

# **Kent Adult Safeguarding**

## **Policy to Support Referral to the Disclosure and Barring Service**

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## Introduction

### **In December 2012 the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged into the Disclosure and Barring Service (DBS).**

This service provides a joined up, seamless service to combine the criminal records and barring functions.

The Employer or Volunteer Co-ordinator must make appropriate referrals to the DBS.

- Since December 2012 the local authority has the power rather than the duty to refer to the DBS.
- The Employer or Volunteer Coordinator must not engage in regulated activity someone whom you know has been barred by the DBS.
- Everybody within the pre-September 2012 definition of regulated activity will remain eligible for enhanced CRB checks, whether or not they fall within the post-September definition of regulated activity.

You are advised to access the up to date versions of the guidance and form direct from the [DBS Website](#).

- a) the key elements of the referral process
- b) the circumstances under which a referral should be made
- c) the legal responsibilities of employers, including the paid and voluntary sector and also employees
- d) the responsibilities of Local Authorities, Keepers of Registers and Supervisory Authorities and Health and Social Care Bodies
- e) the main points of the law in relation to referrals

### **DBS Referral Guidance**

This duty to share information was introduced under the Vetting and Barring Scheme. From 12<sup>th</sup> October 2009 employers, social services and professional regulators had to notify the ISA (now DBS) of relevant information so that individuals who pose a threat to vulnerable groups can be identified and barred from working with these groups.

From December 2012 the local authority had the power rather than the duty to refer to the DBS.

Referral to the DBS must be made when **relevant conduct** has occurred.

\***Relevant Conduct** is that which:

- a) Endangers or harms a child or vulnerable adult or is likely to endanger or harm a child or vulnerable adult;
- b) If repeated against or in relation to a child or vulnerable adult, would endanger them or would be likely to endanger them;
- c) That involves sexual material relating to children (including possession of such material);
- d) That involves sexually explicit images depicting violence against human beings (including possession of such images), if it appears to DBS that the conduct is inappropriate; or

- e) Of a sexual nature involving a child or vulnerable adult, if it appears to DBS that the conduct is inappropriate.

### **The Responsibilities of Employers or Volunteer Co-ordinators**

The main responsibility for making a referral to the DBS rests with the regulated activity providers. They are employers or volunteer co-ordinators. They must make the referral when they withdraw a person from regulated activities or would have done so had the person not resigned, retired, been made redundant or been transferred to a non regulated or controlled activity. (This does not apply to temporary suspension without prejudice pending investigation)

### **\*Definition of Regulated Activity Relating to Adults (from September 2012)**

The definition of regulated activity relating to adults no longer labels adults as 'vulnerable'. Instead, the definition identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. This means that the focus is on the activities required by the adult and not on the setting in which the activity is received, nor on the personal characteristics or circumstances of the adult receiving the activities. There is also no longer a requirement for a person to do the activities a certain number of times before they are engaging in regulated activity.

There are six categories of people who will fall within the definition of regulated activity (and so will anyone who provides day to day management or supervision of those people). A broad outline of these categories is set out below. For more information please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012.

#### **(i) Providing health care**

Any health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for further details about what is meant by health care and health care professionals.

#### **(ii) Providing personal care**

Anyone who:

- a) provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails because of an adult's age, illness or disability;
- b) prompts and then supervises an adult who, because of their age, illness or disability, cannot make the decision to eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision; or
- c) trains, instructs or offers advice or guidance which relates to eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, hair or nails to adults who need it because of their age, illness or disability.

#### **(iii) Providing social work**

The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

(iv) **Assistance with cash, bills and/or shopping**

The provision of assistance to an adult because of their age, illness or disability, if that includes managing the person's cash, paying their bills or shopping on their behalf.

(v) **Assistance in the conduct of a person's own affairs**

Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for the further categories which are covered here.

(vi) **Conveying**

A person who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers.

**Withdrawal from Regulated Activity**

Withdrawing a person from regulated activity in the context of making a referral does not necessarily mean permanently removing them. Once your investigations have established harm or risk of harm to a child or vulnerable adult, a decision needs to be made as to the best way of managing this information.

1. Return the individual to work with additional training and / or a warning
2. Dismiss the individual
3. Return the individual to a non regulated activity
4. Continue suspension due to risk of harm while seeking advice

If the decision is to remove the person either through points 2 to 4 above then permission to engage in regulated activity has been withdrawn and referral to the DBS must be made. Where an individual has left your employ before you made any final disciplinary decision due to harm or risk of harm to a vulnerable adult this information **must** also be referred to the DBS.

**Responsibilities of Local Authorities, Keepers of Registers, Supervisory Authorities, Health and Social Care (HSC) Bodies and Education and Library Boards**

In all cases the trigger to make a referral to the DBS is when there is evidence that an individual who is engaged or may have been engaged in *regulated activity* has:

- a) engaged in **Relevant Conduct**;
- b) satisfied the **Harm Test**;

or received a caution or conviction for a *relevant offence*.

- o and they consider that the DBS may bar the worker

If the above conditions have been met the prescribed information **must** be referred to the DBS by the employer or the volunteer co-ordinator.

The referral should be made to the DBS when the body (employer or volunteer co-ordinator) has gathered sufficient evidence as part of their investigations to conclude that a person has engaged in *relevant conduct*, satisfied the *harm test* **or** received a caution or

conviction for a *relevant offence*. Referral at this point will help to ensure that the DBS has sufficient information to commence its decision making process while providing adequate safeguarding for vulnerable groups.

### **All Groups: Making a Referral When There Is No Duty to Refer**

The DBS will consider all information referred to it from any source in relation to whether an individual should be included in a barred list. For example:

- a) Regulated activity providers and other groups may provide information where following an internal investigation there is insufficient evidence to show *relevant conduct* occurred, but they still have concerns about that individual; or
- b) Where an employer may have concerns about an individual who has left their employ and they know or think that the individual works in *regulated activity* in another setting.

Again there is no duty to refer to the DBS but they may.

### **Who Will Be Informed If An Individual Is Barred?**

Following representations, if an individual is subsequently barred they will be notified in writing and they are Barred. All organisations with a *legitimate interest* in the individual will be notified that the individual is Barred. If the individual is not barred, they and *legitimately interested* parties will be advised in writing.

The DBS does not have the power to inform any other individuals or organisations of the decision including an employer who may have dismissed the individual (as they no longer have a *legitimate interest* in the individual).

### **Legitimate Interest**

A person or organisation has a legitimate interest in another person if they

- a) have engaged or are considering engaging them in regulated activity, and
- b) the person or organisation has registered any interest and
- c) the registered interest relates to the activity that the person or organisation has permitted the individual to engage in and
- d) the person or organisation has notified the DBS of the address to which any notification is to be sent or
- e) if they are a Keeper of Register or Supervisory body as mentioned in the 2006 Act or 2007 Order and the individual concerned is registered with that body.

**It will be apparent from this section that neither the ex-employer nor the Local Authority that made the referral to the DBS will be informed of the outcome of the referral. So the records held by the Local Authority will be a record that a referral was made by Social Care, Health & Wellbeing (SCH&W) or KMPT to the DBS in respect of the individual.**

### **Power to refer**

The power to refer may be used when a local authority or regulatory body is acting in a role other than as a regulated activity provider, for example when undertaking a safeguarding role.

When those bodies use their power to refer a person, they may provide any information to the DBS that they have about the person being referred if both of the following two conditions are met:

**Condition 1: the organisation thinks a person has either:**

- a) harmed or poses a risk of harm to a child or vulnerable adult;
- b) satisfied the harm test; or
- c) received a caution or conviction for a relevant offence

**Condition 2: the organisation thinks that:**

- a) the person they are referring is or has been, or might in the future be working in regulated activity; and
- b) the DBS may consider it appropriate for the person to be included in a barred list

If a local authority or regulatory body identifies that a person has met the above criteria, it has the power to refer to the DBS.

When an organisation is considering exercising the power to refer it should make sure that the referral is compliant with the [Data Protection Act 1998](#) and human rights legislation. The organisation should seek legal advice if necessary.

Whenever a local authority refers a person to the DBS, they must consider whether they are doing so under the duty to refer or their power to refer.

**Local authorities as regulated activity providers**

A local authority is considered a regulated activity provider if:

- a) they are responsible for the management or control of regulated activity,
- b) the regulated activity is carried out for the purposes of the local authority; and
- c) the local authority makes, or authorises the making of arrangements (in connection with a contract of service, or for services otherwise) for another person to engage in regulated activity

This means that the duty to refer applies when the local authority is the employer of staff in regulated activity.

The staff can be employed directly, by contract or through a personnel supplier.

A personnel supplier may be an employment agency, employment business or an educational establishment. An educational establishment becomes a personnel supplier when they make arrangements to supply a student to a regulated activity provider, such as a school.

Referrals, under the duty to refer, should be made on the [DBS referral form](#).

The duty to refer requires the referring person or organisation to supply prescribed information. There are fields on the form for you to provide this.

**Duty of the Local Authority**

Local authorities are under a legal duty to refer where they are the regulated activity provider and they have withdrawn permission for a person to engage in regulated activity, because the person has either:

- a) harmed or poses a risk of harm to a child or vulnerable adult, or
- b) satisfied the harm test, or

- c) received a caution or conviction for a relevant offence
- d) this also applies if the local authority would or might have withdrawn permission for a person to engage in regulated activity if the person has not otherwise ceased to engage in regulated activity. This includes situations where the person was re-deployed to a non-regulated activity role or resigned or retired

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

The Local Authority **must** make a referral to the DBS following safeguarding actions in all cases where a worker, volunteer or personal assistant has abused a vulnerable adult **unless** they have a record of evidence that the employer or volunteer coordinators has made the DBS referral.

The Designated Senior Officer (DSO) in the case must inform the SCH&W Assistant Director of the outcome of the safeguarding case conference and the recommendation that referral to the DBS is required.

Where the Employer has not, cannot or does not intend to make the DBS referral the DSO **must** complete the DBS referral form with as much information as we have and submit it to the DBS with relevant papers. Relevant papers are likely to be minutes of safeguarding planning meetings or case conferences and may include the summary of the investigation/assessment carried out. Any papers submitted should be checked and cleared by the relevant Team Manager and the names of the victims and any other non professional third parties, if appropriate, must be obscured leaving their initials only. The names of all professionals involved and their agencies must remain clear. If the perpetrator is an employee of KCC then the registered manager in consultation with HR manager will be responsible for completing the DBS referral on behalf of the local authority. The DSO must ensure the referral to the DBS is recorded on SWIFT.

When SCH&W make a referral to DBS a copy of the referral form and other papers submitted should be filed with the safeguarding papers for the **victim** and the Adult Safeguarding Unit should be advised that the referral has been sent. **(Please e-mail the details of the person referred to the DBS and the name of the victim of the safeguarding case to: [heather.batt@kent.gov.uk](mailto:heather.batt@kent.gov.uk)**. This will ensure that any further requests for information regarding the case received by the Adult Safeguarding Unit can be passed immediately to the relevant team).

We are not obliged to seek information from others which we do not already hold. The DBS may write to SCH&W to obtain clarification or any additional information or documents held by the authority with regard to the safeguarding case. We have a **legal duty to provide the information they request, if we have it**.

Where a recommendation for referral to the DBS is made, the details of the employee or volunteer must be added to SWIFT and linked to the victim of the safeguarding case as the confirmed perpetrator. Record on the KASAF that the perpetrator was referred to the DBS and ensure this information is transferred to SWIFT.

If there is any disagreement in relation to referring a SCH&W member of staff to the DBS following a multi agency safeguarding case conference this must be referred to the relevant Divisional Director. They will be responsible for making the final decision and communicating that decision to the members of the case conference.

When a **direct payment user** wishes to employ a personal assistant they will be strongly advised to ask for a DBS check to be carried out by the local authority. If the DP users refuses to have a DBS check carried out **and** we have information/evidence within SCH&W showing that the potential personal assistant was implicated in a safeguarding case we can refuse to provide the direct payment to enable the personal assistant to be employed using local authorities funding.

Where we have detailed information about the perpetrator and the employer is not able to make the DBS referral SCH&W have the power to make the referral and advise the perpetrator in writing that we have done so.

## Summary of the DBS Referral Process when this is related to a Safeguarding Adults Case

When making a referral using the DBS referral form the requirement is to provide all the information that is held by the authority in relation to the alert. This will include all the relevant adult protection papers including: the summary of investigation, the assessment of the impact of the abuse on the victim and the minutes of any safeguarding adults meetings. *(The papers submitted should only include the initials of any vulnerable adults be they victim or witnesses)*

<b>Step 1</b>	<ul style="list-style-type: none"> <li>a) Safeguarding Adults case conference involving the relevant employer or volunteer co-ordinator recommends referral to the DBS</li> <li>b) Safeguarding adults case conference relating to abuse by the employer or volunteer coordinator recommends referral to the DBS</li> </ul>
<b>Step 2</b>	<p>The Assistant Director must be informed in writing about the outcome of the case conference and advised that the DSO is preparing the DBS referral as the employer has not or is not intending to make the necessary referral. If the perpetrator is an employee of SCH&amp;W then the registered manager in consultation with the HR department will be responsible for completing the DBS referral on behalf of the local authority. The DSO must ensure the DBS referral is recorded on the safeguarding papers and on SWIFT.</p>
<b>Step 3</b>	<p>If there are any disagreement about the need for the DBS referral this should be referred to:</p> <ul style="list-style-type: none"> <li>a) The relevant Assistant Director if an employee of a P&amp;V organisation is concerned</li> <li>or</li> <li>b) The relevant Divisional Director if the perpetrator is employed by SCH&amp;W.</li> </ul>
<b>Step 4</b>	<p>The KASAF should be completed recording the full details of the perpetrator and noting the referral to DBS as the outcome of the alert.</p>
<b>Step 5</b>	<p>This information must be transferred to SWIFT.</p>

<b>Step 6</b>	Where we have information that the employer has not or is not intending to make the DBS referral following a safeguarding case, the DBS referral form must be completed with the information held by SCH&W. We should attach relevant papers including minutes of safeguarding meetings, case conference and the summary of the investigation/assessment carried out. The names of all non - professional third parties should be obscured. (Initials are recommended). The papers should be checked by the team manager and authorised by a head of service and posted to the DBS by recorded/registered delivery.
<b>Step 7</b>	You <b>must</b> advise the Adult Safeguarding Unit that the DBS referral is being made by SCH&W or the referral is being made by the employer. (e-mail <a href="mailto:heather.batt@kent.gov.uk">heather.batt@kent.gov.uk</a> with details of the person being reported to the DBS and the name of the victim to enable follow up letters from the DBS arriving with the safeguarding unit requesting additional information can be forwarded promptly to the relevant team)
<b>Subsequent to DBS referral being made</b>	<p>The DBS may write to the local authority for any additional information held in relation to the referral. We are legally required to provide information we hold within 28 days but this should be checked and cleared by the relevant Assistant Director and returned to the DBS with a covering letter.</p> <p><b>Be aware that any information provided will be shared with the perpetrator as part of the DBS processes which will allow the person to challenge any information related to them.</b></p>