

The legal duty to refer to DBS

The Disclosure and Barring Service (DBS) is responsible for managing the lists of people who are barred from regulated activity 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.

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

Guidance about regulated activity can be found on [DBS.gov.uk](https://www.dbs.gov.uk)

Conditions to meet to make a referral

Before making a referral, an organisation should establish if the following conditions are met:

- 1) The individual has been removed from regulated activity. 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. Read the [‘Making barring referrals to the DBS’](#) section for further information

Relevant conduct is an action or inaction that has harmed or placed a member of a vulnerable group including children, at risk of harm.

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 vulnerable groups, including children.

If your situation does not meet the legal duty to refer, you can still make a referral on safeguarding grounds. Please seek your own legal advice when doing this.

When to make a referral

- To decide if a referral to DBS is appropriate, organisations first need to investigate, gather enough evidence, and conclude their investigation to establish they have met the conditions to make a referral
- A referral should be made to DBS even if a significant period of time has passed between the allegation and the gathering of evidence
- Employers and organisations should complete their investigations and disciplinary processes, even if the person has left their employment
- If a person is under suspension, pending an investigation, at this point the referral may not be necessary. Please seek further advice from the DBS Regional Outreach Team before making a referral
- A duty to refer applies even when a referral has also been made to a local authority safeguarding team or professional regulator, or you have reported the allegation to the police.

How to make a good quality referral

- DBS accepts referrals from organisations using our online referral form, by email, or by post. Read the [‘Making barring referrals to the DBS’](#) section for further information
- Please provide all relevant information to facilitate the DBS decision-making process. This can include job description, internal and external investigation and disciplinary processes, interviews, chronology of events, victim impact, relevant training, and supervision records, contact details for any other organisations involved, and evidence of previous misconduct
- Ensure we can read any information you send in. If you send in a handwritten statement, please send in a typed-up version which is signed and dated
- If scanning or photocopying documents, please ensure the quality is not reduced
- If using acronyms within the referral form or supporting evidence, please explain what these are
- For further information, read [‘How to make a good quality barring referral’](#) on DBS.gov.uk

Redaction

As part of the process to decide if an individual should be placed on a Barred List, any information provided in a referral or requested by DBS may be used by us, and could be disclosed to the referred person, or other parties. DBS will redact information prior to this being sent out to the referred person. This redaction is carried out first by the case worker and then by a dedicated redaction team.

If you choose to redact information before you submit it, please only redact what is necessary and ensure the information is still understandable. For example, if redacting names, include initials, or child one, for example.

Requests to share information with DBS

We may need to contact your organisation to get information about an individual who has been referred to us. The referring organisation may be asked to provide supporting information to DBS. Regulated activity providers have a legal duty to share information under [Section 35 Safeguarding Vulnerable Groups Act \(SVGA\) 2006](#)

If you are a local authority

[Section 40 of the Safeguarding Vulnerable Groups Act \(SVGA\) 2006](#) places a duty upon local authorities to provide information to DBS upon request. The information which a local authority is under a duty to provide is laid down within [Regulation 7 of the SVGA 2006 \(Prescribed Information\) Regulations 2008](#). Furthermore, [Rule 12.73 The Family Procedure Rules 2012](#) (viii) allows information relating to proceedings to be disclosed to DBS without a court order.

For advice and more information about the legal duty to refer, please contact dbsregionaloutreach@dbs.gov.uk