

## Referring Employees to the Disclosure and Barring Service (DBS)

### Policy Statement

It is currently the responsibility of the Registered Manager to refer a staff member to the DBS barred lists if there is evidence that the person in question has harmed or placed at risk of being harmed one of the service users. By "harmed" is meant demonstrably ill-treating a service user or subjecting a service user to one or more forms of abuse as defined in the service's and the local authority's safeguarding from abuse policies. Such behaviour makes them liable to charges of misconduct, which if proven as misconduct makes the person unsuitable for further or future employment with vulnerable adults and, by implication, in many cases, vulnerable children.

### Reasons for the Policy

In July 2004, the Government introduced an additional means of protecting vulnerable adults from abuse and neglect in care homes or in receipt of a service in their own homes by the establishment of a list of names of people who were considered to be unsuitable to work with vulnerable adults. This was called the Protection of Vulnerable Adults list (POVA). There has been a similar list of people deemed unsuitable to work with children for many years, which provided the model for this development. This was referred to as the Protection of Children's Act (POCA) list.

The introduction of the POVA list meant that there has been additional protection for all users of care services, which is based on common aims and principles. It is possible that some people have been referred and included on both lists.

From January 2009 the Independent Safeguarding Authority (ISA), which was set up under the Safeguarding Vulnerable Groups Act 2006, assumed responsibility for the decisions to place a person on the POVA list. The ISA proceeded to set up a new Vetting and Barring Scheme (VBS).

On 1st December 2012, the Criminal Records Bureau merged with the Independent Safeguarding Authority to become the Disclosure and Barring Service (DBS).

The DBS was established under the Protection of Freedoms Act 2012 and will provide a joined up service combining the criminal records and barring functions. The service and processes previously provided by the CRB have not changed as a result of the merger.

### Scope of Policy

The DBS barred lists apply to anyone employed in the service who is employed in regulated activity, i.e. the personal care of service users.

The policy includes any agency or bank staff and any volunteers who work in the service from time to time and who engage in regulated activity as defined by the Protection of Freedoms Act 2012. It does not apply to individuals who are invited in by service users and relatives as visitors or under some private arrangement where they have no contract of employment with the service as such.

### Features of Policy

There is a legal requirement on the service's management to refer someone to be placed on the DBS barred list where there is evidence that the person has been guilty of misconduct by harming a service user or putting a service user at risk of being harmed during the course of their work and as a result has left the employment of the service. We might make a referral:

1. when we have dismissed someone, following a clear and properly documented dismissal and disciplinary process.
2. when we have suspended a person for misconduct pending investigation, if there is reasonable evidence that harm has been caused

3. retrospectively, for former employees we are concerned about.

The purpose of the DBS barred list is to make sure that anyone who has been guilty of misconduct by harming service users should not be able to obtain employment elsewhere working in regulated activity with adults and/or children. Being on the list will indicate their unsuitability for such employment. A person could be put on one or both lists depending on the seriousness of their actual misconduct and whether they might pose a future risk to adults and/or children.]

### **Examples of How a Person Might be Referred to the List**

1. Where the service dismisses someone because of misconduct, which harmed or placed at risk of harm a service user or service users.

2. Where someone employed by the service has resigned, retired or been made redundant but would otherwise have been dismissed because of misconduct under the DBS barred list definition.

3. Where the person because of their conduct has been employed in regulated activity with service users and who has been transferred to a position which is not a care position.

4. Where the person has been suspended from regulated activity or temporarily transferred to a position which is not a care position but it has not yet been decided whether to dismiss them or to confirm the transfer.

It is a requirement that the service should refer people who have been employed in regulated activity and who have left our employment where we have evidence afterwards that they could and would have been charged with misconduct as a result of mistreating a service user or service users

Any person facing police charges as a result of their misconduct will also be referred for inclusion on the list. It should be noted that suspension from duty as a result of an allegation of mistreatment of residents can potentially result in the person being referred for inclusion on the list, albeit as a temporary or provisional measure. Under these circumstances the service will act in this way if it has good grounds for believing that adults, either in our service or elsewhere, will be put at risk without the referral being made.

### **What it Means to be on the DBS Barred List**

Referral to the DBS barred list will be made only where serious misconduct has occurred and where service users are put at risk by action not being taken. If a person is included on the list they will not be offered work in a care position and of course would be unable to continue to work in this service having regular contact with service users.

In the event of a person being placed on the list they will be committing a criminal offence if they seek or accept employment as a care worker that brings them into regular contact with vulnerable adults.

Under the barring rules the service will also be committing a criminal offence if it knowingly appoints or continues to employ someone who is on a barred list, which allows them to be employed in regulated activity. If the service discovers any of its care workers is on the DBS barred list, although they appear to have had clearance, (e.g. as a result of a change of name or identity) it will not be able to continue to employ them and the person will be dismissed. These provisions are written into all employee contracts.

### **Right of Appeal**

A former employee is able to appeal against their inclusion on the list by making application to the Administrative Appeals Chamber of the Upper Tribunal. However, they can only seek an appeal on the grounds of an "error of fact" or an "error of law".

**How Long Does a Bar Last?**

If a person is barred from working in regulated activity with adults or children by the DBS the bar will last to the end of their life. However the barred person has the right to request a review of the DBS' decision to bar them after a minimum period. The length of the period depends on the age of the person at the time they were barred, as follows.

- 1. Aged under 18 when barred – 1 year.
- 2. Aged 18-24 when barred – 5 years.
- 3. Aged over 24 when barred – 10 years.

The DBS may also review a decision if further information becomes available on a case, there is a change of circumstances or an error is spotted.

**Agreement**

All company employees are required to sign this agreement confirming their understanding and acceptance of this policy.

Signed .....

Date .....

Updated and reviewed 31/05/17 JN