



*Safeguarding  
is everybody's  
business*

## **East Riding Safeguarding Adults Board**

### **Disclosure and Barring Service (DBS)**

#### **Procedure Guidance**

### **Referral for Barring Guidance for Organisations**

#### **What is a DBS Barring Referral**

A referral is information about a person. It tells us of concerns that an individual may have harmed a child or vulnerable adult, or put a child or vulnerable adult at risk of harm.

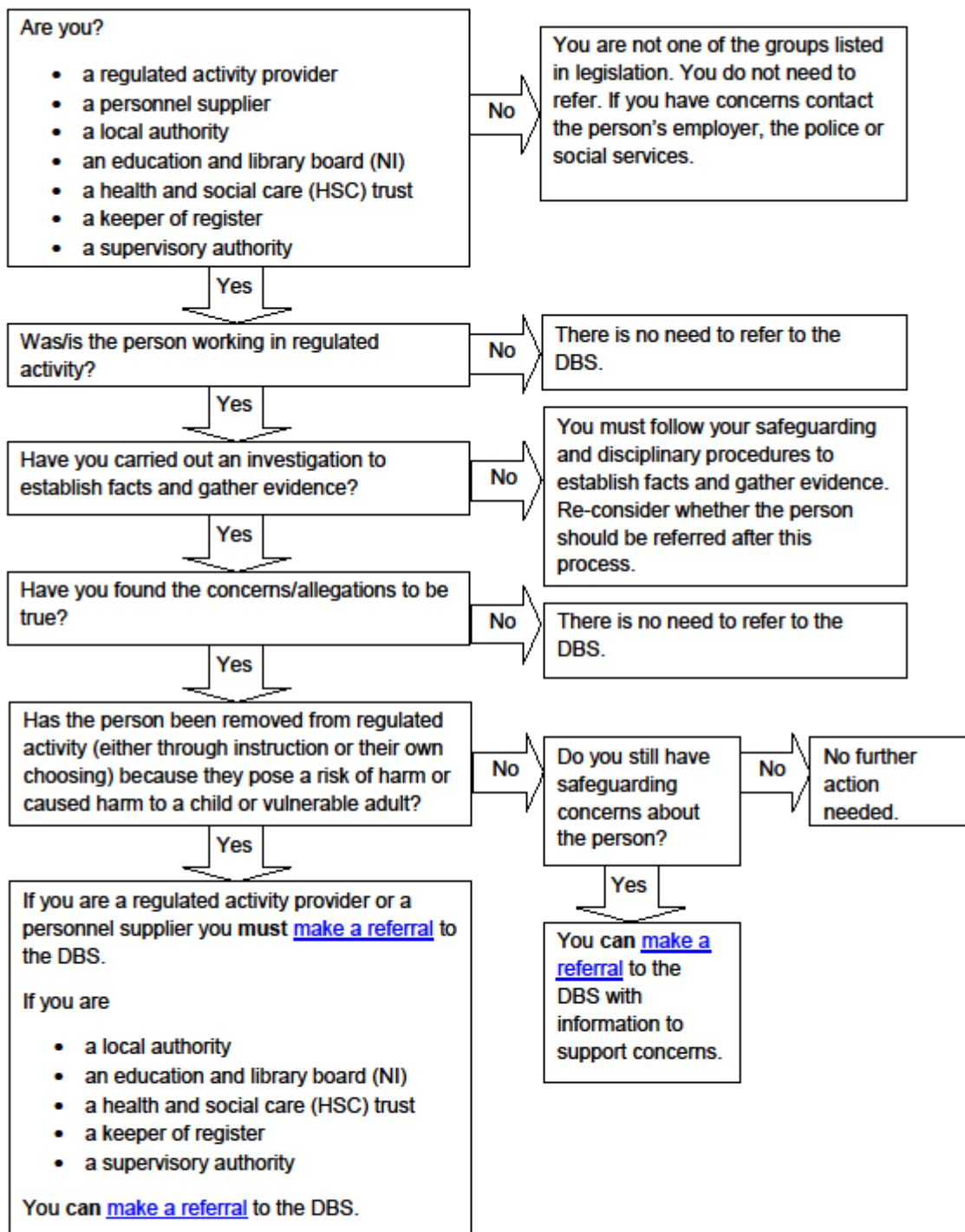
The referral duty doesn't apply to family or personal arrangements, parents or members of the public. If a parent or member of the public has a safeguarding concern, they should contact the police, social services or the person's employer.

These agencies can then investigate the allegation and if appropriate make a referral to the DBS.

If the person's employer is an adult with care and support needs in receipt of a Direct Payment from the Local Authority, social services should investigate the allegation and if appropriate make a referral to the DBS.

When a person has been referred, DBS consider if they need to be added to a barred list(s).

The referral flowchart in below will help you to decide if you need to make a referral.



## **Who can make a referral?**

Under legislation, the following can make referrals to the DBS:

- local authorities
- police
- keepers of register in England, Wales or Northern Ireland
- supervisory authorities in England, Wales or Northern Ireland

The power to refer happens when an organisation is not acting as a regulated activity provider. This will usually be when the organisation is undertaking their safeguarding role.

The power to refer can be used when an organisation thinks a person has either:

- harmed or poses a risk of harm to a child or vulnerable adult
- has satisfied the harm test; or
- has received a caution or conviction for a relevant offence and;
- the person they're referring is, has or might in future be working in regulated activity and;
- the DBS may consider it appropriate for the person to be added to a barred list

## **Who has a legal duty to refer?**

Regulated activity providers (employers or volunteer managers of people working in regulated activity in England, Wales and Northern Ireland) and personnel suppliers have a legal duty to refer to DBS where conditions are met. This applies even when a referral has also been made to a local authority safeguarding team or professional regulator.

If the employer is an adult with care and support needs in receipt of a Direct Payment from the Local Authority, in this circumstance it is NOT the responsibility of the employer to refer to DBS. Social services should investigate the allegation and where conditions are met make a referral to the DBS.

A personnel supplier may be an employment agency, employment business or an educational institution and are described as:

- an employment agency that makes arrangements to either find a work-seeker employment with a hirer or to supply him to a hirer to employ
- an employment business that engages a work-seeker and supplies him to a hirer to work under a hirer's control
- an educational institution if it makes arrangements to supply a student following a course at the institution to a regulated activity provider such as a school.

## **Legal duty to refer: the two conditions that must be met**

If you are a regulated activity provider or fall within the category of personnel supplier, you must make a referral when both of the following conditions have been met:

### **Condition 1**

- you withdraw permission for a person to engage in regulated activity with children and/or vulnerable adults. Or you move the person to another area of work that isn't regulated activity.

This includes situations when you would have taken the above action, but the person was re-deployed, resigned, retired, or left. For example, a teacher resigns when an allegation of harm to a student is first made.

### **Condition 2**

You think the person has carried out 1 of the following:

- engaged in relevant conduct in relation to children and/or adults. An action or inaction 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. eg there has been no relevant conduct but a risk of harm to a child or vulnerable still exists.or
- been cautioned or convicted of a relevant (automatic barring either with or without the right to make representations ) offence

### **Relevant conduct in relation to adults:**

A vulnerable adult is a person aged 18 years or over who is being provided with, or getting a service or assistance which is classed as regulated activity for adults.

Relevant conduct is:

- endangers a vulnerable adult or is likely to endanger a vulnerable adult
- if repeated against or in relation to a vulnerable adult would endanger the vulnerable adult or be likely to endanger the vulnerable 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 vulnerable adult

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

- harm a vulnerable adult
- cause a vulnerable adult to be harmed

- put a vulnerable adult at risk of harm
- attempt to harm a vulnerable adult
- incite another to harm a vulnerable adult

A person satisfies the harm test if they may:

- harm a vulnerable adult
- cause a vulnerable adult to be harmed
- put a vulnerable adult at risk of harm
- attempt to harm a vulnerable adult
- incite another to harm a vulnerable adult

**A DBS Produced Examples of harm document in relation to vulnerable adults is attached here:**



Examples of harm  
.pdf

### **What is harm?**

This is not defined in legislation. DBS view harm as its common understanding or the definition you may find in a dictionary.

Harm is considered in its widest context and may include:

- sexual harm
- physical harm
- financial harm
- neglect
- emotional harm
- psychological harm
- verbal harm

This is not a fully comprehensive list, harm can take many different forms.

ERSAB definitions of harm and abuse can also be found via [www.ersab.gov.uk](http://www.ersab.gov.uk)

### **What is the harm test?**

A person satisfies the harm test if they may harm a child or vulnerable adult or put them at risk of harm. It is something a person may do to cause harm or pose a risk of harm to a child or vulnerable adult.

## **Must I make a referral?**

If you engaged a person to work in regulated activity, you have a legal duty to refer where the relevant conditions are met.

The duty to refer applies even when a report has been made to another body such as a local authority safeguarding team.

The duty to refer applies irrespective of whether another body has made a referral to the DBS in relation to the same person.

This helps to make sure the DBS have all the relevant information to consider a case. DBS can then make a fair, consistent and thorough decision about whether to bar a person from working with vulnerable groups.

A person who is under a duty to refer and fails to refer to us without reasonable justification is committing an offence. If convicted they may be subject to a fine up to £5,000.

## **Employers of Personal Assistants via Local Authority Direct Payments**

If the employer is an adult with care and support needs in receipt of a Direct Payment from the Local Authority, in this circumstance it is NOT the responsibility of the employer to refer to DBS. Social services should investigate the allegation and where conditions are met make a referral to the DBS.

## **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.

## **How to make a referral**

We accept referrals made using our [online referral form](#) (further information can be found via <https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs> regarding how to create an online account and/or make an online referral) or by post (paper).

Further DBS guidance to help with making a DBS Paper referral and identifying examples of regulated activity providers, personal suppliers, legal requirements, and documents to support making a Referral can be found via:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638129/DBS\\_referral\\_guidance\\_completing\\_the\\_form\\_v1\\_2\\_August\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638129/DBS_referral_guidance_completing_the_form_v1_2_August_2017.pdf)

Either way you'll be asked to provide prescribed information. This is information that you must legally provide, if you're under a duty to refer or if you fall within those persons/bodies who are legally required to provide information on request. You should be aware that the legal duty to provide prescribed information may apply whether you've made a referral to the DBS or not.

It's important that you provide us with as much relevant information as you can. DBS rely on the quality of information provided to us. You're not expected to provide information that you don't have access to. As part of the process to decide if an individual should be placed on a barred list, any information in your referral may be used by us and could be disclosed to the referred person or other parties.

### **Should I make a referral when an allegation is first made, or when I temporarily suspend someone?**

When an allegation is made, you should investigate and gather enough evidence to establish if it has foundation.

This will inform your processes for any decision to dismiss or remove the person from working in regulated activity.

You should make a referral even if a significant period of time has passed between the allegation and the gathering of evidence to support a decision to make a referral.

You should complete your investigations and disciplinary processes (even if the person has left your employment).

This is particularly important as DBS rely on referral evidence and any other relevant evidence gathered.

The duty to make a referral may not be triggered by temporary suspension, it depends if you have sufficient information to meet the referral duty criteria. You may suspend a person pending an investigation where there have been allegations of harm or risk of harm.

Following investigation, if you decide to let the person return to a position working in regulated activity with children or vulnerable adults then there may not be a legal duty to make a referral.

But, if you decide to dismiss the person or remove them from working in regulated activity then you would need to make a referral.

### **Will I be informed of the outcome of my referral?**

Only if you can prove a legitimate interest in the person you have referred.

If you no longer employ the referred person or let them engage in regulated activity, then you may not be able to show a legitimate interest and won't be advised of the outcome.

## **Appeals**

A person included in a barred list (other than for an autobar without representations) has the right of appeal against a decision of the DBS to include them in a barred list on the grounds of an 'error of fact' or an 'error of law'. This also applies to a decision not to remove a person from a barred list following a Review of their inclusion in a barred list being carried out.

Automatic barring (autobar) cases are where a person has been cautioned or convicted for a 'relevant offence' or been issued with a Risk of Sexual Harm Order and the details have been provided to DBS by the Home Office.

More information about this can be found via:

**“DBS referrals guide: referral and decision making process”**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638101/DBS\\_referrals\\_guide\\_referral\\_and\\_decision\\_making\\_process\\_v3.3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638101/DBS_referrals_guide_referral_and_decision_making_process_v3.3.pdf)

Appeals are dealt with by the Administrative Appeals Chamber of the Upper Tribunal, or the Care Tribunal in Northern Ireland. Please refer to DBS Referral guide: Appeals for further information.

## **Help with referrals**

You can call DBS on 03000 200 190 if you need help or advice.

Guidance date: 25.02.19