

## BRANSTON PRE-SCHOOL CENTRE

### DBS POLICY

Branston Pre-School complies fully with the DBS and any other relevant legislation, regarding the correct handling, use, storage, retention and disposal of Disclosures and Disclosure information.

All members of staff are required to have an enhanced DBS check carried out within their probationary period.

Any adult that does not have a DBS clearance will not have unsupervised access to the children in the setting.

A record is made of when the checks are requested from our provider (CAPITA) and regularly chased until a DBS disclosure is received back. This period is usually 4 to 6 weeks.

DBS disclosures would never normally be kept for longer than six months; the only exception to this would be if a member of staff challenged the reply received back. In the usual course of events on receipt of the DBS disclosure the date of issue, staff member's name, the unique reference number and recruitment decision is logged and the disclosure is shredded immediately. If a disclosure is revealed then this will be discussed with the staff member and referred to the Registered Provider. This information is stored in pre-school in a locked filing cabinet.

The Manager is the person authorised by CAPITA to check DBS request forms and the identification provided. The Manager is the nominated person to verify ID for completion of DBS applications via CAPITA for Ofsted.

Every year, in September, all staff are required to sign a form stating that nothing has happened in the previous twelve months which would stop them from receiving a satisfactory DBS check or from working with children. A check will be made via the update system to confirm. Staff and committee are also advised re Disqualification by Association and are required to confirm that they are not compromised in this respect at each declaration in line with Safeguarding Vulnerable Groups Act (2006). An additional check will be made via the update system to form part of the staff supervisions.

Members of the Committee are also required to have a DBS check carried out but this is carried out directly by CAPITA for OFSTED. Applications must be made immediately upon being voted on to the committee (usually at the AGM). The 'nominated person' (usually the Pre-School Manager) is authorised to check DBS request forms and the identification provided before it is sent to CAPITA for OFSTED. The suitability letter is received by the Nominated Person and the disclosure number is logged immediately upon receipt from OFSTED and once the nominated person has had sight of the original disclosure. Members of the committee are also required to complete a declaration annually, immediately after each AGM, stating that nothing has changed which would warrant a further DBS check. These are held securely in the setting. Committee members will not be privy to any information about children in the setting until their DBS is cleared.



## **Disqualification by Association – Guidance for Early Years Providers**

While the rules surrounding disqualification are outlined in the Childcare Act 2006 (section 75), the terminology used in the Early Years Foundation Stage (EYFS) has led to some confusion around disqualification. This is because paragraph 3.4 refers only to the registered provider.

The Childcare (Disqualification) Regulations 2009 make no distinction between a registered provider, childminder or employee, so apply to any person working with children in a setting. If providers have an employee that is living or working in the same household as somebody who would be disqualified (for example their partner, lodger or cleaner) then the employee will also be disqualified from working with children.

Providers have a responsibility to ensure staff are suitable to work with children and not disqualified. This means that providers will have to request that staff declare if they live in the same household as someone who is disqualified. Those that may be disqualified may apply to Ofsted for a “waiver” of disqualification but cannot work until such waiver is confirmed. Employers should seek advice from employment law specialists prior to taking any decision in respect of suspension.

### **Reasons for Disqualification:**

There are a number of reasons that a person may be disqualified from working with children, under the Childcare Act 2006. These may be grouped under the following general headings:

- Grounds relating to the care of children
- Offences against children
- Offences against adults
- Inclusion on the list held by the Disclosure and Barring Service
- Living on or working on premises where a disqualified person lives or where a disqualified person is employed. This includes a provider or a nursery worker living in a household with a person that is disqualified
- Having registration refused or cancelled (this does not apply to a person whose registration as a childminder or childcare provider is cancelled in England for non-payment of fee after 1 September 2008)
- Offences include those committed overseas that, had the offence been committed in the UK, would disqualify that person from registration, regardless of how the offence is described in the law of the other country.

A list of the offences and cautions for which a person may be disqualified can be found in Tables 4 & 5 in Ofsted’s Compliance, investigation and enforcement hand-book: childminding and childcare – disqualification:

<http://www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook-childminding-and-childcare>

## Checking suitability

It is essential that providers have robust systems in place to check staff members' suitability to work with and to continue working with children. At least one member of staff should have attended Safer Recruitment training. Checking staff suitability should not only be done during the recruitment and selection process, but should be an ongoing process that is embedded into your regular practice. You may do this through a specific question during staff supervisions and appraisals, or asking each member of staff if anything has changed in their personal circumstances that would affect their suitability to work with children. Providers may prefer to have a 'suitability questionnaire' that all staff and volunteers complete at regular intervals.

## Applying for a waiver

If a member of staff is disqualified from working with children (through an offence committed by them or because someone they live with is disqualified), then they would need to apply for a waiver from Ofsted to allow them to continue working with children. Application to have disqualification waived must be made by the disqualified person and not the employer. The setting must seek employment law advice about suspension of the employee until a waiver decision has been reached.

Each waiver application will be considered on its own merits, and a waiver may be granted with limitations, e.g. a waiver may apply to one particular type of employment or to particular premises. If a waiver is granted, then the employer must make a decision as to whether they wish to employ/continue employing this person.

Action the setting needs to take now:

- All relevant staff must be asked to complete a declaration as soon as possible, affirming that they are not disqualified. Settings should print the Schedules to the Regulations (which detail the disqualification orders, offences etc.) and make these available for staff (either with each form or in a central place) :

<http://www.legislation.gov.uk/ukxi/2009/1547/contents/made>

- Settings should seek employment law support immediately if they:
  - a. Know of anyone in their employment who is or may be disqualified
  - b. Receive a positive declaration from any member of staff.
- Anyone who is disqualified will need to be immediately suspended and OFSTED must be notified within 14 days. The setting confidentiality policy must be adhered to.

## Recruitment

All short-listed candidates in relevant settings, from this point onwards, must complete the declaration.

## **Frequently asked questions:**

### **Does disqualification by association apply to volunteers?**

Volunteers or casual workers who are directly concerned with the management of the childcare or who work on a regular basis, whether supervised or not, fall within the remit of Disqualification by Association and will be required to complete a declaration.

### **What does 'living in the same household' mean?**

The regulations state that a person can be disqualified by living in the same household as another person who is disqualified from registration, or lives in a household in which such person is employed. The Government use the following definition for household – one person or a group of people who have the accommodation as their only or main residence AND either share at least one meal a day, or share the living accommodation (living or sitting room). This includes spouse/partners, children including foster children, house share colleagues and lodgers. They do not need to be related to come under this definition. The occupant(s) of a bedsit (house of multiple occupancy) who do not share a sitting or living room with anyone else comprise a single household.

### **Do settings have any discretion to undertake a risk assessed approach in order to allow a member of staff to continue their current duties whilst we are awaiting decision on a waiver?**

No. It is an offence to knowingly employ a member of staff who is disqualified from working with children (through an offence committed by them or because someone they live with is disqualified). A risk assessment may be submitted to Ofsted as part of the consideration for a waiver decision, but the employee should not work pending this decision. Please seek advice from employment law specialists prior to taking any decision in respect of suspension.

### **Is a current DBS sufficient for existing staff or should the setting obtain a new one?**

There is no requirement to check DBS certificates for existing staff and self-declarations are acceptable.

### **How do employers check "householders"?**

It is not the employer's role to carry out a check on individuals other than those they employ, however employers should have effective systems in place to ensure that staff are suitable to work in childcare. Employees should be asked to provide the necessary information about any person who lives in the same household as them.

**Are people required to ask their householders if they are disqualified?**

No there is not a requirement for this. Staff are required to declare "to the best of their knowledge" and settings can accept declaration at face value.

**Are offences like GBH and ABH of adults included?**

Violent offences against adults which do not have a sexual element are not grounds for disqualification. So offences such as rape, sexual assault etc. would be covered.

**Who will check whether or not the provider has taken any action in respect of disqualification by association?**

Ofsted Inspectors will ask what steps a setting has taken to ensure no one is employed who may be disqualified.

**What about recruitment of new staff?**

Any shortlisted candidates must declare relevant information and this would need to be considered and discussed with the applicant. The setting could decide not to proceed with the application on the basis that the employee is disqualified or, proceed and, if they become the preferred candidate a conditional offer made and a waiver applied for. If the waiver is not granted, the conditional offer can be withdrawn.

**If a member of staff declares relevant information, how do they apply for a waiver?**

Please see Ofsted's "Applying to waive disqualification – A childcare factsheet". This sets out information for staff, circumstances in which a waiver can and cannot be applied for and the process for applying for a waiver. Remember that only the member of staff can apply for a waiver – you cannot make this application on their behalf.

<https://www.gov.uk/government/publications/applying-to-waive-disqualification-early-years-and-childcare-providers>