

Referring to Disclosure & Barring Service Policy

Policy Statement

This policy reflects the Disclosure and Barring Service guidance (2019) on how Heydays care and Support Services should make referrals to its barred list(s) under the circumstances and conditions that they are legally required to do so. The DBS is common to England and Wales.

The DBS was established under the Protection of Freedoms Act 2012 to provide a joined-up service for England and Wales combining the criminal records and barring functions. The DBS has developed its own procedures for making referrals in line with the requirements of the Protection of Freedoms Act 2012, which are different in some important respects from those that previously operated.

Scope of Policy

The DBS barred list(s) apply to anyone employed in Heydays care and Support Services who is employed in "regulated activity", involving the personal care of people who use Heydays care and Support Services and associated care tasks as summarised below.

The policy includes any employment agency or bank staff and any volunteers who work in Heydays care and Support Services 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 invited in by people who use Heydays care and Support Services and relatives as visitors, or under some private arrangement, where they have no contract of employment with Heydays care and Support Services as such.

In a care service for adults, regulated activity means the provision of personal care; assistance with, for example, washing and dressing, eating, drinking or toileting, or

teaching someone to do one of these tasks. In some instances (mainly domiciliary care), it will involve help with a person's money, bills or shopping. Escorting or transporting people to, from or between places where they receive healthcare, personal care or social work is also included as regulated activity.

A person is made vulnerable as a result of engaging in the regulated activity. Any abuse or harm suffered that might result in the referral to the DBS barred list(s) will therefore result from the carrying out of the regulated activity.

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By "harmed" is meant demonstrably ill-treating a person receiving care or subjecting them to one or more forms of abuse as defined in Heydays care and Support Services and the local authority's policies on safeguarding from abuse or harm. Such behaviour makes them liable to charges of misconduct, which if proven makes the person unsuitable for further or future employment with vulnerable adults and, by implication, in many cases, vulnerable children.

A referral to the DBS is based on information regarding a person working in regulated activity with children or vulnerable adults alerting the DBS to concerns that he or she has caused harm or risk of harm to a person receiving care. A referral can be made by the care service manager online or by using the DBS Referral Form as instructed on the DRS web site.

However, Heydays care and Support Services also recognises that local authority adult protection/safeguarding boards and the care service regulators also have powers to make referrals and might do so independently or in association with the care service depending on the circumstances.

Features of Policy

There is a legal requirement on Heydays care and Support Services management to refer a care worker for possible inclusion on the DBS barred list where there is evidence that the person has been guilty of misconduct by harming a person who uses the services or putting them at risk of being harmed during their work and as a result has been dismissed or removed from the carrying out of regulated activity.

The purpose of the DBS barred lists is to make sure that anyone who has been guilty of misconduct by harming people who use the services should not be able to obtain employment elsewhere working in regulated activity with adults and/or children. Being on the list(s) will indicate their unsuitability for employment in positions that require them to carry out regulated activity with adults and/or children.

How a Person Might be Referred to the List

Heydays care and Support Services will refer a person for inclusion on the DBS barred list(s) when it has dismissed or removed a person from working in a care role with people who use the services (or would have if the person had not left or resigned, etc) because that person has:

- been cautioned or convicted for a relevant offence
- engaged in relevant conduct in relation to people who use the services (ie an action or inaction (neglect) that has harmed a person or put them at risk of harm)
- satisfied the Harm Test (ie there has been no relevant conduct (ie no action or inaction) but a risk of harm still exists).

A referral is not made when an allegation is first made. It follows after a disciplinary investigation and evidence gathering in order to establish if any allegation has foundation. The DBS will only proceed with its assessment when it has obtained adequate information and evidence that satisfies one or more of the three conditions described above.

In exceptional circumstances, the care service might make a referral before it has completed its own investigations when it has good grounds for believing that people who use the services could be put at risk without the referral being made. The DBS will then decide if it has sufficient evidence to make a full assessment in line with its procedures.

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 people who use the services 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 people who use the services. In line with DBS procedures, the referred person will have the opportunity to make representations to the DBS by providing information and evidence as to why they should not be placed on the list(s).

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 or children under the definition of regulated activity.

Under the barring rules, Heydays care and Support Services 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 (eg 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.

Appeals

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. They can seek to appeal on the grounds of an "error of fact" or an "error of law". The DBS will notify the person of their right to appeal.

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's 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.

Age at time of barring Minimum period before review can be requested

Aged under 18 when barred 1 year

Aged 18–24 when barred 5 years

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.

Training

All staff are made aware from induction onwards of the procedures that will be followed in the event of their causing harm to any the people to whom they are providing a service.