



DBS referrals guide: Local Authority referral duty and power

Purpose

This guide is designed to provide local authorities with information about their **duty** as an employer, as well as their **power** in relation to child protection and adult safeguarding, to refer a person to the Disclosure and Barring Service (DBS) under the Safeguarding Vulnerable Groups Act 2006 (SVGA) (as amended)).

Changes for Local Authorities

Following changes to the SVGA, from 10 September 2012, the duty of a local authority to provide prescribed information changes to a **power** to provide any information they hold relating to a person if two conditions are met.

The first condition is that the local authority 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.

The second condition is that the local authority thinks:

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

It is important for local authorities to be aware that while the general requirement for them to refer to the DBS has been changed to a **power**, if the local authority is also the regulated activity provider (the employer) **they are still required to provide information under the legal duty to refer**.

Whenever a local authority refers a person to the DBS, they must consider whether they are doing so under the **duty to refer** or they are using their **power to refer**. Where the power is used, local authorities need to consider the legal ramifications of making the referral and compliance with the Data Protection Act 1998 (further guidance is available in DBS referral guide: data protection and security).

Power to refer

The **power to refer** relates to when a local authority is not acting as a regulated activity provider (the employer). This will normally be when a local authority is undertaking their safeguarding role. Where a local authority identifies that a person has met the above criteria, the local authority has the power to refer a person to the DBS.

The following examples are provided as guidance to local authorities to identify when a referral may be made to the DBS under the **power to refer**.

Scenario 1

Following a serious case review by the Local Safeguarding Children Board the local authority found that the actions of a parent, who is also a teacher for a school (**where the local authority is not the employer**) committed offences of serious sexual abuse against a child.

Scenario 2

An adult social care investigation identified that a member of staff that was working at a **privately run care home** engaged in emotional and physical abuse of elderly residents. The member of staff left during the course of the investigation, but it was concluded had they not left that the care home would have dismissed them from their role.

Scenario 3

During an investigation by a local authority it is identified that a teacher at a **local academy** teaching children who are under 16 years of age, was dismissed after the teacher failed to adhere to Health and Safety procedures which resulted in the serious injury of two children.

Where a local authority is exercising its **power** to refer a person, the local authority **may** provide any information it holds relating to the person they are referring.

Local Authorities as a Regulated Activity provider

In general terms a local authority would be 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 (whether in connection with a contract of service or for services otherwise) for another person to engage in regulated activity

This means that where the **local authority is the employer** of staff in regulated activity, whether they are employed directly, by contract or through a personnel supplier, the **duty to refer** would apply.

The duty to refer requires the referring person or organisation to supply prescribed information. Referrals under the duty to refer should be made on the DBS referral form. Additional information on the duty to refer can be found in DBS guidance notes: employer's duty to make a referral, the DBS referral guide and DBS referral instructions available on our website.

Duty to refer

Local authorities are under a **legal duty** to refer a person to the DBS where they fall under the **definition of a regulated activity provider** and they have withdrawn permission for a person to engage in regulated activity, or would or might have done so had the person not otherwise ceased 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.

The following examples are provided as guidance to local authorities to identify when a referral must be made by law to the DBS under the **duty to refer**.

Scenario 4

A local authority investigation identified that a care worker **employed by them** has verbally and emotionally abused service users. The member of staff resigned shortly after allegations were made. It was concluded that had the care worker not left they would have dismissed them from the role.

Scenario 5

Following an investigation by the local authority, it emerges that a **member of staff** working at a **local authority run residential home** has stolen money from several service users. The member of staff was dismissed as a result of the findings.

Scenario 6

Following allegations of abuse at a children's home **run by a local authority**, it was identified that a member of staff established an inappropriate relationship with a child who was a resident of the home and took sexually explicit images of them. The member of staff was arrested and prosecuted.

Local authorities must be aware that where they are required by law to refer a person under the **duty to refer**, they are required to provide the prescribed information identified in the Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations (England and Wales) 2008 and the Safeguarding Vulnerable Groups (Prescribed Information) Regulations (Northern Ireland) 2009.

The legal duty to refer to DBS applies to regulated activity providers even when a referral has been made to another body such as a local authority safeguarding team or professional regulator. The duty to refer applies **irrespective** of whether another body has made a referral in relation to the same person.

While a local authority may still provide information in addition to the prescribed information, they are legally bound to supply all of the prescribed information they hold. Local authorities, as with any other regulated activity provider, are only required to supply the prescribed information if they hold it. There is no requirement to generate new information for the purposes of the referral.

The DBS referral form is designed to assist those under a legal duty to refer by ensuring that all prescribed information is captured on the form and supporting documentation. For more information read the following guidance on our [website](#):

- DBS referral form
- DBS referral form guidance
- referral guidance
- additional information form

Duty to provide information on request

The duty to provide information on request is applicable where the DBS is considering:

- whether to include a person in a barred list; or
- whether to remove a person from a barred list.

The DBS may require a local authority to provide any prescribed information (under the Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008). In such circumstances it is irrelevant whether the local authority previously referred under a duty or power to refer.