



Allegations against people who work with children

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Duty to refer to the LADO

Agencies have a duty to refer to the LADO when it is suspected that a person who works with children who meets the Regulated Activity criteria has:

- Behaved in a way that has harmed a child, or may have harmed a child
- Possibly committed a criminal offence against or related to a child; or
- Behaved towards a child or children in a way that indicates s/he is unsuitable to work with children.

The LADO will discuss the referral and will decide with the referrer whether it meets the allegations management criteria or whether further information is required before this decision may be made.

If the referral does meet the criteria, the LADO will either consult the Police and Children's Services about whether the agency concerned may proceed with an internal disciplinary inquiry or whether an Allegations Management Meeting (AMM) is required to consider the other inquiry strands.

If the agency is given the all clear to undertake an internal inquiry it will be expected that the agency will keep the LADO informed of its progress and conclusion.

Allegations Management Meeting (AMM)

If the criteria are considered to be met it will usually be the case that an Allegations Management Meeting will be convened, chaired by the LADO, to share information and to decide collectively which of the following investigative strands are appropriate to follow and will set out an investigative plan.

1. A Police investigation of a possible criminal offence
2. Enquiries and assessment by Children's Social Care about whether a child is in need of protection or in need of services; and
3. Consideration by an employer of disciplinary action in respect of the individual.

The LADO will subsequently coordinate the investigative process and act as a single point of contact. Should the allegation be substantiated agencies have a duty to make a referral to the Disclosure and Barring Service (DBS).

Investigative Plan from AMM meeting

A Plan will be issued within 24 hours of the AMM with detailed minutes being issued within 10 working days of the meeting.

Conclusion of the investigation

The LADO will decide whether to convene further AMMs to review / evaluate the outcome of the investigation in consultation with involved agencies.

- a) Substantiated: there is sufficient identifiable evidence to prove the allegation;
- b) False: there is sufficient evidence to disprove the allegation;
- c) Malicious: there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false;
- d) Unfounded: there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they say. Alternatively they may not have been aware of all the circumstances;
- e) Unsubstantiated: this is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

What triggers the legal duty to refer to the DBS?

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 a 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 / 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 adult 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. 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.

Further information on DBS referral guidance is attached.

Disclosure and Barring Service Information

- **DBS Factsheet: Summary of Regulated Activity relating to Children (page 8)**
- **Referral guide for Employers and volunteer managers (page 16)**

DBS Factsheet:

Summary of Regulated Activity relating to Children

V1.0 – June 2013

This Factsheet provides a summary of the main provisions of regulated activity relating to children. It is intended as a general aid. It is not legal advice or guidance and does not cover all aspects of regulated activity relating to children or cover all exceptions.

Activity of a specified nature

- Teaching, training, instruction, care for or supervision of children (except if the person undertaking the activities is under regular supervision)¹ if carried out by the same person frequently² or overnight³.
- Advice or guidance (except legal advice) provided wholly or mainly for children which relates to their physical, emotional or educational well-being if carried out by the same person frequently² or overnight³.

Activity within specified establishment

- Any activity that is for or on behalf of the establishment with the opportunity for contact with children if carried out frequently²:
- Excepted is work by volunteers under regular supervision¹ or occasional or temporary contract work that is not an activity of a specified nature listed above.
- Specified establishments are schools, pupil referral units, academies, nursery schools, Further Education (FE) establishments mostly for children, institutions for the detention of children, children's homes, children's centres (in England), children's hospitals (in Northern Ireland) and childcare premises including nurseries.

Healthcare of a child (any frequency)

- Healthcare provided to a child by a health care professional or by a person acting under the direction or supervision of a healthcare professional.
- A health care professional who is a person regulated by a professional healthcare regulator (i.e. a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002).
- Health care includes: all forms of health care provided for children and includes physical, mental and palliative health care; diagnostic tests and investigative procedures and procedures similar to surgical or medical care, but not provided in connection with a medical condition.

Personal Care of a child (any frequency)

- Physical help with eating or drinking for reasons of illness or disability.
- Physical help with toileting (including menstruation), washing, bathing or dressing for reasons of age, illness or disability.
- Prompting together with supervision when a child is otherwise unable to decide for themselves in relation to any of the above personal care activities.
- Training or advice given to a child in relation to any of the above personal care activities.

Moderating an online forum for children

Moderating a public electronic interactive communication service likely to be used wholly or mainly by children and carried out by the same person frequently². Except activity by a person who does not have access to the content of the matter or with users of the service.

Driving a vehicle used for conveying children

Driving a vehicle being used only for conveying children and their carers or supervisors under a contract or similar arrangement when carried out by the same person frequently².

Early years or later years childminding (any frequency)

Early or later years childminding where there is a requirement to register or for voluntary registration under the Childcare Act 2006 and where the activity takes place on domestic premises for reward.

Fostering a child (any frequency)

Day to day management of regulated activity (any frequency)

Day to day management on a regular basis, of a person who is providing a regulated activity in relation to children. This includes the supervisor of a person who would be in regulated activity if not under regular supervision¹.

Northern Ireland and Wales

Regulated activity with children in Northern Ireland and in Wales also includes a number of office holders that are not in regulated activity in England. Further information is available on the DBS website.

Other key exceptions to regulated activity relating to children

Family and Personal Relationships

Excepted from regulated activity relating to children is any activity conducted in the course of a family relationship, or a personal relationship between friends for no commercial consideration.

Family relationships involve close family (e.g. parents, siblings, grandparents) and relationships between two people who live in the same household and treat each other as family.

Personal, non commercial relationships are arrangements where either no money changes hands, or any money that does change hands is not part of a commercial relationship (for example, gifting a friend money for petrol after they have driven you to the hospital), and the arrangement is made between friends or family friends.

Peer Groups

Excepted from regulated activity relating to children is a person who is part of a peer group and is assisting or under the direction of a person who is engaging in regulated activity. For example a student helping a teacher.

Supervising a Child in Employment

Excepted from regulated activity relating to children is a person who supervises a child in the course of the child's employment including work experience. However, it is regulated activity if the child is under 16 and it is carried out by an unsupervised¹ person for whom arrangements exist principally for that purpose.

Definition of a Child

A child is a person aged under 18 years of age.

Statutory Supervision Guidance

To be supervised in accordance with HM Government statutory guidance, the supervision must be regular and day-to-day, by a person engaging in regulated activity and reasonable in all the circumstances for the protection of children. Further information is provided in the HM Government statutory supervision guidance available from the DBS website.

DBS Check

An eligible organisation recruiting to a position (paid or unpaid) that falls within the definition of regulated activity relating to children, may request an applicant to obtain an enhanced DBS Check with barred list check to help determine their suitability for the position, prior to engaging them. Eligible staff in post may also be re-checked to help confirm their ongoing suitability. Further information on eligibility for DBS Checks is available on the DBS website.

Legislation and Guidance

Regulated activity relating to children is defined in Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended). Further information is provided in the HM Government Factual Note on regulated activity relating to children and statutory supervision guidance available from the DBS website.

Further Information

For more information please contact us:

Website: www.gov.uk/dbs

Barring

Helpline: 01325 953 795

Email: dbsdispatch@dbs.gsi.gov.uk

Disclosure

Helpline: 0870 9090 811

Email: customerservices@dbs.gsi.gov.uk

Any frequency means that doing the activity once or more is regulated activity.

¹ **Supervision** as defined in statutory guidance on supervision.

² **Frequently** means once a week or more or four or more times in any 30 day period.

³ **Overnight** means once or more between 2am and 6am with the opportunity for face to face contact with children

Disclosure & Barring Service

Referral guide for: Employers and volunteer managers

V3.0 – February 2014

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 about the referral process you may contact the DBS referral helpline on 01325 953 795 or email dbsdispatch@dbs.gsi.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.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.

Where you choose to accept the risk described above, referrals less than 10MB in size can be e-mailed to the DBS at dbsdspatch@dbs.gsi.gov.uk

It should be understood that any information you have referred may 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 refer applies to them. In essence, regulated activity is work that a barred person must not do. It refers to both paid and unpaid work with vulnerable groups including children which meet certain criteria.

Regulated activity is defined in the Safeguarding Vulnerable Groups Act (SVGA 2006), Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (<http://www.legislation.gov.uk/nisi/2007/1351/contents/made>) and associated legislation.

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 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*

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

and

Condition Two

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 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 – for example, 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?

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 make a referral even if a significant time period may have elapsed between the allegation and the gathering of sufficient evidence to support the decision to make a referral. 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
- 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 the DBS factsheet: relevant offences in England and Wales

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249428/dbs-factsheet-relevant-offences-england-and-wales.pdf

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 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. However, you should consider any advice that may be provided by the Police or a safeguarding professional in relation to making a referral to DBS, where appropriate.

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 good faith in the interests of safeguarding children or vulnerable adults including acting under the advice of the Police or a safeguarding professional, 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. DBS will use its legal powers and barring processes to determine whether the person should be barred from working in regulated activity relating to children and / or vulnerable adults. 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 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.gov.uk/dbs

Email: dbsdispatch@dbs.gsi.gov.uk

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