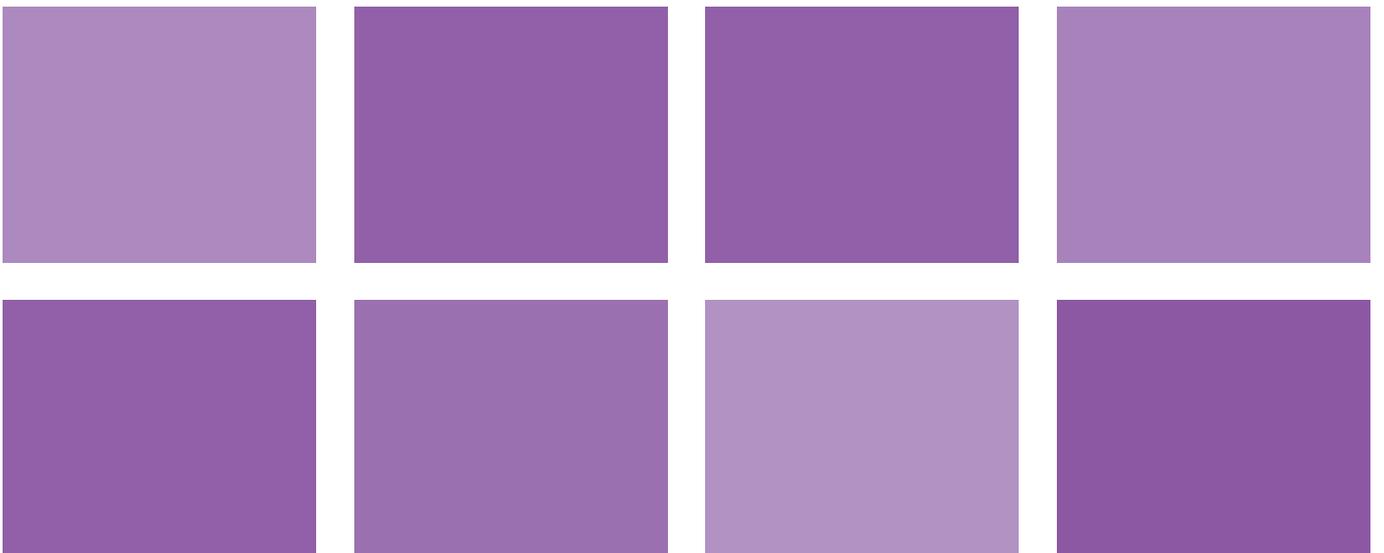




Disclosure & Barring Service

Referral Guidance: Frequently asked questions



Contents

1. What is a referral?	1
2. Why are referrals important?	1
3. What is meant by a child?	1
4. What is a vulnerable adult?	1
5. Who has a legal DUTY to refer?.....	1
6. Who has a legal POWER to refer?.....	1
7. What are regulated activity providers?	2
8. Who are personnel suppliers?	2
9. Who are keepers of registers?.....	2
10. Who are supervisory authorities?	3
11. When should I refer?	3
12. What is regulated activity relating to children?	3
13. Is there guidance on supervision?	4
14. What is regulated activity relating to vulnerable adults?	4
15. What is relevant conduct?	5
16. What is meant by relevant conduct in relation to children?.....	5
17. What is meant by relevant conduct in relation to vulnerable adults?	5
18. What is the harm test?.....	6
19. What information should I send?	6
20. Who does the DBS share referral information with?	7
21. Can the DBS investigate a referral?	7
22. What is the DBS' referral process?.....	7
23. Can the general public make referrals?.....	7
24. What happens after a referral is received?.....	7
25. In practical terms, what will happen if the person is barred?	7
26. How do I find out the outcome of a referral I have made?	8
27. How long does a bar last?	8
28. Can the DBS decision be appealed?.....	8
29. What happened to the old barred lists - POVA, POCA and List 99?.....	9
30. Where can I get further information or help to make a referral?	9

1. What is a referral?

A referral is information sent to the DBS which indicates that a person has harmed or posed / poses a risk of harm to children or vulnerable adults.

2. Why are referrals important?

A referral to the DBS ensures that an independent, impartial and structured approach is used in assessing future risk on people who may continue to be a safeguarding concern because of their actions or behaviour.

3. What is meant by a child?

Section 60 of the Safeguarding Vulnerable Groups Act 2006 defines a Child as “a person who has not attained the age of 18”.

4. What is a vulnerable adult?

The term ‘vulnerable adult’ has been amended as it was felt to be inappropriate to label an adult as vulnerable solely due to their circumstances, age or disability. In general terms, an adult (a person aged 18 or over) is classed as vulnerable when they are receiving one of the following services:

- Health care;
- Relevant personal care;
- Social care work;
- Assistance in relation to general household matters by reason of age, illness or disability;
- Relevant assistance in the conduct of their own affairs; or
- Conveying (due to age, illness or disability in prescribed circumstances)

5. Who has a legal DUTY to refer?

Under the Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, the following groups have a legal duty to refer:

- Regulated activity providers; and
- Personnel suppliers.

6. Who has a legal POWER to refer?

Under the Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007, the following groups have a legal power to refer:

- Local authorities;
- Education and Library Boards (NI);
- Health and Social Care (HSC) Trusts (NI);
- Keepers of Registers; and
- Supervisory Authorities.

7. What are regulated activity providers?

A regulated activity provider is an organisation or individual responsible for the management or control of regulated activity (paid or unpaid) and makes arrangements for people to work in that activity. This will usually be an employer or a voluntary organisation.

Examples of a regulated activity provider would include, but not be limited to:

- An NHS hospital or health and social care trust that employ people to provide care, supervision and advice to children and vulnerable adults.
- A school that provides education to children under 18 years of age.

A regulated activity provider can also be a person who manages volunteers in a regulated activity position, such as a scout leader or as part of a charitable organisation.

8. Who are personnel suppliers?

Personnel suppliers are organisations that supply people to work in regulated activity (either paid or voluntary) in a variety of settings and can include employment agencies, businesses and relevant educational institutions.

An employment agency makes arrangements to either find a person employment with a hirer or to supply them to a hirer to employ.

An employment business engages a person and supplies them to a hirer to work under a hirer's control.

An educational institution is a Personnel Supplier if it makes arrangements to supply a student following a course at the institution to a regulated activity provider such as a school.

9. Who are Keepers of Registers?

Keepers of registers are defined under Section 41(7) of the Safeguarding Vulnerable Groups Act 2006 and under Section 43(7) of the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007. These are:

- General Teaching Council for Wales (GTC W)
- General Teaching Council for Northern Ireland (GTC NI)
- Care Council for Wales
- Northern Ireland Social Care Council
- General Medical Council (GMC)
- General Pharmaceutical Council (GPhC);
- Pharmaceutical Society of Northern Ireland (PSNI)
- General Dental Council (GDC)
- General Optical Council (GOC)
- General Osteopathic Council (GOsC)
- General Chiropractic Council (GCC)
- Nursing and Midwifery Council (NMC)
- Health and Care Professions Council (HCPC)

10. Who are Supervisory Authorities?

Supervisory Authorities are defined under Section 45(7) of the Safeguarding Vulnerable Groups Act 2006 and Section 47(7) of the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007. These are:

- Teaching Agency;
- Care Quality Commission;
- Secretary of State for Education (in relation to inspection of Independent Schools);
- Ofsted (HM Chief Inspector of Schools in England);
- Office of the Public Guardian;
- Charity Commission for England and Wales;
- Welsh Government Ministers;
- Estyn (HM Chief Inspector of Education and Training in Wales);
- Care and Social Services Inspectorate Wales (CSSIW);
- Healthcare Inspectorate Wales (HIW);
- Northern Ireland Government Ministers;
- NI Education & Training Inspectorate;
- Regulation and Quality Improvement Authority (RQIA) (NI); and
- Charity Commission for Northern Ireland.

11. When should I refer?

Where a person/organisation has a legal duty to refer, there are two main conditions which should be met for a referral to be made, these are:

- 1) They have permanently removed a person from 'regulated activity' through dismissal or permanent transfer from 'regulated activity' (or would have if the person had not left, resigned, retired or been made redundant); and
- 2) They believe the person has :
 - a. Engaged in 'relevant conduct'
 - b. Satisfied the 'harm test' (i.e. no action or inaction occurred but the present risk that it could be significant), or
 - c. Received a caution or conviction for a 'relevant offence' (a list of these offences is available on the DBS website, or call the helpline for advice).

A referral should not be made when an allegation is first made. An investigation and evidence gathering should be first undertaken by the person or organisation that would normally refer to the DBS. This is in order to establish if the allegation has foundation, for example as part of an internal disciplinary process. Without evidence or substance to the claims many allegations will be quickly closed down as there will be no foundation on which the DBS can proceed.

Information on the referral duty for other groups can be found on the DBS website, www.gov.uk/dbs or call our helpline on 01325 953795 for further information.

12. What is regulated activity relating to children?

Regulated activity relating to children is a term which is defined in law and used to describe an activity which involves working with children, whether this is in a paid or unpaid capacity.

In general terms, regulated activity relating to children comprises of:

- Unsupervised activities: teach, train, instruct, care for or supervise children, or provide advice / guidance on well-being, or drive a vehicle only for children

Work for a limited range of establishments ('specified places') with opportunity for contact: e.g. schools, children's homes, childcare premises. This does not include work by supervised volunteers

- Please note that work under either of the above is regulated activity only if done regularly. Statutory guidance for supervision is available from the Department for Education website. www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring
- Relevant personal care, e.g. washing or dressing; or health care by or supervised by a professional
- Registered childminding and foster-carers
- Moderating online forums or chat rooms provided mainly for children where the person has access to the content and contact with users of the service.

The Government has issued a Factual Note on working in regulated activity with children. The Factual Note is available from the 'Guidance and Factsheets' page of the 'Resource library' on the DBS website.

13. Is there guidance on supervision?

Statutory guidance on supervision has been issued by the Secretary of State for Education in relation to regulated activity with children. Further information is available on the Department for Education website. www.education.gov.uk/childrenandyoungpeople/safeguardingchildren/a00209802/disclosure-barring

14. What is regulated activity relating to vulnerable adults?

Any person 18 years of age or over can be a vulnerable adult. The definition no longer labels certain adults as 'vulnerable adults.'

This means that the focus is on the activities required by an adult and not on the setting in which the activity is received, not on the personal characteristics or circumstances of the adult receiving the activities.

Providing health care (any health care professional providing health care to an adult or any person providing health care under the direction or supervision of a health care professional)

Providing personal care - anyone who:

- Provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of the adult's age, illness or disability
- Prompts and then supervises an adult who, because of their age, illness or disability, cannot

make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails; without that prompting or supervision

- Trains, instructs or offers advice or guidance which related to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.
- Providing social work (the provision by a social care worker of social work): Assistance with cash, bills and/or shopping
- Assistance in the conduct of a person's own affairs
- Conveying a an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This does not include family, friends or taxi drivers.

The Government has issued a Factual Note on working in regulated activity with adults. The Factual Note is available from the 'Guidance and Factsheets' page of the 'Resource library' on the DBS website.

15. What is relevant conduct?

Put simply, relevant conduct is an action or inaction that has harmed or placed a child or vulnerable adult at risk of harm. This is a legal term which is defined for both Children and Vulnerable Adults under Schedule 3 of the Safeguarding Vulnerable Group Act 2006.

16. What is meant by relevant conduct in relation to children?

Relevant conduct in relation to children is conduct which:

- Endangers a child or is likely to endanger a child
- If repeated against or in relation to a child, would endanger a child or would be likely to endanger them
- Involves sexual material relating to children (including possession of such material)
- Involves sexually explicit images depicting violence against a person (including possession of such images), if it appears to DBS that the conduct is inappropriate
- Is of a sexual nature involving a child, if it appears to DBS that the conduct is inappropriate.

A person's conduct endangers a child if they:

- a. Harm a child,
- b. Cause a child to be harmed,
- c. Put a child at risk of harm,
- d. Attempt to harm a child, or
- e. Incite another to harm a child.

17. What is meant by relevant conduct in relation to vulnerable adults?

Relevant conduct in relation to vulnerable adults is conduct which:

- Endangers a vulnerable adult or is likely to endanger a vulnerable adult

- If repeated against or in relation to a vulnerable adult, would endanger an adult or would be likely to endanger them
- Involves sexual material relating to children (including possession of such material)
- Involves sexually explicit images depicting violence against a person (including possession of such images), if it appears to DBS that the conduct is inappropriate
- Is of a sexual nature involving a vulnerable adult, if it appears to DBS that the conduct is inappropriate.

A person's conduct endangers a vulnerable adult if they:

- a. Harm a vulnerable adult,
- b. Cause a vulnerable adult to be harmed,
- c. Put a vulnerable adult at risk of harm,
- d. Attempt to harm a vulnerable adult, or
- e. Incite another to harm a vulnerable adult.

18. What is the harm test?

There are occasions where a person may not have engaged in relevant conduct but there are still serious concerns which satisfy the harm test.

To satisfy the harm test there needs to be credible evidence of a risk of harm to children or vulnerable adults such as statements made by an individual regarding conduct/behaviour, etc. For a case to be considered as a risk of harm, relevant conduct would not have occurred but there must be tangible evidence rather than a "feeling" that a person represents a risk to children and / or vulnerable adults. For example, a teacher who confides in their head teacher that they are sexually attracted to children (but who had not engaged in 'relevant conduct') would satisfy the harm test.

19. What information should I send?

The minimum details that the DBS requires in order to commence its consideration of a case are:

Information that will clearly establish the identity of the individual, examples of this will include (but not be limited to) information such as:

- a. Name
- b. Address
- c. Date of birth
- d. National Insurance Number (NINO) if known

Sufficient evidence to suggest that there has been a relevant offence or harm/risk of harm to a child or a vulnerable adult.

It is important to note that while a local authority, keeper of register or supervisory authority can refer any information, regulated activity providers and personnel suppliers are required by law to supply prescribed information if they hold it. The DBS Referral Form & DBS Referral Instructions (available from the DBS website www.gov.uk/dbs) identifies the information and documents you should provide at the time you make a referral, including those you are legally required to provide.

You should provide all the information that you hold in relation to the person or the case that is

asked for in the Referral Form. However, you are not expected to obtain or produce documents that you do not hold or have.

20. Who does the DBS share referral information with?

The DBS may disclose referred information to the referred person and/or any other parties in accordance with statutory duties under the Safeguarding Vulnerable Groups Act 2006 and other legislation.

21. Can the DBS investigate a referral?

No. The DBS has no investigatory powers and relies upon information provided with referrals and other relevant information that it can gather. If you know relevant information exists within another organisation please let us know who has it so we can contact them to ask for it.

22. What is the DBS' referral process?

Once a regulated activity provider has permanently removed a person from regulated activity through dismissal or permanent transfer from regulated activity (or would have if the person had not left, resigned, retired or been made redundant), the process is as follows:

Any referral made to the DBS by a regulated activity provider or personnel supplier must be made using the DBS Referral Form. Local authorities, keepers of registers or supervisory authorities may submit referrals in other forms but are encouraged to refer using the DBS Referral Form.

The completed and signed Referral Form, supporting evidence and documents should be posted to the DBS. The DBS will acknowledge the referral by return post within three working days of receipt. The case will given a unique reference number and is passed to our caseworkers to be handled in accordance with the DBS decision making processes.

23. Can the general public make referrals?

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 safeguarding concerns raised by members of the public are referred to the DBS.

24. What happens after a referral is received?

After the DBS receives a referral it will typically be processed through our five-stage decision making process. DBS Factsheet 2: Referral and barring decision-making processes, outlines the stages and is available from the 'Guidance and Factsheets' page of the 'Resource library' on the DBS website.

25. In practical terms, what will happen if the person is barred?

A person who is barred from working with children or vulnerable adults will be breaking the law if they work or volunteer, or seek or offer to work or volunteer with those groups in regulated activity.

Any organisation that employs someone who is barred from working with children and/or vulnerable adults commit an offence if they knowingly allow a barred person to engage in regulated activity with the group of which they are barred.

26. How do I find out the outcome of the referral I have made?

The primary purpose of the DBS is to help prevent unsuitable people from working with children and vulnerable adults. We can only disclose the outcome of a referral (i.e. if the referral results in a person being barred from working with children and/or vulnerable if the person or organisation can demonstrate a legitimate interest to know. A legitimate interest must be linked to safeguarding, for example:

- Any person or organisation if they employ the person or are considering employing the person in regulated activity.
- A professional regulator or supervisory authority for the purposes of carrying out their functions.
- The police for the prevention, investigation and detection of crime or the apprehension or prosecution of offenders.

27. How long does a bar last?

If the DBS bars a person from working in regulated activity with either children or vulnerable adults, the bar will extend to the life of the person. However, a barred person also has the right to request a review of the DBS' decision after a minimum barred period. The minimum barred is dependent on the age of the barred person at the date they were barred. The minimum barring periods are as follows:

- a. Aged under 18 when barred - 1 year
- b. Aged 18 to 24 when barred - 5 years
- c. Aged over 24 when barred - 10 years

All requests for review must be made in writing to the DBS. We can only agree to a review a barred person's case after the minimum barring period has elapsed and only if the person can demonstrate that their circumstances have changed in such a way that they no longer pose a significant risk to children and/or vulnerable adults.

The DBS also has the power to review a person's inclusion on the DBS Barred Lists at any time where:

- Information becomes available which it did not have at the time of the person's inclusion in the list
- There has been a change of circumstances relating to the person, or
- An error has been made by the DBS (ISA)

It should be noted that the ability to review a barring decision at any time is a power given to the DBS under law. The power to review at any time does not give a barred person a right to have their case reviewed by the DBS. Also, while the DBS may review cases at any time due to the circumstances above, it does not guarantee that a barring decision will be revoked at the end of the review. A person will only be removed from either the children's or adults barring list if the DBS is satisfied that it is not appropriate for the person to remain barred.

28 Can the DBS decision be appealed?

Yes, but there are conditions. A barred person has the right to seek an appeal only on the grounds of an 'error of fact' or an 'error of law'. Appeals are dealt with by the Administrative Appeals Chamber of the Upper Tribunal, or the Care Tribunal in Northern Ireland.

29. What happened to the old barred lists - POVA, POCA and List 99?

As part of the implementation of the then ISA's responsibilities, we undertook a process to appropriately transfer those people who had been previously placed on POCA, POVA and List 99 for safeguarding reasons onto its own lists – the ISA Children's List and the ISA Adults List. This process is almost complete, with the result that POCA, POVA and List 99 for all practical purposes, are no longer in use. Anyone who has been placed in the ISA barred lists now has their inclusion transferred to the DBS barred lists.

30. Where can I get further information or help to make a referral?

Contact the DBS Helpline on 01325 953795 if you have any questions about making a referral or need help in completing the referral form.

Further information is also available on the DBS website: www.gov.uk/dbs

