



Disclosure & Barring Service

Myth Busting

1. There has been a concern with an employee which I have reported to the police, therefore a DBS referral isn't needed.

True

False

It is essential the DBS is informed of scenarios where the referring organisation has some evidence that an individual has posed a risk of harm, even if the organisation has informed the police of the situation, and no further action was taken. This is because the burden of proof for the police and the Crown Prosecution Service requires that there is sufficient evidence to be able to prove beyond all reasonable doubt that an individual has committed a certain act or behaved in a similar way. However, in order to make a decision to place an individual in a Barred List, the DBS only requires enough evidence to prove that on the balance of probability, a person has committed the same act. i.e. it is more likely than not that it occurred.

If the police do charge the individual, they would not automatically inform the DBS of this. Therefore, it is still important a DBS referral is made.

2. I have witnessed an employee carry out inappropriate restraints with a resident on numerous occasions, but not reported this to anyone. My actions would not satisfy relevant conduct.

True

False

The colleague who is regularly carrying out inappropriate restraints on residents is putting adults in their care at risk of harm/harming the adults. The individual who has witnessed this and not reported this behaviour is also endangering the adult. Everyone has a responsibility to safeguard and organisations should have policies and procedures in place to report concerns/whistleblowing policy. Employers should make staff aware of the policies and procedures and provide any necessary training to their employees.

An employer may deem the behaviour of witnessing inappropriate restraints and not reporting this as unacceptable and remove this individual from their role. If they do, the employer has a legal duty to refer this individual to the DBS. The DBS would then make a decision as to whether this individual (as well as the individual using inappropriate restraints if they were also removed from their role) should be placed on the Barred List.

It is essential that everyone is aware of their safeguarding duties and follows appropriate steps to raise any concerns they have witnessed.



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3. I have reported the abuse to CQC, therefore a referral to the DBS isn't needed.

True

False

Although the regulator **may** (although they may not) inform the DBS of a case, this does not happen as a matter of course. The legal duty to make the referral sits with the regulated activity provider. Even if the individual is banned from working within their sector, this does not prevent them from working in the future with children and/or vulnerable adults in all regulated activity.

4. The DBS only include individuals on the Barred List (Child and/or Adult) if they have been cautioned or convicted of a serious offence.

True

False

The DBS do include individuals in one or both Barred Lists if an individual has been cautioned or convicted of a Relevant offence (Autobar Regulations, 2009). However, the DBS will also consider Discretionary referrals and Disclosure Information (information that comes to light when an individual applies for an enhanced check with one or both barred lists). Therefore, it is possible that individuals who have no Cautions and Convictions could be included in one or both Barred Lists.

5. An individual could be included in one or both Barred List's, despite not having any interaction with the police

True

False

DBS does not only make decisions as to whether an individual should be included in one or both barred lists based on their criminal history. Certain cautions and convictions will result in automatic inclusion on one or both barred lists (relevant offences). The DBS can also receive information following what comes to light when an individual applies for an enhanced check with one or both barred lists. This is because they are looking to work in regulated activities (Disclosure route).

However, we also receive discretionary referrals. Although with these referrals there may be police involvement, this is not always the case. The DBS makes findings based on the balance of probabilities, therefore police findings are not necessary for the DBS to make a decision as to whether someone should be included in one or both lists.



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6. The DBS can only consider including an individual in one or both Barred Lists if they have caused direct harm to a child or vulnerable adult in their care (whilst working in Regulated Activity).

True

False

The legislation outlining relevant conduct includes; 'if repeated against or in relation to a child/vulnerable adult would endanger the child/vulnerable adult or be likely to endanger the child/vulnerable adult'. Therefore harm could have been caused by an individual outside of regulated activity against someone who would not be deemed a child or vulnerable adult, however if repeated against a child or vulnerable adult would likely endanger them.

Likewise, the harm test includes; cause a child/vulnerable adult to be harmed / put a child/vulnerable adult at risk of harm / attempt to harm a child/vulnerable adult / incite another to harm a child/vulnerable adult – therefore direct harm to a child/vulnerable adult does not need to have occurred for the DBS to consider including them in one/both Barred Lists.

7. Once an individual is barred, they can request for this decision to be reviewed on an annual basis

True

False

The SVGA (as amended) and the SVGO set out the conditions under which a person can appeal against a barring decision or to appeal against a refusal to remove a person following a review where:

- a person does not meet the test for regulated activity; or
- certain statutory conditions are met, or
- a person requests a review after a minimum barring period

Where a person wishes to appeal against the DBS decision to include them in a barred list, appeals can only be lodged with the Tribunal only on the grounds that the DBS has made a mistake:

- on a point of law; or
- on a finding of fact made by the DBS on which the decision to bar was based

Applications for review may only be made with the permission of the DBS. The person may apply for permission ONLY if:

- the application is made AFTER the end of the minimum barred period (based on their age); and
- in the prescribed period ending with the time when the barred person applies for permission, they have made NO other such application.