

# Disclosure & Barring Service (DBS) Referrals Procedure

## Procedure information

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Summary of document:

To inform employees of the Disclosure and Barring Service (DBS) Checks procedure.

Scope:

To all staff who have a responsibility as detailed in the Disclosure and Barring Service (DBS) Policy.

To be read in conjunction with:

948 - Disclosure and Barring Service Policy Number – opens in a new tab

Owning group:

People, Organisational Development and Culture Committee

Executive Director job title:

Lisa Gostling, Director of Workforce and OD

Reviews and updates:

1. Original information contained in version 1 of policy 948
2. Policy 948 split into three sections 15.2.2023

Keywords

Disclosure Barring Service DBS

Glossary of terms

DBS – Disclosure and Barring Service

SRA – Senior Recruitment Advisor

AM – Appointing Manager

NWSSP – NHS Wales Shared Services Partnership

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## Scope

To all staff employed by the Health Board.

## Aim

The aim of this document is to ensure a robust and consistent approach in the DBS referrals.

## Objectives

The aim of this document will be achieved by the following objective:

- Identify the process for referral to DBS

## DBS Referral

Referral to DBS is required to ensure that those who pose a risk are considered for being barred from working with the relevant workforce: adult, children or both. It is an offence for individuals on the Barred List to apply for posts in Regulated Activity (post 10<sup>th</sup> September 2012 definition).

Previously it was illegal for them to apply for all posts. Now individuals who are on the Barred List can now apply for posts that do not fall within the parameters of the new definition of Regulated Activity.

The DBS has responsibility for making barring decisions on the Children's list and the Adult's list, which falls under the following legislation:

- Safeguarding Vulnerable Groups Act 2006;
- Safeguarding Vulnerable Groups (Northern Ireland) Order 2007;
- Protection of Freedoms Act 2012;

The DBS does not have investigative powers and therefore relies on the information the employers sends them to make a decision as whether or not to place someone on the Barring List.

Before making a referral the employer is to gather sufficient evidence to support the referral. A fully concluded internal investigation may not be required prior to making the referral.

### Referring someone to the DBS

There may be occasions where there is a legal duty to refer to the DBS. Once a referral has been made a unique reference will be provided to the employer.

### Who should refer?

The Head of the relevant service has the responsibility for making the referral. Advice can be sought from the County Workforce Team.

There is a legal duty to make a referral when the following two conditions have both been met:

### Condition One

You withdraw permission to engage in regulated activity or you would have taken the action to withdraw but the employee;

- Dismissed;
- Redeployed;

- Retired;
- Redundant;
- Resigned.

### Condition Two

You think the person has either:

- Engaged in relevant conduct
- Satisfied the harm test; or
- Received a caution for, or a conviction for or been convicted for a relevant offence

### Relevant Conduct

Conduct which:

- endangers a child or adult or is likely to endanger a child or adult
- if repeated against or in relation to a child or adult would endanger the child or adult or be likely to endanger the child or adult
- involves sexual material relating to children (including possession of such material)
- involves sexually explicit images depicting violence against human beings (including possession of such images)
- is of a sexual nature involving a child or adult

Relevant Conduct information can be found at

[Making barring referrals to the DBS - GOV.UK \(www.gov.uk\)](http://www.gov.uk) – opens in a new tab (see list on left of page and click on Relevant Conduct)

Satisfied the Harm Test in relation to children and/or vulnerable adults. The harm test is satisfied when Relevant Conduct cannot be established but it appears to the DBS that a person **may**:

- Harm a child or adult who is in receipt of regulated activity
- Cause a child or adult who is in receipt of regulated activity to be harmed
- Put a child or adult who is in receipt of regulated activity at risk of harm
- Attempt to harm a child or adult who is in receipt of regulated activity
- Incite another to harm a child or adult who is in receipt of regulated activity

Harm information can be found [Making barring referrals to the DBS - GOV.UK \(www.gov.uk\)](http://www.gov.uk) – opens in a new tab - (see list on left of page and click on Harm)

### Requirement for an Investigation

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

The duty to make a referral is **not** triggered by temporary suspension. The Health Board may suspend a person pending an investigation where there have been allegations of harm or risk of harm. If following the investigation the Health Board decides 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 it is decided to dismiss the person or remove them from working in regulated activity with children or vulnerable adults then the referral criteria would be met.

#### Referrals for Automatic Barring Offences

Anyone convicted or cautioned for certain serious offences will, subject to the consideration of representations where permitted be barred from working in regulated activity with children and/or vulnerable adults through the criminal sentence auto bar route.

If the Health Board becomes aware that one of its employees has been convicted or cautioned for a relevant offence the Health Board has a legal duty to make a referral to the DBS.

[Making barring referrals to the DBS - GOV.UK \(www.gov.uk\)](http://www.gov.uk) – opens in a new tab

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

#### Referral to DBS if the legal criteria are not met

There may be occasions when the Health Board may 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 the Health Board have strong concerns but the evidence is not sufficient to justify dismissing or removing the person from working with children or vulnerable adults. This may be the result of a formal process

The DBS is required by law to consider any and all information sent to it from any source. If the Health Board wishes to make a referral to the DBS in the interests of safeguarding children or adults where the legal duty is not met, it can do so in consideration of relevant employment and data protection laws (section 29).

#### Requirement to Supply Information to DBS on Request

If the DBS makes a request for information about one of Health Boards current or former employees, the Health Board has a legal duty to provide the information if it has the information available. This should be treated as a priority. This duty applies irrespective of whether a referral has already been made.

## References

Disclosure & Barring Service (DBS)