and we decide to waive your disqualification, it is then still your employer's decision whether or not to employ you. Your potential employer may decide not to employ you because of other factors relating to their own recruitment and staff retention procedures.

It is an offence for a person to employ someone whom they know to be disqualified from working with children. If you think that you, or a person you are considering employing, may be disqualified, you can contact us by email at disqualification@ofsted.gov.uk.

We take action to safeguard children where we find a disqualified person is providing or working in early years or childcare. Where the provision is registered with Ofsted, this can include taking steps to suspend a childminder's or childcare provider's registration or cancel a registration.

Information for those who are disqualified, joining an organisation which provides early years and childcare provision

If you want to join an organisation that is already providing early years and childcare and you are disqualified, for example, if you want to be a committee member, director or partner, you must apply to us for your disqualification to be waived. You should try to do so before you join the body, otherwise we may have to tell the person who represents the organisation to us that you are disqualified, but we will not tell them why. We will tell them of any decision we make about your application to waive disqualification. The organisation must then decide about your future role. If you continue to be part of the organisation, and we have not agreed to waive your disqualification then this will affect the organisation's suitability to provide early years and childcare.

We take action to safeguard children where we find a disqualified person is providing or employed in early years and childcare. Where the provision is registered with us, this can include taking steps to suspend a childminder's or childcare provider's registration or cancel a registration.

Information for early years and childcare providers on people living or working on the premises where early years or childcare takes place

We are responsible for making suitability decisions about those living or working on premises where childminding or childcare on domestic premises takes place, including those who work directly with children.

We expect early years and childcare providers on other premises to have similar robust vetting and recruitment procedures in place to ensure those who are employed on the premises where that provision takes place are suitable to work with, or be in regular contact, with children. Providers must ensure that any person not vetted is never left alone with children.

Ofsted cannot waive the disqualification of those people who live or work on early years and childcare premises who are not employed by the organisation running the provision. Therefore, the provider must take action to ensure that such people do not have contact with children.

Applying to us to waive your disqualification

If you are disqualified, you can request a form to apply to us to waive your disqualification by emailing disqualification@ofsted.gov.uk. You must complete the form and give us the required information in writing. We cannot agree to waive your disqualification on the strength of information you give over the telephone.

What do you do to consider a request to waive a disqualification?

We consider each request on its own merits, taking into account the reasons for your disqualification, the length of time since the matter took place that disqualifies you, the reasons why you believe we should waive your disqualification and any risks to children from allowing you to provide or work in early years and childcare provision. We may ask you for more information, or for your agreement to carry out further checks, or we may ask you to attend an interview before making our decision. We will notify you in writing of our decision.

If we decide to waive your disqualification, the letter we send you will explain the circumstances that apply to our decision. We may limit the decision to waive disqualification to one type of employment or to particular premises. You will need to keep this letter safe in case you need to show it to an inspector or to a new employer. This also applies to anyone connected with your application.

How to appeal if we refuse to waive your disqualification

You can appeal to an independent body, the First-Tier Tribunal (Health, Education and Social Care Chamber) (the Tribunal) against our decision to refuse an application to waive your disqualification. You must make an appeal in writing within 28 days of the date of our decision letter. You can obtain guidance on how to appeal from the tribunal by:

- writing to the secretary of the Tribunal at: First-tier Tribunal: Care Standards Appeals, Mowden Hall, Staindrop Road, Darlington, DL3 9BG
- telephoning 01325 392 712
- faxing 01325 391 045
- emailing CST@tribunals.gsi.gov.uk⁴
- website www.justice.gov.uk/contacts/hmcts/tribunals/care-standards

⁴ For now, the Chamber is not updating its email and website to reflect its new name.

The Tribunal's decision

The Tribunal's decision takes immediate effect. The Tribunal will confirm its decision in writing and tell you the reasons for the decision, including any right to review or appeal you may have against its decision, and how to do this.

More information

Useful addresses and contacts

- Ofsted
Piccadilly Gate
Store Street
Manchester
M1 2WD

Email: disqualification@ofsted.gov.uk
Website: <http://www.ofsted.gov.uk/>

- Family Information Services national helpline: 0800 298 9121:
www.familyinformationservices.org.uk/index.php?option=com_comprofiler&ask=userslist&listid=7&Itemid=72

Acts of Parliament and supporting legislation

You can find the Acts and other legislation mentioned in this leaflet online at www.opsi.gov.uk.

The Childcare Act 2006 and supporting regulations set out the requirements for registration for childminders and childcare:
<http://www.legislation.gov.uk/ukpga/2006/21/contents>.

Section 68 of the Children Act 1989 and the Disqualification from Caring for Children (England) Regulations 2002:
<http://www.legislation.gov.uk/uksi/2002/635/contents/made>.

The Childcare (Disqualification) Regulations 2009:
<http://www.legislation.gov.uk/uksi/2009/1547/contents/made>.

Section 33 of the Criminal Justice and Court Services Act 2000 gives the power of a senior court (Crown court and above) to make an individual the subject of a disqualification order if the court believes that a convicted individual will continue to be a risk to children: <http://www.legislation.gov.uk/ukpga/2000/43/contents>

Other Information

The Compliance, investigation and enforcement handbook:
www.ofsted.gov.uk/resources/ciehandbook.

If you are applying to be registered with us you can find out more information in:

- Guide to registration on the Early Years Register, Ofsted, 2014;
www.ofsted.gov.uk/resources/140063.
- Guide to registration on the Childcare Register, Ofsted, 2014;
www.ofsted.gov.uk/resources/120084.

The Disclosure and Barring Service is responsible for holding information about those who are barred from working with children and young people. More information is available from the authority's website:
<https://www.gov.uk/government/organisations/disclosure-and-barring-service>.

The First-Tier Tribunal (Health, Education and Social Care Chamber) is an independent body established under section 3 of the Tribunals, Courts and Enforcement Act 2007.