

DISCLOSURE & BARRING SERVICES – DUTY TO REFER

Any organisation working with vulnerable groups has a statutory duty to refer an individual to DBS (Barring) in certain circumstances. This is independent of any responsibilities to report cases of harm or abuse to social services, safeguarding boards or the police.

One of the functions of DBS is to make barring decisions about people who are referred to the service, usually following an employer's disciplinary process, with the possible consequence of that person being barred from working or volunteering with children and/or vulnerable adults in specific types of work known as regulated activity: Regulated activity is work a barred person cannot do.

The Safeguarding Vulnerable Groups Act (SVGA) 2006 places a duty on employers of people working with children or vulnerable adults in regulated activity to make a referral to the DBS in certain circumstances. SVGA Schedule 4 (Parts I and II) defines regulated activity and is subsequently amended under Protection of Freedoms Act 2012 Ch 5.

Before a referral can be made, an employer must first undertake a disciplinary investigation and gather evidence in order to establish if the allegation has foundation. Without evidence or information for the DBS to consider, many allegations will be quickly closed down as there will be no basis on which the DBS can proceed.

A referral is made when an employer or volunteer manager has **dismissed or removed** a person from working with children or vulnerable adults (or would or may have if the person had not left or resigned) because the person has:

1	Been cautioned or convicted for a relevant offence.
<i>or</i>	
2	Engaged in relevant conduct in relation to children and/or vulnerable adults - an action or inaction (neglect) that has harmed a child or vulnerable adult or put them at risk of harm.
<i>or</i>	
3	Satisfied the Harm Test in relation to children and/or vulnerable adults - 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.
✓	A referral should be made when the employer has gathered information and evidence to support the allegation and decided that the criteria for making a referral to the DBS has been met.
✗	A referral should not be made when an allegation is first made.

The DBS uses a fair, thorough and consistent process that ensures that the decision it reaches is both proportionate and appropriate to the risk the person poses to children or vulnerable adults.

DBS process

DBS will write to the individual to say that they have received a referral. Information provided by the employer to DBS which will provide the basis for the barring decision will be shared with the individual. Documents may be redacted but should still make sense (persons may be referred to as Child A, Witness B etc.).

The decision to bar is taken only at the end of a 5 stage procedure but the process can be halted by DBS at any point. If the panel reach the point of “minded to bar” (stage 4) they will write again to the individual and in most cases will offer them the chance to make representation to the panel. The most serious offences carry automatic barring. Some offences include the right to make representation but where the individual does not take up this opportunity, the outcome will be to bar.

The Crown Prosecution Service (CPS) has to prove *beyond reasonable doubt* that a person is guilty of a crime. DBS are looking at evidence of a pattern of harmful behaviour (which may not constitute a crime) as grounds to bar the individual and this is based on the *balance of probability*.

DBS has a legal requirement to provide eight weeks in which the individual may make representation, and provides a further two days from the date on the notification letter to allow for postage. It is possible to request a time extension. This will be considered, and may be allowed depending on why it is needed. An individual may make use of friends, family, legal personnel, union staff etc. to assist them in their making their representation, but DBS are unable to offer assistance.

Oral representations

Whilst it is expected that the majority of people who make representation will do so in writing, in the interests of fairness and equality, and to protect a person’s rights under the European Convention on Human Rights, arrangements can be made to hear oral representations. There are no set criteria for deciding whether or not oral representations might be appropriate. Decisions will be made on a case by case basis taking into account the individual circumstances of the person and the reason(s) for the request. It’s important to understand that making oral representations won’t put any individual at an advantage or disadvantage in comparison to a person submitting written representations.

This may include (but is not restricted to) getting representations by:

- telephone
- video conference
- audio/video recording
- a face to face meeting

The individual will be allocated a member of staff as a main point of contact who will aim to answer any questions or concerns.

Witness request

DBS may ask someone to provide a witness statement/appear as a witness if they know something about a particular case under consideration.

DBS may also ask for a witness statement/appearance as a witness if someone has specialist knowledge that would be useful in deciding the facts in an appeal hearing

(professional or expert witness). Decisions on whether or not to ask someone to be a witness will be made on a case by case basis.

Further information

✓	If you suspect that a crime has been committed you should contact the Police
!	The DBS has no investigatory powers and relies upon the evidence provided with referrals and any other evidence that it may gather.
!	It is crucial that employers do not make a referral to the DBS without providing supporting evidence. The DBS Referral Form details the information you should provide if you have it.
!	Employers should, as far as possible, complete their investigations (even if the person has left their employment). This will ensure that the DBS has all available information and evidence on which to base its decision.
!	If additional relevant information becomes available to an employer after making a referral, this should also be provided to the DBS.
!	In all cases, the referral should be made on the DBS Referral Form and posted to the DBS enclosing all relevant information that the employer holds.

We strongly recommend that you use the DBS website for further information, where the referral process is clearly described and from which the relevant forms can be accessed.

	www.gov.uk/government/organisations/disclosure-and-barring-service	
	https://www.gov.uk/report-unfit-work-children-vulnerable-adults	
DBS	Helpline: 0300 0200 190 /1 for Welsh	✉ dbsdispatch@dbs.gsi.gov.uk
PO Box 3963, Disclosure and Barring Service, Royal Wootton Bassett, SN4 4HH		

Contact us to discuss DBS referral or your organisation's safeguarding responsibilities



Companion information sheets

TSS Regulated activity for Children
 TSS Regulated activity for Adults
 TSS Role of Safeguarding Officer

Other relevant links can be found on our companion sheets