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# DBS Referrals

When should a referral be made?



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## “When should I make a DBS referral?”

This is a commonly asked question of the FBeducation team. Safeguarding is a very important issue and applies to all staff who work with children or vulnerable adults.

In order to uphold safeguarding principles, there is law which exists to protect children and vulnerable adults. This law imposes safeguarding duties on organisations who employ staff to work with children and vulnerable adults.

Therefore, safeguarding principles are fundamental in education establishments in order to protect the welfare of the children. If any of your staff face serious allegations of child harm, pose a risk to a child or are subject to allegations of criminal offences against a child, you will need to consider a DBS referral.

In this e-shot we talk about when a referral to DBS is required. Firstly, we need to consider if there is anything that ought to be done before making a DBS referral in the event you have a staff member facing allegations like the ones described above.

### Is there anything I need do before making a DBS referral?

Yes, there are issues which will need addressing right at the onset of any allegations made against a member of staff working in a College or School.

A formal process should always be used when it is alleged that a teacher or member of staff (including volunteers) has:

- (a) Behaved in a way that has harmed a child, or may have harmed a child;
- (b) Possibly committed a criminal offence against or related to a child; or
- (c) Behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

The Local Authority Designated Officer (LADO) has the overall responsibility for oversight of the formal procedures, resolving inter-agency issues and for liaison with the Local Safeguarding Children Board (LSCB). Contact your LADO for advice and guidance on managing the case.

The LADO will be able to suggest how the matter should be dealt with, either through internal disciplinary procedures or via an inter-agency meeting. If the LADO suggests that internal procedures are not appropriate you should stop any internal investigations until you are instructed otherwise.

The inter-agency meeting will require relevant information about the person for whom the allegations are about such as start date, position, address, date of birth, any history in terms of disciplinary warnings, the date they last received child protection training, DBS check information and the date of the check. They will also need to confirm certain details about the alleged victim (if there is one).

During this process the Police may become involved. Should the case warrant Police investigation, it is likely that all internal investigations will be stopped until the Police authorise that you can proceed with internal disciplinary investigations. Police statements for use in any disciplinary investigations or hearings may be available if prior Police consent is given for their use.

Where there are serious allegations involved concerning a member of staff, you will need to consider if a DBS referral is needed.

## What is the DBS?

DBS stands for Disclosure and Barring Service (DBS).

## Why do I need to make a DBS referral?

A DBS referral is a legal requirement. A referral may need to be made in order for the DBS to make a decision whether an individual represents a potential risk of harm and whether or not to put them on the “barred list”, which will determine whether the person can work with children or vulnerable adults again.

## When do I need to make a DBS referral?

All Schools and Colleges undertake a “Regulated Activity” under the rules which regulate referrals to the DBS, because of the close link to children. DBS impose a regulatory requirement on Schools and Colleges to refer any person to the DBS who meets the test (see below) of such a referral.

## What is the test?

There are two main conditions which should be met for a referral to be made to the DBS:

1. If someone has been dismissed from employment within a School or College; or

If someone has resigned from their employment within a School or College and you would have dismissed had they not chosen to resign.

AND

2. You believe that person poses a risk of harm to a child or vulnerable adult; and/or that person has received a criminal caution or conviction for a “relevant offence” ([a list of these relevant offences is available on the DBS website](#)).

## What kind of conduct may pose a risk of harm to a child?

The following examples of conduct may pose a risk of harm to warrant a DBS referral under the test set out above:

- Conduct which is likely to cause harm under the harm test.

The harm test is satisfied where a person thinks that an individual may:

- a) Harm a child or vulnerable adult.
- b) Cause a child or vulnerable adult to be harmed.
- c) Put a child or vulnerable adult at risk of harm.
- d) Attempt to harm a child or vulnerable adult.
- e) Incite another to harm a child or vulnerable adult.

- Subject a child to sexual grooming.
- Engaging in:
  - a) Inappropriate relationships with children;
  - b) Conduct that endangers a child or vulnerable adult or is likely to do so;
  - c) Conduct that, if repeated against or in relation to a child or vulnerable adult, would endanger them or be likely to do so;
  - d) Conduct involving sexual material relating to children (including possession of such material);
  - e) Conduct involving sexually explicit images depicting violence against human beings (including possession of such material); or
  - f) Conduct of a sexual nature involving a child or vulnerable adult.
- Conduct which endangers a child or a vulnerable adult if it:
  - a) Harms a child or vulnerable adult;
  - b) Causes a child or vulnerable adult to be harmed;
  - c) Puts a child or vulnerable adult at risk of harm; or
  - d) Attempts to harm a child or vulnerable adult.
- Inciting another to harm a child or vulnerable adult.
- Viewing sexual material relating to children, including:
  - a) Indecent images of children (produced by any means, whether of a real or imaginary subject); or
  - b) Material (in whatever form) which portrays children involved in sexual activity and which is produced for the purposes of giving sexual gratification.

### **A teacher has been arrested for criminal offences relating to children. Should I refer to the DBS straight away?**

A referral should not be made to the DBS when an allegation is first made.

An investigation and evidence gathering should be first undertaken by the person or organisation that would normally refer to the DBS. This is in order to establish if the allegation has foundation, for example as part of an internal disciplinary process.

Without evidence or substance to the claims many allegations will be quickly closed down as there will be no foundation on which the DBS can proceed.

## How do I refer?

You can refer a person of concern to the DBS by [clicking this link](#).

Remember, if there is scope to refer to DBS, you need to be making a referral.

## I have entered into a Settlement Agreement, do I still need to refer to the DBS?

In short, yes you must refer. This is a legal requirement. Be wary of Unions proposing a Settlement Agreement in sensitive situations, because they should not be agreed where a teacher or member of staff (including a volunteer) has:

- (a) Behaved in a way that has harmed a child, or may have harmed a child;
- (b) Possibly committed a criminal offence against or related to a child; or
- (c) Behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children.

No agreement should be reached allowing the employee to resign in order to prevent disciplinary action.

A Settlement Agreement which prevents the education establishment from making a referral to DBS when the test is satisfied, is likely to result in a criminal offence being committed as the education establishment would not be complying with its legal duty to make the referral.

## More information

You may find the statutory guidance on keeping children safe in education helpful, which can be [accessed here](#).

If you have any questions or concerns then please contact a member of the FBeducation team on 01332 265 956.

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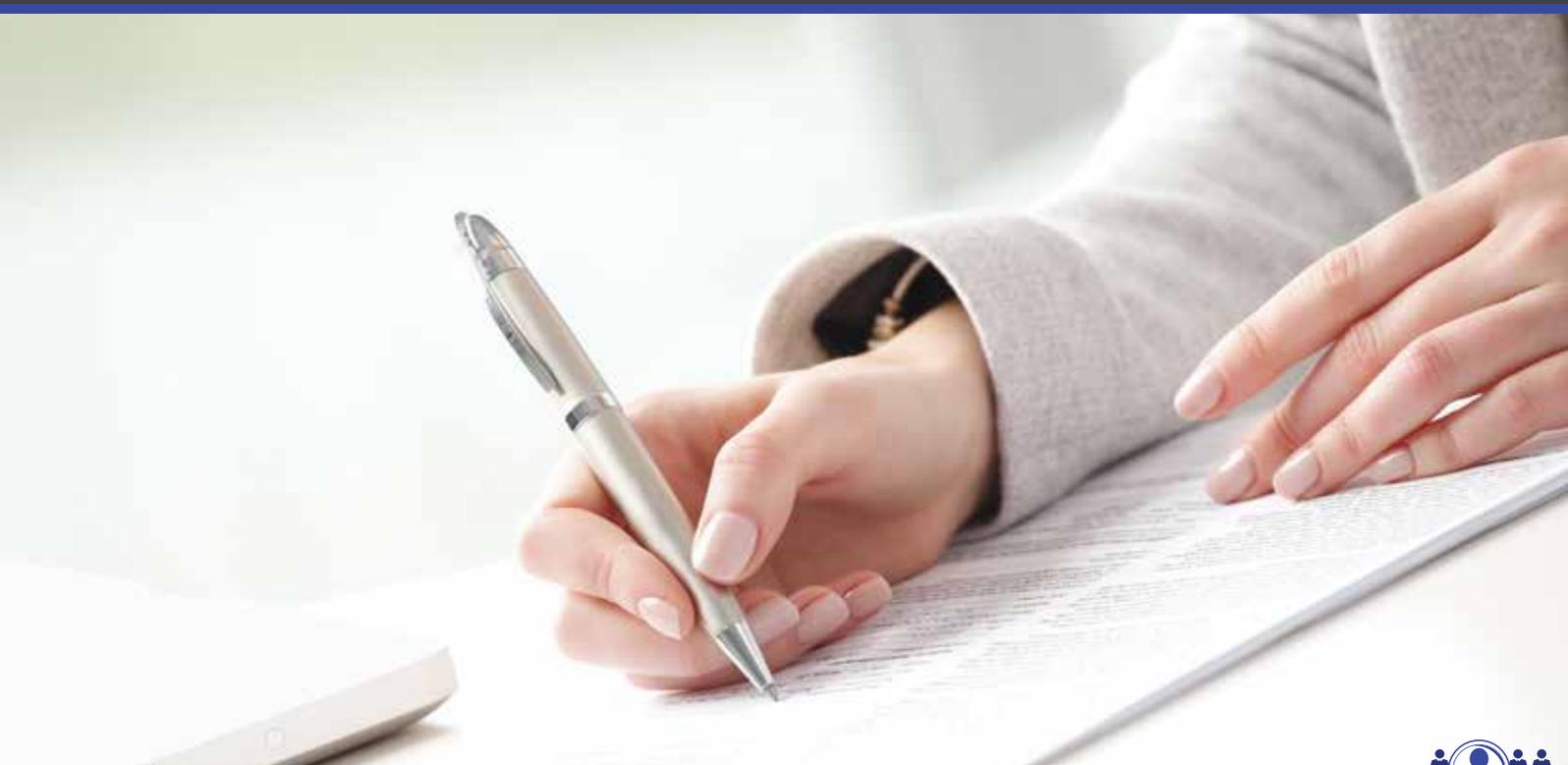
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