



DISCLOSURE & BARRING SERVICE (DBS): REFERRAL POLICY

This document applies to all Council employees.

This document may not be applicable to employees who transferred into LCC under TUPE legislation and remain on the terms and conditions of their previous organisation.

Last Review	July 2013
Next Scheduled Review	July 2018
Last Updated	July 2013

CONTENTS

1. THE LEGAL DUTY TO REFER.....	1
2. DUTY TO REFER AS A REGULATED ACTIVITY PROVIDER	1
3. DUTY TO REFER AS A LOCAL AUTHORITY	2
4. NO LEGAL DUTY TO REFER.....	3
5. REQUIREMENT TO SUBMIT INFORMATION WHERE THE EMPLOYEE IS A “REGISTERED PROFESSIONAL”	3
6. DUTY TO PROVIDE INFORMATION TO THE DBS IF REQUESTED	3
7. WHO SHOULD MAKE A REFERRAL TO THE DBS?	3
8. HOW TO MAKE A REFERRAL TO THE DBS	4
9. USEFUL CONTACTS.....	4
10. FURTHER RELEVANT POLICIES	4

POLICY ON THE REFERRAL TO THE DISCLOSURE & BARRING SERVICE (DBS)

This policy should be read in conjunction with the [Council's Criminal Records Check Policy](#), the [Council's Children's Safeguarding Policy](#), the [Council's Allegations Against Persons who Work with Children Policy](#) and the [Council's Disciplinary Policy and Procedure](#).

The DBS was created with the merger of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA). The ISA was created to prevent unsuitable people from working with children and adults. The ISA had four statutory duties:

- To maintain a list of individuals barred from engaging in regulated activity with children;
- To maintain a list of individuals barred from engaging in regulated activity with adults;
- To make well-informed and considered decisions about whether an individual should be included in one or both barred lists; and
- To reach decisions as to whether to remove an individual from a barred list.

The DBS has responsibility for making barring decisions on the Children's list and the Adults list, previously known as:

- the PoCA list under the Protection of Children Act 1999,
- the PoVA list under the Care Standards Act 2000,
- List 99 under the Education Act 2002

1. THE LEGAL DUTY TO REFER

The Safeguarding Vulnerable Groups Act (2006) sets a legal duty for the Council to refer information to the DBS if we dismiss or remove a member of staff/volunteer from working with children and/or adults (in what is legally defined as regulated activity) because they meet the referral criteria. The Council has a duty to refer information to the DBS as both a Regulated Activity Provider and as a Local Authority. Regulated Activity is defined in [Appendix A of the Criminal Records Check Policy](#).

2. DUTY TO REFER AS A REGULATED ACTIVITY PROVIDER

The Council, as a regulated activity provider, has a duty to refer all allegations of abuse or misconduct towards a child or adult made against a member of staff or a member of staff of a contractor or partner organisation. The terms 'staff' or 'employee' should be read as including unpaid staff (volunteers). The term 'employer' should be read as including any person or organisation responsible for volunteers.

A referral must meet **both** criteria below:

- The Council withdraws permission for an individual to engage in regulated activity, or would have done so had that individual not resigned, retired, been made redundant or been transferred to a position which is not regulated activity because;

- They think that the individual has:

EITHER - engaged in relevant conduct i.e. conduct:

- That 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 them or would be likely to endanger them;
- Involving sexual material relating to children (including possession of such material);
- Involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to DBS that the conduct is inappropriate;
- Conduct of a sexual nature involving a child or adult, if it appears to DBS that the conduct is inappropriate.

OR - satisfied the harm test: where the Council believes that an individual:

- may harm a child or adult,
- may cause a child or adult to be harmed,
- puts a child or adult at risk of harm,
- attempts to harm a child or adult, or
- incites another to harm a child or adult.

OR - received a caution or conviction for a relevant offence.

If both conditions have been met the information must be referred to the DBS once the regulated activity provider has gathered sufficient evidence as part of their investigations to support their reasons for withdrawing permission to engage in regulated activity and in following good practice, consulted with their Local Authority Designated Officer (LADO) or Health and Social Care Trust Designated Officer if appropriate. Further guidance can be found in the [DBS Referral Guidance](#).

If following an internal investigation, it is decided that the best course of action is to issue a formal warning and return the employee to a regulated activity with additional training the Council still have a duty to refer to the DBS. This is because we have satisfied both conditions by withdrawing the employee from regulated activity and we have established that relevant conduct or the harm test has been satisfied.

3. DUTY TO REFER AS A LOCAL AUTHORITY

It is possible that, in the course of a child protection or adult safeguarding investigation, or by other means, a Local Authority officer may become aware that a person not employed by the Council may have satisfied the relevant criteria but that no referral has been made by any other agency. Where possible the employer of the individual concerned should be informed of their legal duty to refer and of the implications for failing to do so. If they still fail to fulfil this duty then a referral should be made as follows.

- In cases involving adults the service manager in Adults Services will initiate a referral.
- In cases involving children a referral will be initiated by the LADO.

Advice in respect of making a referral may be sought from the Serco HR advisory service.

Referrals direct to the Teaching Agency or the Health and Care Professions Council will continue in cases of misconduct where there is no vulnerable client protection element.

In cases where people (carers) are employed through the Direct Payments scheme, there is no legal duty on the employer (the client) to refer to the DBS. The legal duty to refer will fall on the Local Authority. In these cases the referrals should be made as set out above.

4. NO LEGAL DUTY TO REFER

There are situations in which the Council may make a referral but there is no legal duty to refer for example following an internal investigation there is insufficient evidence to show relevant conduct occurred but there are serious concerns about that individual. Even though the circumstances do not meet legal requirements, the individual may have left the Council employment and we know or believe they work in regulated activity in another setting. This may be reported as “patterns of behaviour” form evidence on which the DBS might make a future decision to bar.

Although there is a legal duty to refer in certain circumstances there is now the power (but not a mandatory duty) for Local Authorities to make a retrospective referral to the DBS. This is when there is evidence that an individual has engaged in relevant conduct prior to 12th October 2009 and that the person is engaged or may engage in regulated activity.

5. REQUIREMENT TO SUBMIT INFORMATION WHERE THE EMPLOYEE IS A “REGISTERED PROFESSIONAL”

There may be circumstances in which an employee is registered with the Teaching Agency or the Health and Care Professions Council. It is appropriate to refer circumstances (relating to misconduct where there has been a vulnerable client protection element) to both the DBS and the registering organisation in terms of their respective decision making processes. It could occur that the DBS decide, on the balance of evidence, that it is minded not to bar an individual, and in that circumstance the DBS may contact the Teaching Agency or the Health and Care Professions Council to ascertain their comment.

6. DUTY TO PROVIDE INFORMATION TO THE DBS IF REQUESTED

The DBS has the legal right to receive information where it asks for it from regulated activity providers and personnel suppliers. There may be occasions during an investigation when the DBS will ask for additional information to assist it with its decision making. However, this legal right only extends to existing information that you might hold. Employers are not required to undertake any additional investigations or enquiries.

7. WHO SHOULD MAKE A REFERRAL TO THE DBS?

Responsibility for initiating a referral will lie with the manager who has raised the initial concern. To ensure that the Council has a consistent approach to the delivery of information to the DBS all referrals relating to employees should be made through Serco HR who have responsibility for making the referral to the DBS. All issues which

may lead to a referral will be discussed, investigated and co-ordinated by Managers with support from Serco HR.

8. HOW TO MAKE A REFERRAL TO THE DBS

The DBS has a single referral form process for use in relation to both children and vulnerable groups. DBS requires the referral form and all associated papers to be presented in hard copy and this will be done through a secure delivery process.

Serco HR will securely retain a copy of the referral form (if it relates to an employee) and all associated papers for future reference, as the DBS may need to refer to any specific case on a subsequent occasion.

9. USEFUL CONTACTS

Serco Disclosures Team on 01522 555441
disclosures@lincolnshire.gov.uk

10. FURTHER RELEVANT POLICIES

- [Criminal Records Check Policy](#)
- [Rehabilitation of Offenders and Self Disclosure Policy](#)
- [Recruitment and Selection Policy \(Including Safer Recruitment\)](#)
- [Recruitment and Selection Toolkit \(Including Safer Recruitment\)](#)
- [Council's Children's Safeguarding Policy](#)
- [Council's Allegations Against Persons who Work with Children Policy](#)
- [Council's Disciplinary Policy and Procedure](#)