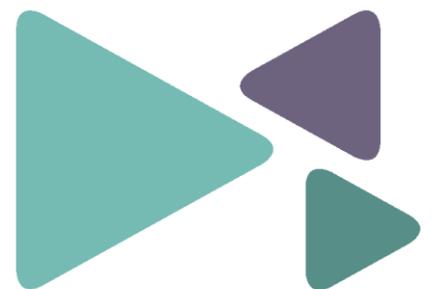


**Duty
To Refer
Guidance**



disclosure
services

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Duty to Refer Guidance

What is a Duty to Refer?

If an organisation has employees or volunteers that are carrying out 'regulated work' with children or protected adults, they are legally obliged, under certain circumstances, to submit a referral to either the DBS or Disclosure Scotland. This is known as having a Duty to Refer.

Who has a legal Duty to Refer?

Under legislation, many referrals come from regulated activity providers, but referrals can also be sent by regulatory bodies, employment agencies, educational institutions, personnel suppliers or courts.

Grounds for Referral

If you're a regulated activity provider, regulatory body, employment agency, educational institution or personnel supplier, you have a legal Duty to Refer an individual if they are responsible for meeting the two conditions below. This duty exists irrespective of whether the police, local authorities or other agencies are involved.

Condition 1

- You dismiss an individual or permanently transfer them away from providing regulated work with children or protected adults to a different role within the organisation that doesn't include regulated work
- The individual leaves the organisation before they could be dismissed, for example resigning or making no further contact with the organisation after the incident;
- You don't extend their probation or fixed term contract because of relevant conduct outlined in Condition 2 below

Condition 2

You believe the person has carried out one or more of the following:

- Endangers or is likely to endanger a child or protected adult
- Engaged in inappropriate conduct involving pornography with a child or protected adult
- Engaged in inappropriate sexual conduct with a child or protected adult
- Given inappropriate medical treatment to a child or protected adult
- Caused harm to a child or protected adult

Types of harm

- Physical harm, including assault or inappropriate restraints;
- Psychological or emotional harm, including placing a child or adult in a state of fear, alarm or distress;
- Damage to property, rights or interests such as theft, fraud, embezzlement or extortion

This is not a fully comprehensive list.

The term 'harm' can take many different forms and be defined in a number of different ways and it's important to remember that people can actually cause harm or a risk of harm without doing anything themselves directly.

Harm can also include behaviours that can lead to a risk of harm, for example:

- Attempting to harm (even if they're not successful in doing so);
- Trying to make others cause harm;
- Encouraging someone to self-harm;
- Engaging in reckless behaviour that may cause somebody to be harmed as a result, even if the harm is not intentional.

If any disciplinary action covered under **Condition 1** was taken, the referral must be made within three months of the date of the decision of the organisation to either dismiss or permanently remove the individual from regulated work or from the date that the individual would have been permanently removed should they not have already left.

The three-month period to submit a referral to Disclosure Scotland is a statutory requirement, irrespective of any appeals period. Even where an individual appeals a decision to remove them from regulated work, the three-month period will begin on the date of the decision to dismiss or remove them from regulated work.

By law, employers have a Duty to Refer harmful behaviour even if it takes place outside of work or the employer is made aware of the harmful behaviour after the employee or volunteer has left the organisation.

How to make a referral

If an employee or volunteer has been permanently removed from providing regulated work due to harmful behaviour towards a child or protected adult, the employer or organisation has to send a referral. If the individual was working in England, Wales or Northern Ireland, the referral will have to be made to the Disclosure and Barring Service. If they were working in Scotland, the referral will be made to Disclosure Scotland.

Submitting a referral to Disclosure Scotland

If you're an employer, employment agency or personnel supplier wanting to submit a referral, you will need to use the [Employer Referral Form](#) and send it to Disclosure Scotland.

If you're a regulatory body, such as The General Teaching Council for Scotland, The General Dental Council or The General Medical Council, you will need to use the [Regulatory Body Referral Form](#).

The form will ask for:

- Proof of the person's identity (name, address, date of birth, national insurance number)
- Details of the type of regulated work they're employed to do
- The PVG scheme number of the individual, if they have one
- Details of the harmful behaviour
- Details and documentation relevant to the employer's investigation and outcome

**The referral shouldn't identify any children or protected adults by name.
It should use a coded reference instead, like "child A - age 12, male, victim"**

A Sample Referral Policy for Organisations and Employers is available [here](#)

Completed forms should be printed out and posted to the address on the form or emailed to pucorrespondence@disclosurescotland.gov.scot

Submitting a referral to the Disclosure and Barring Service

Referrals can be made to the Disclosure and Barring Service using either their;

[Online Referral Form](#)

or

[Paper Referral Form](#)

Online Referral Form

The DBS recommend using their Online Referral Form as it's faster and easier to send a referral using this method.

You'll need to register for a DBS online services account to be able to submit your referral online, this can be done in 3 easy steps:

- Access the DBS online portal [here](#)
- Select 'Create an Individual Account'
- Follow the on-screen instructions

Once you have created your account and logged in, you will be able to select the 'Submit a referral' option in the Services menu on the left side of the screen.

The Online Referral Form will enable you to:

- Save your referral and complete it later (draft forms are saved for 10 days before being removed)
- Upload electronic documents in support of your referral (subject to technical limitations)
- Use the same form to refer multiple individuals involved in the same incident
- Use the additional attachments space at the end of part 3 if you want to include more than one attachment for each question or if you have any other relevant information to support your referral

Paper Referral Form

Alternatively, you can complete the [DBS Paper Referral Form](#) and post it to the DBS, along with all of the information that has been requested on the form. Guidance and additional information can be found [here](#).

Paper Referral Forms should be sent to:

DBS Barring, PO Box 3963, Royal Wootton Bassett, SN4 4HH

The DBS cannot guarantee the security of information until it is in their possession, and will not take responsibility for such information until they receive it.

For this reason, they recommend submitting referrals via their secure online referral form

Things to remember

- Complete all internal investigations / disciplinary processes prior to referring (even if the individual resigns)
- Check the **Grounds for Referral**
- Contact **Disclosure Scotland Protection Services** if you are unsure
- When possible, type all statements and interviews
- Redact service user and witness details from documents
- Provide relevant sections of Policy Handbooks
- The individual can provide representations

This guide is not legal advice and doesn't cover all aspects or examples of harm, referrals and barring.
If you need legal assistance, you should speak with a legal advisor.



Disclosure Services
Ellice House
Ellice Way
Yale Business Village
Wrexham
LL13 7YL

 info@disclosureservices.com
 www.disclosureservices.com
 01978 510100

