

This is a guide to help employers and volunteer managers understand their legal duty to make a referral to the Disclosure and Barring Service (DBS) when one of their workers or volunteers has harmed or poses a risk of harm to a child or vulnerable adult.

This guide is intended as a helpful guide to the main requirements of the law around the duty to make a referral to the DBS. It does not explain every aspect of the law. This guidance includes changes to disclosure and barring services contained in the Protection of Freedoms Act 2012. The DBS was established on 1 December 2012 following a merger of the Independent Safeguarding Authority (ISA) and the Criminal Records Bureau (CRB).

If you have any questions you may contact the DBS Helpline on 01325 953 795 or email the DBS at dbsdspatch@db.sgs.gov.uk alternatively, you may seek your own legal advice.

The DBS Referral Form (and guidance on completing the form) is available on the DBS website www.homeoffice.gov.uk/DBS

The following questions should be helpful in your understanding of the DBS' referral process and how it supports regulated activity employers

1. How do I make a referral?

A referral should be made using the DBS Referral Form. The form and guidance on completing the form are available on the DBS website.

The form should be completed, signed and posted to us, together with all of the information that you hold which has been requested on the form. It is vital that you provide the DBS with as much relevant information as you can as we have no investigatory powers and rely on information provided to us by other organisations. However, you are not expected to source and provide information that you do not hold or have in your possession.

You may email referrals to DBS, however, any referrals sent via e-mail are done so at the sender organisations own risk. The DBS cannot guarantee the security of e-mail based referrals whilst in transit over the internet and takes no responsibility for the confidentiality of such referrals until received and in our possession.

For this reason we recommend that you send referrals by registered post. However referrals less than 10MB in size can be e-mailed to the DBS at dbsdspatch@db.sgs.gov.uk

It should be understood that any information they have referred will be used by the Disclosure and Barring Service and may be disclosed to the referred person or other parties in accordance with statutory duties under the Safeguarding Vulnerable Groups Act 2006 and other legislation.

2. Who does the legal duty to refer apply to?

Employers and volunteer managers of people working in 'regulated activity' in England, Wales and Northern Ireland are called 'regulated activity providers', and the legal duty to



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refer applies to them. In essence, regulated activity is work - both paid and unpaid - with children or vulnerable adults which meet certain criteria.

Regulated activity is defined in the Safeguarding Vulnerable Groups Act (SVGA 2006), Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and associated legislation. Guidance on the definitions of regulated activity and links to the relevant legislation are available in the 'Resource library' pages of the DBS Website: www.homeoffice.gov.uk/DBS

3. When did the legal duty to refer begin?

The legal duty to make referrals to the ISA began on 12 October 2009 and remains in force. The duty to make referrals continues to apply now the ISA and CRB have merged to form the new Disclosure and Barring Service (DBS).

4. What triggers the legal duty to refer?

You **must** make a referral to the DBS when the following **two** conditions have **both** been met:

Condition One

When you withdraw permission for a person to work in regulated activity with children and / or vulnerable adults, either through dismissal or by moving the person to another area of work that is not regulated activity.

AND

Condition Two

When you **think** the person has carried out one of the following:

- Been cautioned or convicted of a relevant (automatic barring) offence; or,
- Engaged in relevant conduct in relation to children and / or vulnerable adults [i.e. an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk or harm]; or,
- Satisfied the Harm Test in relation to children and / or vulnerable adults. [i.e. there has been no relevant conduct (i.e. no action or inaction) but a risk of harm to a child or vulnerable still exists].

Condition one includes situations where an employer / volunteer manager **would or may** have dismissed the person or moved them to other duties, if the person had not resigned, retired, or otherwise left their work - e.g a teacher resigns when an allegation of harm to a student is first made. The Head Teacher establishes that harm did occur, or was at risk of occurring, and decides that they may have dismissed the person had they not left and so makes a referral to the DBS.

5. Should I make a referral when an allegation is first made or when I temporarily suspend someone?



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You should **not** refer someone when an allegation is first made. You should always investigate and gather sufficient evidence and information to establish if the allegation has foundation. This will also inform your processes for any decision to dismiss or remove the person from working with children and / or vulnerable adults. You should, as far as possible, complete your investigations and disciplinary processes (even if the person has left your employment). This is particularly important as the DBS has no investigatory powers. In making our barring decisions we rely upon the evidence provided with referrals and any other relevant evidence that we may be able to gather.

The duty to make a referral is **not** triggered by temporary suspension. You may suspend a person pending an investigation where there have been allegations of harm or risk of harm. If following your investigation you decide to return the person to a position working in regulated activity with children or vulnerable adults (perhaps with additional training or supervision) then there is **no** legal duty to make a referral to the DBS. However, if following investigation you decide to dismiss the person or remove them from working in regulated activity with children or vulnerable adults then the referral criteria would be met.

6. What is harm?

We consider harm in its widest context. Harm may include:

- Sexual harm;
- Physical harm;
- Financial harm;
- Neglect;
- Emotional harm;
- Psychological harm; or
- Verbal harm.

This is not an exhaustive list and harm may take many different forms.

7. What about referrals for automatic barring offences?

A person who has been convicted or cautioned for certain serious sexual or violent offences will, subject to the consideration of representations where permitted, be automatically barred by the DBS from working in regulated activity with children and/or vulnerable adults. These offences, also known as “relevant offences” or “automatic inclusion offences” are listed in Factsheet 5 on the DBS website. If you become aware that one of your workers has been convicted or cautioned for an automatic barring offence you have a legal duty to make a referral to the DBS.

You also have a legal duty to remove a person from working in regulated activity with children or vulnerable adults if they are barred by the DBS.

8. Must I make a referral?

Any person or organisation that employs another person in regulated activity has a legal



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duty to make a referral to the DBS if the criteria to make a referral are met. The duty to refer applies **irrespective** of whether another body, such as a local authority or professional regulator, has made a referral in relation to the same person.

This helps to ensure that the DBS has all relevant information to consider about a case, to make a fair, consistent and thorough decision about whether to bar a person or not from working with vulnerable groups including children.

It should be noted that a person who fails to provide information to the DBS without reasonable justification commits an offence and if convicted may be subject to a fine up to £5,000.

9. Will I be informed of the outcome of my referral?

Under legislation, the DBS can only advise the person making the referral on the outcome of the referral if they can demonstrate a 'legitimate interest' in the person they have referred. For example, if they continue to employ the person. If the person making the referral no longer employs the person then they could not demonstrate a legitimate interest in the person they referred and accordingly could not be advised of the outcome.

10. When does the duty to refer NOT apply?

The referral duty does **not** apply to family arrangements or to personal arrangements for no commercial consideration.

The referral duty does **not** apply to parents or members of the public. If a parent or member of the public has a safeguarding concern they should contact the Police, social services or the person's employer / volunteer manager. These agencies can then investigate the allegation, gather evidence and if necessary, make a referral to the DBS.

11. Can I make a referral to the DBS if the legal criteria are not met?

There may be occasions when you wish to make a referral in the interests of safeguarding children or vulnerable adults, but the legal duty has not been met. For example, where you have strong concerns but the evidence is not sufficient to justify dismissing or removing the person from working with children or vulnerable adults.

The DBS is required by law to consider any and all information sent to it from any source. This includes information sent to the DBS where the legal referral criteria are not met. If an employer wishes to make a referral to the DBS where the referral criteria are not met, they should do so in consideration of relevant employment and data protection laws. An employer may wish to seek their own legal advice in relation to these cases.

12. Can the general public make referrals to the DBS?

Although the DBS can accept a referral from any source, (i.e. this can be a member of the public, a regulated activity provider, the police, a regulatory or supervisory authority, or any



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other party), we do not have investigatory powers and therefore members of the public should initially direct any safeguarding concerns to the Police, their local authority or the person's employer. Following investigation and assessment of evidence, if appropriate, information would then be referred to us for our consideration. This helps to ensure that only genuine safeguarding concerns raised by members of the public are referred to the DBS.

13. Do I have to provide information to the DBS if they ask me for it?

If we contact you and request information about one of your current or former workers, you have a legal duty to provide us with the requested information, if you have it. This duty applies irrespective of whether you have made a referral to us.

Further information and assistance

Helpline: 01325 953 795
Website: www.homeoffice.gov.uk/DBS
Email: dbsdispatch@dbs.gsi.gov.uk

Post: Disclosure and Barring Service
Post Office Box 181
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DL1 9FA

