

**Protecting Vulnerable Groups (PVG) Part 2  
Referrals. Consideration for listing, risk assessment and determination**

**Publication Code: OPS – 0413-231**

<b>Publication date</b>	3 April 2013
<b>Version number</b>	1
<b>Author's initials</b>	HD
<b>Job title</b>	Development Officer
<b>Responsibility for this document</b>	National Registration Team Manager
<b>Review date</b>	3 March 2014

This is the first version of this document.

## **Referrals, consideration for listing, risk assessment and determinations**

This information has been drawn from Disclosure Scotland PVG 'Guidance for individual's organisations and personal employers' June 2010 and this should be consulted for a detailed explanation of the above processes.

[http://www.disclosurescotland.co.uk/pvg/316289\\_v6\\_20100628.pdf](http://www.disclosurescotland.co.uk/pvg/316289_v6_20100628.pdf)

### **1. Background**

The PVG scheme aims to provide a robust system aimed at preventing people who are unsuitable from doing regulated work with children or protected adults and identifying those who become unsuitable. (PVG guidance page 81).

For this to work successfully it is necessary for organisations to pass information to Disclosure Scotland where they consider that an individual may not be suitable to do regulated work so that this can be properly evaluated and appropriate action taken.

Referrals can be made to Disclosure Scotland by employers and regulatory bodies such as the Care Inspectorate. These referrals will then be considered by Disclosure who will assess whether the individual should be barred from regulated work.

The Care Inspectorate has the power to make referrals for providers, managers and staff working in services. However, providers have the primary duty to refer their staff and managers. Only in situations where we identify that the provider has failed or refuses or is unable to make the referral, should the Care Inspectorate refer providers or their staff.

Normally providers would refer staff after a disciplinary procedure and when a worker was dismissed from their duties. However there may be situations where a person may be referred for incidents out with work, which may impact on the worker's suitability to carry out their role with protected adults and/ or children.

Where Disclosure Scotland receives more than one referral for the same person for the same incident from different organisations, this will be considered together as 'one case'.

### **2. Referral grounds**

Sometimes an individual doing regulated work can become unsuitable to continue to do this work and this may be indicated by their conduct at work or outside of work.

The referral needs to be related to the type of work they are doing (for example, where a nursery nurse harms a protected adult this does not meet the referral grounds for regulated work with children). However, the inappropriate conduct does not have to be connected with their work in any way. (Disclosure Scotland gives examples of "someone who has taken inappropriate pictures of children on a beach or has stolen from an elderly and frail neighbour

would meet the grounds for referral if the individual was doing regulated work with children or regulated work with adults respectively”).

A referral to Disclosure Scotland should be made where they have caused harm<sup>1</sup> or where there is risk of harm or where it is considered necessary to permanently remove an individual from doing regulated work.

Essentially, the criteria are:

1. an individual doing regulated work has done something to harm a child or protected adult or place them at risk of harm and
2. the impact is so serious that the organisation has dismissed the individual or transferred the individual to a position that does not involve regulated work ( or would have or might have done so if the individual has stopped doing regulated work for some other reason)

### **The meaning of the word harm:**

- physical harm
- psychological harm
- unlawful conduct which adversely affects another person’s property, rights or interests (theft, fraud, embezzlement or extortion)

### **Risk of harm:**

- attempting to harm another
- trying to get someone else to harm another
- encouraging someone to harm themselves
- conduct otherwise causing, or likely to cause another to be harmed

Advice from legal services must be sought by the Inspector Manager when referrals to Disclosure Scotland are being considered to ensure the criteria for a referral are met.

### **3. Power of Care Inspectorate to refer as a scrutiny body**

The Care Inspectorate expects providers to make the referral where they have concerns about their own staff and the grounds for referral have been met. The provider must inform the Care Inspectorate using the ‘notifications’ process.

Where the Care Inspectorate is aware that the provider has not referred an individual nor has any doubts whether a referral has been made, we should make the referral. But we should not make the referral if we know one has been made, or is in the process of being made.

Referral by the Care Inspectorate would also be necessary where the person to be referred is an individual provider, including a childminder, and there is no employing organisation.

---

<sup>1</sup> Harm is defined at section 93 of the PVG Act and the grounds for referral can be found in section 2

Where the Care Inspectorate takes enforcement action as a result of an individual's conduct, causing harm or putting people at risk of harm (in line with the PVG definition), we should consider whether there are grounds for a referral and seek to verify if one has been made by the provider. If the provider has not made a referral or does not intend to do so, the Care Inspectorate should refer the person concerned.

Referrals must be made by the employing organisation within 3 months of the grounds for referral being met and it is an offence for a provider not to do so. The Care Inspectorate will also work within these timescales.

#### **4. Referral information**

The information which is to be submitted to make a referral is set out in The Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 (SSI2010/181).

Disclosure Scotland provides a standard referral form and includes:

- Identity of individual
- Details about this referral ground
- Details of the regulated work done by the individual
- Details of any relationship between the child or protected adult involved
- Details of any action taken by the referring organisation

The PVG legislation does not require the organisation making the referral to notify the individual, however Disclosure Scotland will share this information with the individual.

Inspector Managers must discuss potential referrals to Disclosure Scotland with legal services. No referral should be made without the agreement of Head of Legal Services or a solicitor acting in their absence.

#### **5. Providing information to Disclosure Scotland**

Disclosure Scotland while considering an individual for listing will gather information from relevant organisations. The Care Inspectorate may be required to supply information under section 19 of the PVG Act. Where the Care Inspectorate is so required and provides referral information in good faith, it will be protected from actions for damages under section 41 of the PVG Act.

In these circumstances the request for information will be processed by the Information Governance Team in conjunction with legal services in order to submit the required information.

## **6. Action where staff, manager or the provider are identified as being under consideration for listing.**

The Care Inspectorate may be notified in various ways that an employee of a care service, manager or provider is under consideration for listing.

It should be noted that while some situations would lead to instant listing (such as a sexual offence against a child) in many situations Disclosure Scotland will consider the referral grounds and consider whether the person should be listed, and as such barred from working with protected adults and or children.

It should be noted that being under consideration, does not mean that listing will occur. Consideration may also take a period of months. People under consideration should not automatically be suspended or dismissed.

The PVG guidance suggests that employers conduct a Risk Assessment to determine the necessary action whilst the consideration for listing process is carried out.

The Risk Assessment and subsequent action should include:

- Consideration of the reasons/grounds for referral
- The potential risk to children or protected adults
- Whether the person should continue with their job/role
- If the role should be restricted, tasks limited
- Whether the person should have no access to children or protected adults and be supervised at all times
- Whether an alternative post should be identified in interim
- Whether suspension pending the outcome of consideration is necessary
- Whether the grounds of referral (including previous criminal history) is significant enough to warrant dismissal

See appendix 1 – flow chart

## **7. Consideration for listing – determination**

At the end of the process, the individual concerned and interested parties will be notified of Disclosure Scotland's decision.

### **7.1 Not listed**

Where an individual is not listed for barring and is still a PVG scheme member, the employer will still need to consider whether they wish to continue to employ the person in line with their safe recruitment policy.

## **7.2 Listed individuals**

Where an individual is barred from working with children or protected adults (or both) it is an offence for them to carry out regulated work, including providing or managing a care service.

Where the Care Inspectorate is informed that an individual provider or someone involved in the control and management of a care service is barred, the Inspector Manager must seek advice from legal services.

## Protecting Vulnerable Groups

### Procedure for handling notifications about staff/providers under consideration for listing by Disclosure Scotland

