

Making a barring referral to DBS: Employer Guide

The Disclosure and Barring Service (DBS) is responsible for managing the lists of people who are barred from carrying out regulated activity with children or adults in England, Wales and Northern Ireland.

Organisations who employ individuals or have volunteers who carry out regulated activity with children or adults have a legal duty to refer to DBS if certain conditions are met. These organisations are known as Regulated Activity Providers.

Personnel Suppliers who provide individuals to organisations to carry out regulated activity also have a legal duty to refer.

For more information on regulated activity with children and adults please see [DBS Guidance Leaflets](#)

Legal Duty to Refer

The duty to refer means that Regulated Activity Providers and Personnel Suppliers have a legal obligation to inform DBS of any individual that has caused harm or poses a risk of harm to vulnerable groups.

The duty to refer exists if the following two conditions have been met:

- 1) The individual has been removed from regulated activity with children or adults. This can include dismissal, redeployment, retirement, redundancy, or resignation
- 2) The organisation thinks the individual has engaged in relevant conduct or satisfies the harm test.

If both these conditions have been met, then your organisation is under a legal duty to inform DBS of the individual and about the risk they pose or caused.

If your situation does not meet the legal duty to refer, but there are safeguarding concerns regarding the individual, then you can still make a referral. Please seek your own legal advice when doing this.

DBS can only consider placing an individual on a barred list if they have previously, are currently or in the future will work in regulated activity with children or adults. If this cannot be established through the referral and supporting documentation, then the case will be closed.

The legal duty to refer to DBS applies to Regulated Activity Providers and Personnel Suppliers even when a referral has been made to a body such as a local authority safeguarding team, a LADO or a professional regulator. This is regardless of whether that body has made a referral to DBS about the person.

Failure to refer to DBS when a duty to refer exists, without reasonable justification may result in a prison sentence or a fine of up to £5,000.

Once DBS has received the referral, they will consider the case and make a decision on whether to place the individual on one or both barred lists or not. DBS manages and maintains two barred lists – children and adults. Those placed on the barred list are legally not allowed to work in regulated activity with the workforce they have been barred from.

Sharing information with DBS under UK General Data Protection Regulation (UK GDPR) / Data Protection Act 2018 (DPA 2018)

The legislation that allows for barring referrals to be made under a duty to refer are:

- Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008 or
- Safeguarding Vulnerable Groups (Prescribed Criteria and Miscellaneous Provisions) Regulations (Northern Ireland) 2009

When a Regulated Activity Provider or Personnel Supplier has a legal duty to refer, the information required is **exempt** from the non-disclosure provisions of the UK GDPR/DPA 2018, because the disclosure is needed by law.

The legislation provides a framework for the information to be shared responsibly. Therefore, where a person or organisation is under a duty to refer, the UK GDPR/DPA 2018 **do not** stop the sharing of the information, and the information may be legally given to the DBS.

Making a barring referral

Barring referrals can be made online using DBS Barring Referral Service - [Submit an online barring referral to DBS](#)

Being informed of the barring decision

The referring organisation will not be informed of the barring decision, unless they can prove a legitimate interest in the person who has been referred.

Legitimate interest requests are used by employers, managers of volunteers and local authorities who can demonstrate a need to know e.g. they are looking to employ an individual in regulated activity with children and/or adults; or they make a referral to DBS and retain an interest in the person because they still employ them; or they are aware that the individual may be in regulated activity with children and/or adults in another employment or voluntary role etc and can take action to prevent them from carrying out that work.

Further support and guidance

For more information please see [Making barring referrals to the DBS](#) guidance.

If you have any questions or would like any further support, please contact your [DBS Regional Outreach Adviser](#) or send an email to us at dbsregionaloutreach@dbs.gov.uk