

Referrals to the Disclosure and Barring Service Policy and Procedure

Summary

The Disclosure and Barring Service (DBS), was set up in 2012 and merges the functions previously carried out by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA), manages the vetting and barring scheme and makes barring decisions. The DBS manage the two barred lists: those barred from working with children and those barred from working with vulnerable adults. To enable the DBS to make pertinent and relevant barring decisions the council has a duty to refer relevant information to the DBS.

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Who does this policy apply to?

All individuals working in a regulated activity. This also includes volunteers as well as paid staff.

What is the disclosure and Barring Service (DBS)?

The DBS are an independent body set up to assess people's suitability to work with children and vulnerable adults. From information referred to them, they make the decision to place, an individual on one or both of the barred lists – barred from working with children and barred from working with adults. Full information is available about referrals is available on the [DBS](#) website

What is the definition of a regulated activity if you worked with children?

You will be eligible for a DBS Disclosure with a barred list check if you undertake the following activities:-

- You undertake unsupervised activities which involves the teaching, training, instructing, caring for or supervising children or providing advice/guidance on well-being or driving a vehicle only for children. This only applies where the regulated activity is undertaken regularly.
- You work for an establishment (specified places) with opportunity for contact. This will include schools, children's homes, child care premises. This only applies where the regulated activity is undertaken regularly.
- You are providing personal care, e.g. washing, dressing or health care. You only have to do this activity once.
- You are applying to become a foster carer.

What establishments are covered under the definition of regulated activity for children?

An activity is considered a regulated activity if it is carried out in one of the following establishments and is undertaken regularly (see definition of regular below):-

- Schools.
- Sixth form colleges which are wholly or mainly for under 18 year olds.
- Pupil referral units (may also be known as short stay schools) including Gloucester Hospital Education centre

What is the definition of regular for regulated activity for children?

- Nursery schools
- Institutions for the detention of children
- Children's centres
- Child care premises
- Children's residential

The definition of regular is where a regulated activity is undertaken by the same individual as follows:-

- work undertaken once a week or more.
- work undertaken on four or more days in a 30 day period.
- work undertaken at least once, overnight and with the opportunity for face-to-face contact with children.

What is the definition of supervision for regulated activity for children?

The regulations say that supervision must be reasonable and should give managers the flexibility to determine what is reasonable in the circumstances. The precise nature of supervision will vary from case to case. However, supervision must be:-

- regular (on-going);
- day-to-day;
- reasonable in all circumstances for the purpose of protecting the children concerned;
- carried out by an individual who is engaging in regulated activity relating to children and has a DBS disclosure with a barred list check.

When considering what level of supervision is reasonable, your manager will consider the following:-

- the age of the children concerned;
- the number of children that you are working with;
- whether or not there are other carers/adults around;
- the nature of your work or contact with children;

What is the definition of a regulated activity for adults?

- the vulnerability of the children;
- the experience of, and the checks that have been carried out;
- the number of people being supervised.

The definition of regulated activity for adults no longer labels adults as vulnerable. It identifies the activities, which if the adult required them, means that the adult is considered vulnerable at that particular time.

You will be eligible for a DBS Disclosure with a barred list check if you undertake the following activities:-

- If you are a regulated health care professional providing health care or are acting under the direction or supervision of one.
- You provide personal care including assistance with washing, dressing, eating, drinking toileting or are teaching an adult to undertake these activities because of their age, illness or disability. The activities must relate to physical assistance. E.g. cooking for an adult is not physical assistance and would not fall under this area.
- You provide social work: provision of social care work which is related with any health services or social services. This includes assessing or reviewing the need for health or social care services, and providing ongoing support to clients.
- You provide assistance to an adult which involves managing their money, paying their bills or shopping on their behalf because of their age, illness or disability.
- You transport an adult for reasons of age, illness or disability between places where they have received or will receive health care, personal care or social care on behalf of an employer, provider or voluntary

	<p>organisation.</p> <p>There is no longer a requirement to do these activities a certain number of times before an employee is considered to be engaged in a regulated activity.</p>
What is the school's 'Duty to Refer'?	<p>The Safeguarding Vulnerable Groups Act (SVGA) 2006 sets a legal duty for regulated activity provider to refer individuals to the DBS for consideration for barring in certain circumstances and to provide information to the DBS upon request.</p> <p>For child safeguarding issues a referral would be via the Local Authority Designated Officer (LADO).</p>
What is a Regulated Activity Provider?	<p>A regulated activity provider is an organisation or individual that is responsible for the management or control of regulated activity and makes arrangements for people to work in such activities. This includes regulated activity which is paid or unpaid.</p>
When <u>must</u> a referral to the DBS be made?	<p>A referral must be made to the DBS if the following two conditions have both been met:-</p> <p>Condition one: you are dismissed or removed from working in a regulated activity with children and/or vulnerable adults. This also refers to situations where you have been moved to another area of work that is not a regulated activity. The duty to refer also applies where you would have been referred had you not left, retired, made redundant or resigned.</p> <p>Condition two: if you have:-</p> <ul style="list-style-type: none">• been cautioned or convicted for a relevant offence; or• engaged in relevant conduct in relation to children or vulnerable adults; or• satisfied the 'harm test' in relation to children or vulnerable adults.
What is relevant conduct?	<p>Relevant conduction is an action or inaction that has harmed or places harm on a child and/or vulnerable adult. This is:-</p>

- Conduct which endangers a child and/or vulnerable adult or is likely to endanger a child and/or vulnerable adult.
- Conduct which, if repeated against or in relation to a child and/or vulnerable adult would endanger that child and/or vulnerable adult or would likely to endanger them.
- Conduct involving sexual material relating to children (including possession of such material).
- Conduct involving sexual explicit images depicting violence against human beings (including possession of such images), if it appears to the ISA that the conduct is inappropriate.
- Conduct of a sexual nature involving a child and/or vulnerable adult, if it appears to the ISA that the conduct is inappropriate.

What is the harm test?

The criteria for the harm test is where there is credible evidence of a risk of harm to children and/or vulnerable adults. This is where your conduct endangers a child and/or vulnerable adult, if you:-

- Harm a child or vulnerable adult
- Cause a child or vulnerable adult to be harmed
- Put a child or vulnerable adult at risk of harm
- Attempt to harm a child or vulnerable adult
- Incite another to harm a child or vulnerable adult

What happens if there is not sufficient information to dismiss me from a regulated activity?

There may be occasions when the school may wish to make a referral to the DBS in the interests of safeguarding children and vulnerable adults. The school can still make a referral to the DBS, even if the two conditions have not been met.

This may happen where there are strong concerns about your conduct but the evidence is not sufficient to justify dismissing or removing you from a regulated activity.

What happens if I resign or leave the school before I am dismissed?

The duty to refer still applies if you have met two conditions and you have left, resigned, retired or made redundant from the school.

What information may be referred to the DBS?

Whilst there is no legal duty to do so, the school may also provide information to the DBS where:

- Following an internal investigation there is insufficient evidence to show relevant conduct occurred, but the school has concerns about your conduct.
- Where the school has concerns about you and you have left our employment but knows or 'thinks' that you work in regulated activity in another setting.

What happens if I am suspended from work due to an allegation?

The duty to make a referral is not triggered by a temporary suspension.

If you are suspended the first condition is met. This is because you have been removed from a regulated activity. During the investigation, depending on what information and evidence is found, then the second condition will be met. It is at that stage, that a referral to the DBS should be made.

If after an investigation, you are dismissed or removed from working in a regulated activity, then the school has a legal duty to refer to the DBS.

At what stage should a DBS referral be considered?

When an initial allegation is made, the agreed local safeguarding and conduct procedures must be followed. You may be removed, suspended or transferred from the regulated activity. At this stage, the first condition has been met.

The timing of the referral will be determined by whether your manager or designated officer has sufficient information to meet the second condition.

How is information referred to the DBS?

An employer must use a DBS referral form to provide information to the DBS. Your manager or designated officer will be responsible for completing the DBS Referral Form.

What happens after a referral has been made?

The DBS will acknowledge the referral within three working days of receipt. The DBS will review the information provided and request any additional information if necessary.

The stages for the decision making process can be found on the [DBS](#) website

When will I be informed of the outcome?

The DBS will inform you direct as soon as a decision has been made. They will also inform any other parties who have registered an interest in knowing the outcome.

Do I have the right of appeal?

You have the right to appeal to the Administrative Appeals Chamber of the Upper Tribunal against a decision made by the DBS.

Your appeal is based on the grounds that the DBS has made an error on a point of law or finding of fact in relation to information used to make a decision.

Where the Tribunal finds the DBS has made a mistake on a point of law or finding of fact it will direct the DBS to either remove you from the list or review the case. If the case is reviewed, the Tribunal may direct the DBS to remove you from the list until the DBS has made a new decision.

How do the DBS make their decisions?

Automatic Inclusion

There are circumstances where you can be 'automatically' included on either or both barred lists. The criteria include being convicted of, or cautioned for, the most serious sexual and violent offences and fall into two categories:

- The first category, commonly called 'auto bar offences without representations' are where, in very serious cases, the DBS will bar without any further assessment.
- The second category relates to those offences that, although serious, will allow you to make representations as to why the bar should be removed. In these cases, the DBS will be required to place you on the relevant list(s) but will request representations from you, which they will consider.

Case Assessment

In all other cases, the DBS will have discretion whether to bar or not. In these cases the DBS will consider all available information from a variety of sources, such as police, local authorities or employers to aid the decision making process.

There are a number of stages to the DBS decision making process:

- An assessment of whether relevant conduct or a risk of harm 'on the face of it' (DBS official guidance) seems to have occurred.

- An assessment of whether an incident took place or a particular behaviour was displayed.

- An assessment of the risk that you pose with regards to vulnerable adults and/or children.

Minded to bar

Having carried out the risk assessment the DBS, taking into account all the relevant information and circumstances of the case, will decide whether it is appropriate or not to bar you on either or both lists.

- If the DBS considers that you should be barred, it will invite you to make representations and will provide you with the information on which it proposes to rely in making its decision.

- If no representations are received, or if following representations the DBS still considers you should be barred, you will be placed on either or both lists as appropriate and informed accordingly.

What happens if I am included on the barred list?

If you have been included on the barred list, you are no longer about to work in a regulated activity for that vulnerable group. You will also be breaking the law, if you seek, apply or accept a position in a regulated activity from which you are barred from.

RELEVANT CONDUCT and EXAMPLES of HARM TO CHILDREN

Type of harm to children	Meaning	Examples
Emotional/Psychological	Action or inaction by others that causes mental anguish.	Emotional harm is the emotional ill-treatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may feature age or developmentally inappropriate expectations being imposed on children. It may involve causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. It may involve children witnessing aggressive, violent or harmful behaviour such as domestic violence. Some level of emotional harm is involved in all types of ill-treatment of a child, though it may occur alone. Grooming. Harassment. Inappropriate emotional involvement.
Physical	Any intentional physical contact that results in discomfort, pain or	Physical harm may involve assaults including hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocation, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer feigns the symptoms or, or deliberately causes ill health to a child whom they are looking after. This situation is commonly described using terms

	injury.	such as fictitious illness by proxy or Munchausen syndrome by proxy. Supply drugs to children. Inappropriate/unauthorised methods of restraint.
Sexual	Any form of sexual activity with a child under the age of consent.	Sexual harm involves forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities, or encouraging children to behave in sexually inappropriate ways. Downloading child pornography. Taking indecent photographs of children. Sexualised texts and communication on social networking sites.
Neglect	Failure to identify and/or meet care needs.	Neglect is the failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. It may involve a parent or carer failing to provide adequate food, shelter and clothing, failing to protect a child from physical harm or danger, or the failure to ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.

RELEVANT CONDUCT and EXAMPLES of HARM TO VULNERABLE ADULTS

Type of harm to vulnerable adult	Meaning	Examples
Emotional/Psychological	Action or inaction by others that causes mental anguish.	Inflexible regimes and lack of choice. Mocking, coercing, denying privacy, threatening behaviour, bullying, intimidation, harassment, deliberate isolation, deprivation.
Financial	Usually associated with the misuse of money, valuable or property.	Unauthorised withdrawals from vulnerable adult's account, theft, fraud, exploitation, pressure in connection with wills or inheritance.
Physical	Any physical contact that results in discomfort, pain or injury.	Hitting, slapping, pushing, shaking, bruising, failing to treat sores or wounds, under or overuse of medication, un-prescribed or inappropriate medication, use of restraint or inappropriate restraint, inappropriate sanctions.
Sexual	Coercion or force to take part in sexual acts.	Inappropriate touching. Causing bruising or injury to the anal, genital or abdominal area. Transmission of STD.
Neglect	Failure to identify	Untreated weight loss, failing to administer reasonable care resulting in pressure sores

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	and/or meet care needs.	or uncharacteristic problems with continence. Poor hygiene, soiled clothes not changed, insufficient food or drink, ignoring resident's requests, unmet social or care needs.
Verbal	Any remark or comment by others that causes distress.	Demeaning, disrespectful, humiliating, racist, sexist or sarcastic comments. Excessive or unwanted familiarity, shouting, swearing, name calling.