

Factsheet 2: Referral and barring decision-making process

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Purpose

This Factsheet is intended as a general overview of a typical DBS referral and barring decision making processes. It does not cover all aspects of the referral and barring decision making processes and does not apply in all cases.

Introduction

The DBS is committed to ensuring that we make fair, consistent and thorough barring decisions that are a proportionate response to the harm that has occurred and to the risk of harm posed.

We are keenly aware of the impact barring or not barring a person can have both to the person referred and also those with whom they have or could have come into contact with. Often very difficult and finely balanced decisions have to be made.

There are two main ways cases come to us:

- Autobars - there are two types of automatic barring cases where a person has been cautioned or convicted for a 'relevant offence'. Automatic barring without representations offences will result in the person being placed in a barred list(s) by the DBS irrespective of whether they work in regulated activity. Automatic barring with representations offences may, subject to the consideration of representations and whether the person has a link to regulated activity result in the person being placed in a barred list(s) by the DBS. The DBS has a plain English version of 'autobar' offences in Factsheet 5 on its website;

or

- Referrals from employers and other providers of regulated activity, personnel suppliers, local authorities / health and social care trusts / education and library boards and professional regulatory bodies. Typically there is a duty, in certain circumstances, on those organisations to make a referral to the DBS when they have dismissed or moved an employee working in regulated activity, following harm to a child or vulnerable adult or where there is a risk of harm.

The DBS makes its decisions using barring decision-making processes specifically developed for its use. The DBS Board is ultimately responsible for all the decisions made by the DBS.

Our barring decision-making processes for considering discretionary (non-automatic barring) cases have been developed to ensure all DBS decisions are fair, consistent and thorough. The typical process has five decision-making stages. At each stage a decision is required for the case to progress to the next stage. If the criteria for the case to progress to the next stage are not met, the case is closed and no further action taken. However, where appropriate the DBS retains the information, subject to its Data Retention Policy, in case further referrals are received.



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Typical barring decision-making process

Stage one: Initial case assessment

We determine whether the case falls within our legal powers under the Safeguarding Vulnerable Groups Act 2006, i.e. does there appear to be evidence of relevant conduct or risk of harm to a child or vulnerable adult? Has the person worked in regulated activity or might they work in regulated activity in future? If the initial case assessment criteria are met, the case proceeds to the next stage.

Stage two:

Information gathering and assessment to establish relevant conduct or risk of harm

Information relating to the case is gathered and considered, including any relevant convictions or cautions. As we have no investigatory powers we rely upon the information provided by other organisations. Convictions, police cautions and the findings of specified competent bodies (such as the General Medical Council) are treated as facts in DBS decision-making.

We also consider relevant information which may be provided or requested from regulated activity providers, the police, personnel providers and regulatory bodies such as the General Teaching Council for Wales or the General Medical Council, as well as any relevant information already held in relation to the person from any previous referrals. This could provide evidence of cumulative behaviour indicating a safeguarding risk.

The type of information we would expect to see in support of a referral from an employer includes:

- Minutes of disciplinary hearings;
- Witness statements;
- Dismissal/suspension letter;
- Adult social care or children's service's records in relation to any safeguarding investigation; and
- Details of any police involvement.

When all relevant information is gathered and assessed, we will determine whether relevant conduct is proven on the balance of probabilities or whether risk of harm has been established. Consideration is then given as to whether it is appropriate to progress the case to stage three.

Stage three: Structured judgement process (risk assessment tool)

Depending on the case, a case assessment using our structured judgement process (SJP) may be undertaken. The SJP is an internal risk assessment tool developed to determine whether, based on all relevant information, there is a future risk of harm to children or vulnerable adults. For some cases, a separate process may apply that does not involve a SJP risk assessment. For example financial harm cases or cases which the SJP would not assist the consideration of the case due to factors including insufficient information.

If a risk of harm to children or vulnerable adults is identified and barring is deemed to be an appropriate response to that risk, the DBS will then be 'minded to bar' the person on either



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one or both lists, and the case progresses to stage four. Otherwise the case is closed save in exceptional circumstances where it may still be appropriate to consider a bar.

Stage four: Representations

The person is advised in writing that the DBS has reached a 'minded to bar' view and invites them to make representations as to why they should not be barred. The DBS outlines the legal powers used and reasons for taking this view. A copy of all of the information that we have relied upon to reach the 'minded to bar' position is sent to the person.

The person has eight weeks in which to provide representations to the DBS – although the DBS will consider and may grant extensions to this, if requested. Individuals may be assisted in their representations by, for example, a friend, relative, adviser, trade union or solicitor. Where the DBS considers that it is necessary to protect the person's Convention rights (under the European Convention on Human Rights) or in the interests of fairness and equality, arrangements can be made to hear oral representations. This may be either following a request, or of the DBS' own suggestion.

Such circumstances include (but are not limited to) a person with a disability (whether or not falling within the definition of disability in the Equality Act 2010) which the DBS is satisfied from available information, prevents that person from making written representations with available assistance. All cases are considered on their particular circumstances.

Stage five: The barring decision

If no representations have been received by the end of the eight week representations period, and it is considered appropriate to do so, the person is barred from working with children and/or vulnerable adults. Where representations are received the case is wholly reassessed and a final decision is made. The person is notified in writing of the final decision and, where the decision is to bar the person, they are notified of their rights to seek an appeal/review. If barred, it is illegal for the person to seek, offer or to engage in regulated activity with a vulnerable group they are barred from.

Review of a bar

A barred person has the right to request a review of a DBS (or previous ISA) decision after a minimum barred period has elapsed. These are as follows:

- Aged under 18 when barred - 1 year
- Aged 18 to 24 when barred - 5 years
- Aged 25 or over when barred - 10 years

All requests for review must be made to the DBS. We will agree to a review if the person can demonstrate that their circumstances have changed significantly in such a way that they no longer pose a significant risk to children and/or vulnerable adults. The DBS will not remove anyone from the lists unless we are satisfied that the risk has diminished.

In addition, new legislative powers that commenced on 10 September 2012 gave the DBS the power to review a bar at any time. If and only if, the DBS is satisfied that in the light of new information not available at the time of barring, or any change of circumstances relating



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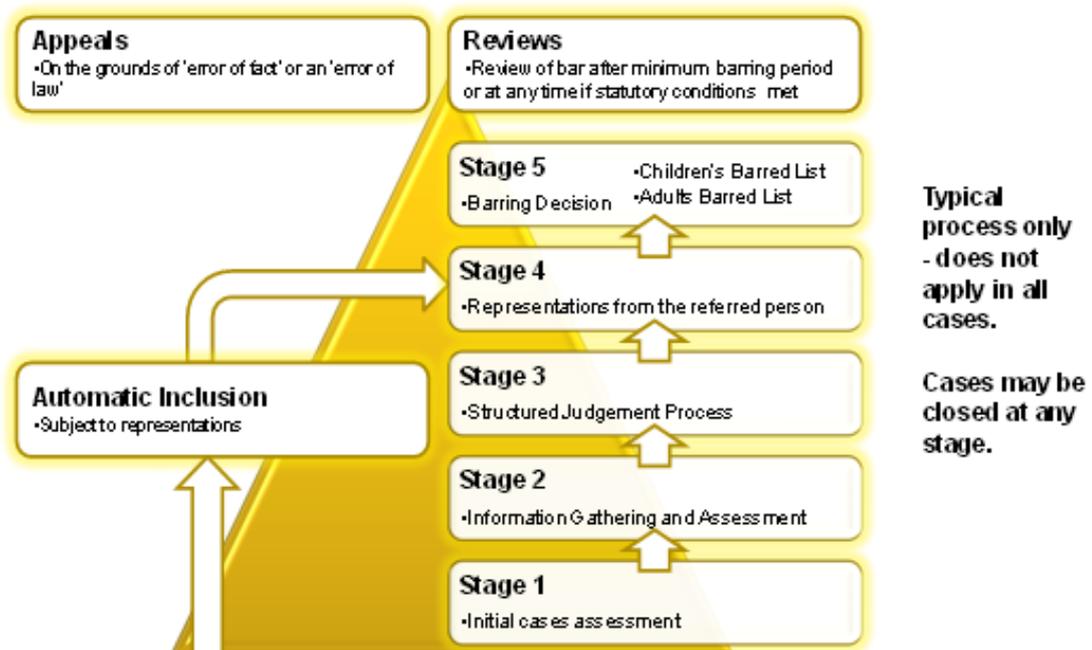
to the person or any error by the DBS, it is not appropriate for the person to be included in a barred list, the DBS can remove a person following such a review.

DBS may also remove a person from a barred list if the person has not previously engaged in regulated activity with the group they are barred from and there is no indication that they will do so in future. However, this provision does not apply to autobar without representations cases.

Appeals

A barred person has the right to seek an appeal from a decision of the DBS to include a person in a list or a decision not to remove a person from a list following a review, on the grounds of an 'error of fact' or an 'error of law'. Appeals are dealt with by the Administrative Appeals Chamber of the Upper Tribunal, or the Care Tribunal in Northern Ireland. We will continue to respond in a timely way to requests for information from the Upper Tribunal and learn lessons from the appeal process.

Typical barring decision-making process



DBS Contacts

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