

Purpose

This factsheet is intended as a general overview of typical DBS referral and barring decision making processes. However, exceptions to the general overview may be made in certain circumstances.

Introduction

The DBS is committed to ensuring that we make fair, consistent and thorough barring decisions that are proportionate and balance the effect of the bar on the individual with the future risk to vulnerable groups. The DBS covers England, Wales and Northern Ireland. Scotland has an equivalent scheme which recognises DBS barring decisions and vice versa.

Often very difficult and finely balanced decisions have to be made. 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 may in future, come into contact with.

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

There are three main ways information comes to us:

1. Discretionary referrals
2. On application for an enhanced disclosure / relevant information from the update service
3. Autobars

In all cases except autobars **without** representations, the DBS can not include a person in a list unless the DBS can establish that the person is, has been, or might in the future be, engaged in regulated activity with children and/or vulnerable adults. This test for regulated activity (TRA) will be considered by assessing all information available to the DBS including the case material, police information and evidence of an application for an Enhanced Disclosure Certificate to work with vulnerable groups including children.

The decision making process:

Discretionary Process

Discretionary cases can be referred to the DBS by any member of the public but most come from employers and other regulated activity providers, personnel suppliers, local authorities / health and social care trusts / education and library boards, and professional regulatory bodies.

Typically there is a legal duty on the organisations listed above to make a referral to the DBS when they have dismissed, removed or would have removed (had they not left), an employee working in regulated activity, following harm to a child or vulnerable adult or

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where there is a risk of harm. Information from an application for an enhanced disclosure/ relevant information from the update service will also be considered under this discretionary barring decision making process.

Government factual notes on [regulated activity](#) are available on the [DBS website](#).

Autobar Process

Automatic barring (autobar) cases are where a person has been cautioned or convicted for a 'relevant offence' or been issued with a Risk of Sexual Harm Order and the details have been provided to DBS by the Home Office.

A relevant offence is set out in legislation, which states that if a person is cautioned or convicted for one of these offences, the DBS **must** consider including the person in the barred lists. The DBS has a plain English version of autobar relevant offences in DBS Factsheets: [relevant offences](#) and [relevant offences - england and wales](#) on its website.

There are two types of automatic barring cases:

1. Automatic barring **without** representations offences will result in the person being placed in a barred list(s) by the DBS irrespective of whether or not they work in regulated activity. As this inclusion in the barred list is set out in legislation, the individual is included in the relevant list and the DBS has no discretion not to include them in the list. There is no right of appeal against automatic barring for a relevant offence.
2. 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. This process is managed using the autobar decision making process.

Typical discretionary barring decision making process

Our barring decision making process for considering discretionary (non-automatic barring) cases has been developed to ensure all DBS decisions are fair, consistent and thorough.

The typical process has five decision making stages and is supported by a decision making template to aid caseworkers to accurately record and consider the case. However, the full five stage process might not be used in all cases. A copy of the Barring Decision Making Process template can be found on the DBS website.

At each stage, the DBS must be satisfied there is sufficient justification to progress to the next stage in the process. If the decision is made not to progress, the case is closed and the individual is informed in writing that no further action is being taken.

Discretionary Barring Stage One: Initial Case Assessment

The powers of the DBS to include persons in a Barred List are contained within the



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Safeguarding Vulnerable Groups Act 2006 (SVGA), particularly at Schedule 3. In stage one we will determine whether the case falls within our legal powers under the SVGA 2006. This will include consideration as to whether there is evidence that the person;

- has engaged in relevant conduct or;
- presents a risk of harm through their thoughts or beliefs and the person;
- has previously worked in regulated activity, is currently working in, or might in the future work in regulated activity. This can be established from the source of the referral, the case material or other sources such as whether a person has applied for an enhanced disclosure certificate or barring list check to work with children or vulnerable adults.

If the initial case assessment criteria are met, the case proceeds to the next stage.

Please refer to [DBS factsheet: Harm, relevant conduct and risk of harm](#) for further information on relevant conduct and risk of harm.

Discretionary Barring Stage Two: Information Gathering and Assessment to Establish Relevant Conduct or Risk of Harm

The type of information we would expect to see in support of a referral from an employer or other referring organisations include:

- minutes of disciplinary hearings;
- witness statements;
- dismissal/suspension letter;
- adult social care or children's services records in relation to any safeguarding investigation and;
- details of any police involvement.

Where appropriate, this can also include evidence such as:

- taped or video interviews;
- CCTV footage.

These lists are not exhaustive and the DBS Referral Form outlines the information to be sent to DBS by the referring body, if they hold it.

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.

As the DBS has no investigatory powers we rely upon the information provided by other organisations. The DBS does have legal powers to request specific information from certain organisations. In these instances these organisations have a legal requirement to provide the requested information.



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The DBS is required by legislation to regard convictions, police cautions and the findings of specified competent bodies (such as the General Medical Council) as facts in DBS decision making. However, the DBS can make additional findings to those made by a competent body.

A list of [competent bodies](#) whose findings can not be challenged with the DBS can be found on the DBS website.

When all relevant information is gathered and assessed, all allegations are robustly evaluated and the DBS makes its own findings as to whether relevant conduct (behaviour which has/may harm) is proven on the 'balance of probabilities'(1) or whether risk of harm has been established.

A criminal conviction is not necessary for a barring decision to be considered. Consideration is then given as to whether it is appropriate to progress the case to stage three or close the case with no further action.

Discretionary Barring Stage Three: Structured Judgement Process (SJP) Risk Assessment Tool

Depending on the case, an assessment using our SJP may be undertaken.

The Structured Judgement for Evaluation of Risk of Harm provides a framework within which 'relevant conduct' can be considered in terms of the presence or absence of long-term risk factors for future harmful behaviour that are relevant to the individual. Its aim therefore is to assist in the determination of the level of risk of harm that the individual presents and forms part of the basis for a later barring decision.

The SJP falls at Stage 3 of the Barring Decision-Making Process. As such, cases should not be considered using this procedure unless and until relevant conduct has been established as having occurred on the balance of probabilities or one of the Risk of Harm categories have been satisfied. This sequencing of decision-making ensures that only those risk factors that are relevant to the individual's future risk of harm are identified i.e. those risk factors that are centrally or causally related to the relevant conduct or harmful behaviour.

In considering any individual case, caseworkers will determine on the basis of the information available the presenting level of concern in relation to a range of relevant risk factors divided into four broad areas.

These are:

1. Predispositional factors
2. Cognitive factors
3. Emotional factors
4. Behavioural factors

(1) The 'balance of probabilities' is the burden of proof used in assessing all DBS referrals. It is the burden of proof used in Civil Law, and means whether something is 'more likely than not' to have happened. This is a lesser burden of proof than 'Beyond Reasonable Doubt' which is used in criminal cases. This can mean that whilst a person is found "not guilty" to the criminal burden of proof, the DBS may make findings based on the 'balance of probabilities'.



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The presenting level of concern will be assessed using the following broad framework:

Definite concerns:

The case material indicates that relevant risk factor(s) are present and that there is a causal link to the relevant conduct (i.e. without the presence of the risk factor(s), the relevant conduct would probably not have occurred).

Some concerns:

The case material indicates some indications that relevant risk factor(s) are present. However, there is no clear causal link to the relevant conduct or there is a significant amount of material that would reduce these concerns.

No concerns:

The case material indicates that relevant risk factor(s) are not present or no information is available relevant to the particular risk factor.

The SJP is an internal risk assessment tool developed to help determine whether, based on all available relevant information, there is a future risk of harm to vulnerable groups, including children. For some cases, a separate process may apply that does not involve an SJP risk assessment. All such cases must be agreed with a Senior Officer and documented.

Examples of these cases include:

- Financial harm cases. This process is supported by a separate decision making template to aid caseworkers to accurately record and consider the case. A copy of the [template can be found on the DBS website](#).
- Where the relevant conduct found proven on the balance of probabilities is deemed to equate to an 'autobar' offence.
- Foreign convictions which equate to an 'autobar' offence.
- Trigger offences – where a caution or conviction for an offence or offences do not fall within the 'autobar' category but have a link to regulated activity and are deemed to establish a pattern of behaviour which merits consideration of a bar to be appropriate.
- Where the relevant conduct found proved on the balance of probabilities is deemed to equate to a 'trigger' offence.
- Where there is insufficient contextual information and relevant conduct found proved on the balance of probabilities does not fit the above criteria but is considered serious enough to consider a bar.

In all cases where representations are provided, the case is reassessed. A new SJP may also be completed incorporating any new information provided in the person's representations, to establish the risk of harm posed by the person.

An SJP assessment should be undertaken if there is sufficient information and it would assist the caseworker in determining risk and the appropriateness of including a person in either of the barred lists.

If a caseworker feels that completing an SJP would not be possible (for example due to lack of information) or that it would not benefit the decision making process (because it is clear



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from the information in the case file that including/not including a person would be appropriate) then caseworkers must ensure that they clearly document their reasons for this.

If a risk of harm to a vulnerable group is identified and barring is an appropriate response to that risk, DBS will be 'minded to bar' the person in one or both lists and the case progresses to stage four. Otherwise the case is closed.

Discretionary Barring Stage Four: Representations

The person is advised in writing that the DBS has reached a 'minded to bar' position and invites them to make representations as to why they should not be barred. The DBS lists the findings of fact established at Stage 2 (information gathering and assessment) of the process and outlines the legal powers used and reasons for taking this position. A copy of all of the information DBS has relied upon to reach the 'minded to bar' position is sent to the person together with a factsheet on the definitions of relevant conduct, risk of harm and regulated activity.

The person has eight weeks in which to provide representations to the DBS – although the DBS will consider reasonable requests made in writing to extend the representations period.

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. Types of documentation that may be considered useful for representations can be found in [DBS Factsheet: Representations](#).

Discretionary Barring Stage Five: The Barring Decision

If representations have not been received by the end of the representations period, and it is considered appropriate to do so, the person is included in the relevant barred list(s).

Where representations are received the case is reassessed and a final decision is made. The caseworker will summarise their conclusions regarding the final barring decision, and the appropriateness of that decision.

The 'appropriateness test' is based on the requirement to ensure children and vulnerable adults are safeguarded and should not be tarnished by any desire to act as a sanction or punishment. In summary it means being clear about what behaviour is proven and what is not.



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Then considering:

- What specifically would the person be at risk of doing in future if a bar were not put in place?
- What would that mean in terms of the level/type of harm that may be caused to individuals in the vulnerable group?
- Would the potential future behaviour be serious enough for a bar to be an appropriate and proportionate response in order to prevent harm or would some less restrictive provision which is in place be sufficient to meet and redress that risk?
- Is the behaviour, even if repeated, something that would fall within the scope of employment/professional responsibility?

Public confidence - It is justifiable that the reasonable perceptions of the public should be considered when reaching decisions regarding 'appropriateness'. The question to consider is would a reasonable member of the public, if they had knowledge of all facts of the case, have their confidence in the effective operation of the statutory safeguarding arrangements undermined by our decision to bar or not bar a person from working with a vulnerable group?

The DBS can and will consider public confidence as part of the appropriateness consideration in every barring decision therefore.

The person is notified in writing of the final decision and, where a decision to bar has been made, the person is notified of their right to seek an appeal/review. If barred, it is an offence for the person to seek, offer to or engage in regulated activity with a vulnerable group they are barred from working or volunteering with.

Typical 'autobar with representations' barring decision making process

Our barring decision making processes for considering automatic barring with representations cases have been developed to ensure all DBS decisions are fair, consistent and thorough.

The starting point for an autobar with representations case differs from a discretionary case. As set out in legislation the relevant caution or conviction is a finding of fact and so there is no requirement to establish relevant conduct or risk of harm. In autobar with representations cases it is the relevant offence which establishes that it is appropriate to intend to bar.

We determine whether the case falls within our legal powers under the Safeguarding Vulnerable Groups Act 2006, (as amended):

- Has there been a caution or conviction for an autobar with representations offence? (see DBS Factsheets: [relevant offences](#) and [relevant offences - england and wales](#) for a list of relevant offences). The majority of offences are not reliant upon the victim being a member of a vulnerable group, although some offences can be with or without representations depending on the age of the victim.
- Has the person worked in regulated activity or might they work in regulated activity in future?



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When both have been established the person is advised in writing that the DBS intends to include them in a barred list(s) and invites them to make representations as to why they should not be. The letter outlines the legal powers used and includes a factsheet explaining the definitions of regulated activity, the effects of a bar and examples of information the person may wish to submit in their representations.

The person has eight weeks in which to provide representations to the DBS (although the DBS will consider reasonable requests made in writing to extend the representations period).

No Representations Received

If no representations are received, the DBS must, by law, include the person in one or both barred lists as stated in the letter inviting representations.

Representations Received

If further information is required by DBS after representations are received it is gathered by DBS and a copy is sent to the referred person.

They are then given additional time to comment on the information (usually two weeks). However, if more time is needed, a request for an extension can be made in writing.

Examples of information which may be provided in representations are:

- Judge's Summing Up
- Transcript of Court Case
- Police interviews
- Probation Reports (including OASys reports)
- Social Services reports (including strategy meeting minutes)
- Medical assessments (including psychiatric, clinical and psychological)
- Specialist risk assessments
- Testimonials and character references
- Pre Sentence Reports
- Defence Statement
- Basis of Plea

This is not an exhaustive list and the information provided may depend on the individual case. The responsibility for obtaining information or evidence to support a referred person's representations lies with the referred person. However, there may be cases where the DBS will obtain information from relevant agencies where necessary for example, to verify a fact or claim made in a person's representations.

The case progresses to the 'autobar with representations' decision making process. The process has four decision-making stages. At each stage a decision is required for the case to progress to the next stage. If the decision is not to progress, the case is closed and the person is informed in writing that no further action is being taken.



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Autobar Stage One: Confirmation of Original Assessment

The relevant offence, the offence details and the evidence that someone is, has or might in future engage in regulated activity is reviewed and the relevant powers used by the DBS are documented. A decision is then made whether no further action is required or whether it is appropriate to progress to stage two.

Occasionally allegations other than the autobar offences will be considered and if additional findings of fact are made the individual will be given the opportunity to comment.

Autobar Stage Two: Consideration of Representations and Evidence Evaluation

Before a decision can be made it is confirmed that the necessary information to make a fair and robust decision is available; that all information to be used in making the decision has been disclosed to the person under consideration and; they have had the opportunity to provide comments/additional representations in response.

The representations are considered and evaluated to establish whether they challenge the intention to include in either or both lists. The evidence that a person is, has, or might in future engage in regulated activity relating to one or both lists is confirmed. All of the evidence, including representations is then fully evaluated and a decision on whether or not it is appropriate to bar the person is made. A decision can be made to close the case at this stage.

Examples where a case can be closed at Stage two include:

- When the circumstances surrounding the commission of the offence are such that a bar is clearly not appropriate or proportionate the case will be closed with no further action.
- Cases where offences took place prior to 12 October 2009 and when it is proven that a Judge has considered issuing a 'Disqualification Order' and decided not to, the case will be closed with no further action. The DBS are unable to consider this type of case under the autobar process. However, discretionary consideration may then be appropriate at this point.
- A caution/conviction for a relevant offence is a finding of fact for the DBS and cannot be challenged with us. Therefore, where the representations merely deny the offence took place and no other substantive information is available to indicate that a bar is not appropriate the person will be included in the relevant list and the case closed.

Cases where there is sufficient substantive information which challenges the appropriateness of including a person in a barred list will be progressed to Stage 3.

Autobar Stage Three: Structured Judgement Process (SJP) Risk Assessment Tool

The starting point of an autobar with representations case is that the individual has been cautioned or convicted of a relevant offence, which implies a risk to a vulnerable groups. Therefore the SJP will not be necessary in all cases. However, where there is sufficient information (including representations), the SJP may be used to assist the DBS to determine risk factors.



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Examples include:

- additional allegations upon which we have made a finding of fact and which the person has been invited to make representations
- previous offending behaviour
- a person's previous employment experience of working in regulated activity, receipt of appropriate training, previous relevant disciplinary record, extensive employment history.
- whether or not a child or vulnerable adult was involved in the behaviours/ offence
- judge's summing up which mitigates a risk
- any risk assessments supplied which might give some indication as to the likelihood of future reoffending and risk posed to vulnerable groups and / or the public in general;
- additional information from Police, Social Services etc
- any other protective factors or mechanisms in place e.g. Sex Offenders Registration, GMC Supervision Order, Sexual Offences Prevention Order and
- any other mitigating or aggravating factors.

An SJP assessment should be undertaken if there is sufficient information and it would assist the caseworker in determining risk and the appropriateness of including a person in either of the barred lists. If a caseworker feels that completing an SJP would not be possible (for example due to lack of information) or that it would not benefit the decision making process (because it is clear from the information in the case file that including/not including a person would be appropriate) then caseworkers must ensure that they clearly document their reasons for this.

Autobar Stage Four: Final Case Summary Including Final Appropriateness Test

If the decision is to take no further action the case is closed and the referred person is informed in writing.

If the decision is to include the person in one or both lists they are informed in writing and given the reasons for the decision (see discretionary barring decision stage five for appropriateness/public confidence considerations).

Escalation Process

A large majority of cases will be decided at caseworker level. However, there will be circumstances where a case presents a particularly complex set of considerations and, with that in mind, the DBS has a robust mechanism for ensuring relevant cases may be escalated to senior management and, where appropriate, the DBS Board Quality Standards Committee (QSC). The QSC is a committee made up of those DBS Board members with safeguarding expertise who can advise on cases escalated to them.

Examples of cases which may meet the criteria for escalation to the QSC are:

- Cases where a person is found not guilty by jury (after having the evidence tested in court) but, on the balance of probabilities, the DBS comes to a contrary finding regarding the specific offence.
- Cases where a person is found not guilty by jury (after having the evidence tested in



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court) but findings of fact have been made on the balance of probabilities regarding aspects of that behaviour (e.g. not guilty of 'indecent assault' in court but findings of fact establishing texting, hugging, love letters, etc).

- Where the findings of the risk assessment do not appear to support a barring outcome but the caseworker feels it would be appropriate to consider barring (or vice versa);
- Where public confidence (which the DBS must have regard to in all its cases) is the determining factor in a decision either to bar or take no action.
- Where there is a fundamental difference in expert/specialist opinion on the case
- Where the reason for the person being under consideration solely relates to their connection or association with another individual who has been identified as posing a safeguarding risk e.g. individuals disqualified from working with children
- Where an incorrect barring outcome has been identified
- Where the specific expertise of a Board member is sought

Specialist Risk Assessments

In some cases a specialist risk assessment by an independent expert may be deemed appropriate. The individual must consent to a face to face interview with the independent assessor. If consent is not given, the DBS may proceed with a specialist assessment based on the case information alone. While a specialist assessment is usually undertaken prior to reaching a 'minded to bar' decision, it can be requested at any stage of the decision making processes.

Review of a Bar

A barred person will have the right to request a review of a DBS decision after a minimum barred period has elapsed 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 a bar is no longer appropriate. The DBS will not remove anyone from the list 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 light of new information not available at the time of barring, or any change of circumstances relating to the person, or any error by the DBS, it is not appropriate for the person to be included on a barred list, the DBS can remove a person on 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 working with and there is no indication that they will do so in future. However, this provision does not apply to auto-bar without representations cases. Please refer to [DBS Factsheet: Reviews](#) for further information.



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Appeals

A person included in a barred list (other than for an autobar without representations) has the right of appeal against a decision of the DBS to include them in a barred list on the grounds of an 'error of fact' or an 'error of law'. This also applies to a decision not to remove a person from a barred list following a Review of their inclusion in a barred list being carried out.

Appeals are dealt with by the Administrative Appeals Chamber of the Upper Tribunal, or the Care Tribunal in Northern Ireland. Please refer to [DBS Factsheet: Appeals](#) for further information.

Data Retention / Data Protection Act

Where appropriate the DBS retains safeguarding information, subject to its Data Retention Policy, and in accordance with other relevant legislation (such as the Data Protection Act 1998). If further referrals or additional information are received, the DBS may reopen a case and take this information into account. The individual will always be notified in writing in these circumstances.

Further, more detailed information regarding any of the above processes or procedures can be provided on request.

DBS Contacts

Website: www.gov.uk/dbs

Barring Services

Helpline: 01325 953 795
Email: dbsdispatch@dbs.gsi.gov.uk

Post: Disclosure and Barring Service
Post Office Box 181
Darlington
DL1 9FA

Disclosure Services

Helpline: 0870 9090 811
Email: customerservices@dbs.gsi.gov.uk

