



**Disclosure &
Barring Service**

**General
Dental
Council**

protecting patients,
regulating the dental team

Memorandum of Understanding

Sharing of information between:

**Disclosure and Barring Service and the
General Dental Council**

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List of Acronyms

CRB	Criminal Records Bureau
DBS	Disclosure and Barring Service
FtP	Fitness to Practice
GDC	General Dental Council
ISA	Independent Safeguarding Authority
KoR	Keeper of Register
MoU	Memorandum of Understanding
POFA	Protection of Freedoms Act 2012
SA	Supervisory Authority
SVGA	Safeguarding Vulnerable Groups Act 2006
SVGO	Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

1. PARTIES TO THE MOU

The partners to this agreement are:

Disclosure and Barring Service (DBS)
PO Box 181
Darlington
DL1 9FA

and

General Dental Council (GDC)
37 Wimpole Street
London
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This document is jointly owned by Adrienne Kelbie, Chief Executive of DBS and Evlynn Gilvarry, Chief Executive & Registrar of the General Dental Council.

2. TERM OF AGREEMENT

- 2.1. This MoU includes changes to information sharing following amendments to the SVGA commencing 10 September 2012. Future legislative changes will be reflected as appropriate in this MoU and will follow the agreed change process as detailed below.
- 2.2. The MoU will be reviewed on an annual basis to negotiate any required changes or to confirm that the agreement is still valid.
- 2.3. A significant change to the Government's disclosure and barring policy or legislation impacting on the MoU will also trigger a review. The review will be conducted jointly by DBS and GDC officers named in the MoU as responsible for the MoU.
- 2.4. If following a review, no changes are required this will be confirmed by DBS and GDC officers responsible for the MoU. A review date will be set for a further twelve months time.
- 2.5. If following a review, only minor changes are required, the changes will be agreed by DBS and GDC officers responsible for the MoU. The MoU will be amended and a review date set for a further twelve months' time.
- 2.6. If following a review, major or significant changes are required, for example to the information flows, then the changes will be agreed by DBS and GDC officers responsible for the MoU and confirmed by the Chief Executive (or officer nominated by the Chief Executive) of the respective organisations. The MoU will be amended and a review date set for a further twelve months' time.

3. PURPOSE AND AIMS

- 3.1. This MoU provides a framework for sharing information between the DBS and GDC and incorporates the arrangements and principles of such information sharing.

- 3.2. The overall aim of the MoU is to ensure that information is legally and appropriately shared in the interests of safeguarding vulnerable groups including children. In particular to:
- Promote co-operation between the DBS and GDC at an operational level and in the conduct of their respective statutory duties;
 - Facilitate an effective and efficient sharing of information within existing legal powers and constraints concerning safeguarding children and adults; and to
 - Promote consultation on matters of safeguarding to improve the DBS and GDC performance in meeting their respective statutory duties and corporate objectives.

4. ROLE AND FUNCTIONS

DBS

- 4.1. The primary role of the DBS is to help employers in England and Wales make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups including children.
- 4.2. Regulated Activity describes the kind of work to which barring applies and is set out in schedule 4 of the SVGA (as amended by POFA).
- 4.3. The DBS is a Non-Departmental Public Body (NDPB) sponsored by the Home Office. DBS has certain statutory responsibilities and is accountable to parliament. This means that DBS operates within defined areas of autonomy and operational discretion however effectiveness and efficiencies are closely scrutinised by ministers, officials and stakeholders.
- 4.4. The statutory responsibilities of the DBS are:
- Processing requests for criminal records checks as defined by Part V of the Police Act 1997;
 - Deciding whether it is appropriate for a person to be placed in, or removed from, a barred list under SVGA or SVGO;
 - Maintaining the DBS Children's Barred List and the DBS Adults' Barred List.
- 4.5. The DBS is established under POFA and carries out the functions previously undertaken by CRB and ISA. Functions of CRB and ISA have been transferred to DBS under POFA and became operational on 1 December 2012.

General Dental Council

- 4.6. The GDC is a statutory body independent of the NHS and of Government, with responsibility for maintaining the dentist and dental care professionals registers for the United Kingdom. The GDC aims to protect patients, promote confidence in dentists and dental care professionals and be at the forefront of healthcare regulation.
- 4.7. The GDC:
- maintains registers of qualified dental professionals;
 - sets standards of dental practice and conduct;
 - assures the quality of dental education;

- ensures professionals keep up-to-date;
 - helps patients with complaints about a dentist or a dental care professional; and
 - works to strengthen patient protection.
- 4.8. The GDC has statutory powers to take action where there are concerns about the fitness to practise (FTP) of a registered dentist or dental care professional. This includes those registrants whose fitness to practise is affected by their health.
- 4.9. The GDC is also a Keeper of Register (KoR) under the SVGA.

5. INFORMATION FLOWS

From DBS to GDC

5.1. Provision of barring information

5.2. Where the DBS takes a decision to bar or is minded to bar any individual which it believes or knows to be a GDC registrant it will notify the GDC of that decision.

5.3. Article 7: Safeguarding Vulnerable Groups (Miscellaneous Amendments) Order 2012

5.4. The DBS may, at the request of a person (X) with a legitimate interest in person (Y), inform person (X) if person (Y) is included in the DBS barred lists (or previous barred lists). For the purposes of this MoU, a keeper of a register has a legitimate interest in relation to a person on their register or being considered for inclusion on their register.

5.5. It is agreed that the GDC will not exercise this general power available to all people with a legitimate interest but use the powers specific to them under S.43 of the SVGA to request the barred status of a person on or being considered for their register.

5.6. Section 43 (3) & (4): Safeguarding Vulnerable Groups Act 2006 (as amended)

5.7. If the GDC applies to the DBS to ascertain if a person on or being considered for their register is barred or subject to a relevant disqualification (e.g. Scottish bar), the DBS must notify the GDC of the bar or disqualification.

5.8. The GDC may exercise this power by applying in writing to the DBS, citing the above legislation and providing sufficient information to provide identification of the person on or being considered for their register. On receiving a valid request in writing the DBS must provide the information and will seek to provide a response within 5 working days.

5.9. Section 43 (5): Safeguarding Vulnerable Groups Act 2006 (as amended)

5.10. The DBS may (whether on application by the GDC or otherwise) provide to the GDC such information as DBS considers relevant.

5.11. The DBS may exercise this power proactively in relation to the safeguarding of vulnerable groups including children if there are sufficient, compelling reasons for the information to be provided and it is relevant to any function of the GDC or in relation to a person on or being considered for their register and not provided for under other legislative provisions. For clarity, the DBS will not proactively provide information

under this provision on a routine basis in relation to referrals, decisions to bar or decisions not to bar (see section 6). The DBS may exercise this power in circumstances where it supports safeguarding children or vulnerable adults.

5.12. The GDC may exercise their power to request information under this provision in relation to circumstances where there are sufficient, compelling reasons for the information to be provided to the GDC. The DBS will not unreasonably withhold providing information under this provision, provided the circumstances are sufficient and compelling to safeguard vulnerable groups including children, relate to the GDCs functions and are not provided for under other legislative provisions. It is agreed that the GDC will not use this power to seek information in relation to fitness to practice cases where they have the power under their enabling legislation to request information relevant to a fitness to practice case.

5.13. Provision of information for fitness to practise cases

5.14. Section 33B (2) and 36Y: Dentists Act 1984 (Amendment) Order 2005

5.15. The GDC has the power to require the DBS to provide it with information or documentation in its possession, which appears to the GDC to be relevant to the discharge of its fitness to practise function in respect of a registrant.

5.16. Requests for information to the DBS should be in writing, stating the legislative provision and providing sufficient information to identify the person. The DBS must provide the information and will seek to respond within 10 working days. However, this time period may be exceeded if records need to be recovered from offsite secure storage. If this is the case, then the DBS will advise the GDC when it can expect to receive the information. In any event the DBS will seek to provide the information as soon as possible.

5.17. It is recognised that the DBS's barring decision making process has been formulated for the DBS to use in accordance with its particular statutory responsibilities. It follows that information produced under this process is not necessarily transferable for use by the GDC who is required to make their own decisions and not rely upon those of other bodies which are made in accordance with separate and differing statutory tests.

5.18. Some documents held by the DBS will be identical to those held by the requesting body, as they will have been provided from the same source (e.g. an employer). Information that originates from a third party (e.g. an employer, a local authority or the police) should be sought directly from that source before a request is made to the DBS. This is because the provider would have given information to the DBS that is specifically relevant to the DBS's functions. The original source may hold other information that is relevant to the GDC.

5.19. There is no relevance in DBS officers attending hearings or providing witness statements in fitness to practice cases.

5.20. The DBS will respond as follows in relation to a request under this power (as appropriate):

- Firstly, to provide the barred status of the person and if barred the reasons for the bar (by providing a copy of the 'minded to bar' or barring letter).

- Secondly, if further information is required, the DBS will provide a list of documents held by the DBS in relation to the case. The DBS will then provide such documents from the list as requested by the GDC and relevant to the matter.
- Thirdly, in cases where the DBS does not bar and relevant information is requested, and available, in relation to the reason not to bar that is not contained in any case document (above), the DBS will provide a summary of relevant information related to the decision not to bar.

From GDC to DBS

5.21. Power to Refer

5.22. Section 41: Safeguarding Vulnerable Groups Act 2006 (as amended)

5.23. The GDC may provide the DBS with any information it holds relating to a person if the first and second conditions are satisfied.

5.24. The first condition is that the GDC thinks that the person has:

- Received a caution or conviction for a relevant (automatic barring) offence;
- Engaged in relevant conduct; or
- Satisfied the Harm Test.

5.25. The second condition is that the GDC thinks that the person is or has been or might in future engage in regulated activity and, except in the case of a relevant offence, that the DBS may consider it appropriate for the person to be included in a barred list.

5.26. When considering making a referral to DBS the GDC will have regard to Key Referral Principles (contained in Appendix 1) and Guidance for Referrals to DBS (contained in Appendix 2).

5.27. Duty to provide information on request

5.28. Section 42: Safeguarding Vulnerable Groups Act 2006 (as amended)

5.29. If the DBS is considering whether to include a person in a barred list or whether to remove a person from a barred list it may require the GDC to provide it with any prescribed information it holds in relation to the person. The GDC must comply with this request.

5.30. Appendix 3 provides a definition of 'Prescribed Information for KoRs' for the purposes of this section.

6. WORKING IN PARTNERSHIP

6.1. Where either the DBS or the GDC receives a referral that it considers that the other organisation will have an interest in it will inform them within five working days to discuss and agree how the case will progress.

6.2. Generally both organisations will continue with their processes concurrently. The DBS is under a legal duty to consider a case within a reasonable time once information is referred to it.

- 6.3. It is usual, however, where a case comes to the attention of DBS and a KoR at the same time that the DBS will wait for the KoR to complete their fitness to practise or conduct process prior to completing a case. This is because the DBS has no investigatory powers and may require the KoR's 'findings of fact' or other information in order to proceed to a barring decision or to close the case.
- 6.4. The exception to this is where the DBS has sufficient, compelling information to proceed to a barring decision and it is in the interests of safeguarding children and adults to do so.
- 6.5. Where the DBS receive a referral and information within that referral indicates that the referred person might be in the GDC register, the DBS will, as part of its information gathering process, write to the GDC requesting information under section 46 SVGA.
- 6.6. In response, and in addition to providing any information that it has a duty to provide, the GDC will confirm that they have an interest in the case.
- 6.7. On receipt the DBS will register the GDC's interest in the case. This will allow at the conclusion of the case, the DBS to advise the GDC (as appropriate) the barring decision and/or referred information.
- 6.8. All information provided by the DBS shall be treated in accordance with Appendix 4 (Security and Audit Assurance). A persons barred status or information will be classified as OFFICIAL–SENSITIVE under the Government Security Classification, and as such, should not be made public.

7. CONTACT POINTS

DBS

- 7.1. The DBS Central Operations Support Team (COST) will be the principal point of contact regarding the day to day operation of the content of this agreement.
- 7.2. Queries in relation to Policy or the MoU should be directed to the officer responsible for MoU.

GDC

- 7.3. GDC FtP Casework will be the principal point of contact regarding the day to day operation of the content of this agreement.
- 7.4. Queries in relation to Policy or the MoU should be directed to the officer responsible for MoU.

8. AUTHORISATIONS

On behalf of the DBS

Name Janet Gauld

Role within organisation Director for Operations (Barring)

Signature



Date


30 March 2015

On behalf of the General Dental Council

Name Evlynne Gilvarry

Role within organisation Chief Executive and Registrar

Signature



Date

18th February 2015

APPENDIX 1: KEY REFERRAL PRINCIPLES

The key referral principles are to help guide health and social care regulators in the use of their powers to make safeguarding referrals to the Disclosure and Barring Service (DBS).

1. The DBS and health and social care regulators will work together in the interests of safeguarding vulnerable groups including children to support the achievement of their respective statutory duties.
2. The DBS and health and social care regulators will work constructively together to share relevant information promptly and appropriately in accordance with the law.
3. Regulators may consider making a referral to the DBS where certain statutory conditions are met, including that there is harm or a risk of harm to a vulnerable adult or child. Regulators' consideration of whether there is harm or a risk of harm may include whether there is evidence of a single episode or pattern of behaviour.
4. It is appropriate to consider making a referral so DBS can consider including the person in a barred list in cases including where:
 - the case concerns or is likely to concern harm or a risk of harm to vulnerable adults or children;
 - regulators' actions cannot remove or effectively mitigate the risk of harm to children or vulnerable adults, for example, if the person's conduct poses a risk of harm outside their professional capacity because of their sexually predatory, violent or threatening behaviour; or
 - the person demonstrates a serious, reckless or callous disregard for professional procedure while responsible for the care of children or vulnerable adults in the course of their professional duties that presents a risk of harm to children or vulnerable adults.
5. In certain circumstances, regulators may consider that it is not necessary to make a referral to the DBS for them to consider including the person in a barred list. Such circumstances include where the case relates solely to:
 - public confidence in the regulated profession or regulatory processes; or
 - professional competence with no wider child or adult safeguarding implications, i.e. the risk of harm to children or vulnerable adults has been removed or effectively mitigated by the regulators' actions.

APPENDIX 2: GUIDANCE FOR REFERRALS TO DBS

Safeguarding Vulnerable Groups Act 2006 Safeguarding Vulnerable Groups (NI) Order 2007

Health and Social Care Keepers of Registers – Guidance for Referrals to the Disclosure and Barring Service

Introduction

1. The Disclosure and Barring Service (DBS) is established under the Protection of Freedoms Act 2012 and carries out functions previously undertaken by the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA). Functions of the CRB and ISA have been transferred to the DBS, which became operational on 1 December 2012.
2. The DBS has the following statutory responsibilities:
 - Processing requests for criminal records checks as defined by Part V of the Police Act 1997;
 - Deciding whether it is appropriate for a person to be placed in or removed from a barred list under the Safeguarding Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012) (SVGA) or Safeguarding Vulnerable Groups (Northern Ireland) Order (SVGO) 2007; and
 - Maintaining the DBS Children's Barred List and the DBS Adults' Barred List.
3. It is a criminal offence for a person on a barred list to engage, seek to engage or offer to engage in regulated activity with a group they are barred from. Regulated activity is defined in schedule 4 of the SVGA, and schedule 2 of the SVGO and includes those settings where a person has the opportunity to build relationships of trust with vulnerable adults and/or children.
4. Professional regulators have a legal power to refer a person to the DBS where there is reason to believe that they may pose a risk to vulnerable adults or children and the person is or has been or might in future be, engaged in regulated activity and the DBS may wish to consider including the person in a barred list. It is not the role of the regulator to make a judgment on whether or not a person should be barred. The regulator must decide whether or not the DBS should be made aware of safeguarding concerns in relation to a particular person. This guidance is intended to clarify the circumstances in which the DBS would expect regulators to share information with them.

Regulatory action that mitigates the risk of harm

5. A key duty of both the DBS and the professional regulators is to prevent harm to people. As a result, in certain circumstances there will be cases that should be considered by both the DBS and professional regulators.
6. However, there are some aspects of behaviour which relate only to the work of a registered professional and should not be considered relevant in the wider context of

safeguarding that the DBS has a duty to consider. This is where the risk of harm relates solely to their professional practice with no wider implications outside their professional practice. In these cases, if a professional's registration is restricted or removed, the risk of harm in relation to those specific settings where the professional is required to be registered or licensed in order to practise is mitigated.

7. In circumstances where a professional's registration has been restricted or removed for harmful behaviour which related solely to their professional practice, and professional regulators are confident that the risk of harm has been mitigated in that the person (in the view of the regulator) does not present a risk outside the specific professional context, there is no need for this information to be referred to the DBS.
8. However, there will be cases where action by a professional regulator cannot mitigate the wider risk of harm to vulnerable adults or children posed by a registered professional. This is because the behaviour and risk factors which led to an individual being referred to the regulator indicates they pose a risk outside the setting in relation to which they are registered to practise. This could include activities which are classed as 'regulated activity' under the SVGA / SVGO. In these circumstances professional regulators should refer information to the DBS.
9. This guidance sets out in more detail how and when information should be shared between the professional regulators and the DBS.

Referrals to the DBS

10. There are three types of cases in which professional regulators should consider using their power to refer information to the DBS.

i) Relevant Offences

11. Relevant offences are offences in relation to which, if a person is convicted or cautioned, will (for automatic barring offences) or may, depending on representations (for automatic inclusion offences), mean the person is included in one or both barred lists.
12. A decision to refer information in relation to relevant offence cases is relatively straightforward. Most of the offences are sexual in nature, or involve violence against the person or property and offences involving some abuse of trust or authority.
13. A referral to the DBS should be made in all cases where the person is or has been or might in future be, engaged in regulated activity and professional regulators are in receipt of a notice of a police caution, notice of criminal conviction or overseas determination or other authoritative document such as a letter from the police confirming details of a conviction for a relevant offence or activity 'connected' to the commission of a relevant offence. A referral should also be made to the DBS where an overseas determination relates to a criminal offence in another jurisdiction which if convicted in the UK would amount to a relevant or connected offence.
14. Connected activities in relation to an autobar offence are attempting to commit, conspiring to commit, inciting another to commit, aiding or abetting in the commission of an offence, or counselling or procuring the commission of any of the specified offences.

15. Relevant offences are described in secondary legislation. A Factsheet of relevant offences is available on the DBS website:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249428/dbs-factsheet-relevant-offences-england-and-wales.pdf

ii) Relevant conduct

16. The SVGA / SVGO provides professional regulators with a power to refer cases where the regulator has established that a person has engaged in 'relevant conduct', that the person is or has been or might in future be, engaged in regulated activity and the regulator thinks the DBS may consider it appropriate to include the person in a barred list.
17. For there to be relevant conduct, the person must have engaged in some kind of act or omission which has either caused actual harm directly to a child or vulnerable adult, or put a child or vulnerable adult at risk of harm. Relevant conduct can be any act or omission on the part of the person that endangers a child or vulnerable adult or is likely to do so if repeated.
18. Relevant conduct also includes behaviour involving sexual material relating to children or sexually explicit images depicting violence against human beings (however produced and whether real or imaginary).
19. Relevant conduct includes conduct carried out overseas as well as in the UK.

iii) Harm test

20. The Harm Test may be considered for those cases where there is a risk of harm to a child and/or vulnerable adult but the circumstances do not meet the relevant offence or relevant conduct referral criteria. It is expected that this power will be used infrequently.
21. The SVGA / SVGO provides professional regulators with a power to refer cases where the regulator has established that the 'Harm Test' is satisfied, that the person is or has been or might in future be, engaged in regulated activity and the regulator thinks the DBS may consider it appropriate to include the person in a barred list.
22. The test is intended to apply to 'prospective' (future) harm and does not apply where there has been any past conduct in relation to children or vulnerable adults, which satisfies the relevant conduct criteria. However, the Harm Test can be applied to 'conduct cases' in the following circumstances:
- a. Where there is an undue delay in the professional regulators regulatory processes, to the extent that a delay in referral to the DBS might pose a risk of harm to children and vulnerable adults; or
 - b. Where there has been an allegation of relevant conduct but for some technical reason the relevant conduct criteria are not met and it is considered that the person poses a future risk to children or vulnerable adults such that the DBS may bar the person; or
 - c. Where there is strong and compelling evidence that the person has committed a serious auto-bar offence and it is considered that the person

poses a serious risk to children or vulnerable adults such that the DBS may bar the person.

23. The Harm Test is likely to be met where there has been no act or omission but the person has communicated something about their thoughts, beliefs or attitudes to indicate they pose a risk of harm directly in relation to children or vulnerable adults (rather than a general risk to all people). For example, where a registrant tells his or her therapist he or she has a desire to cause harm to vulnerable adults or children but has not yet done so. The Harm Test will not usually be met when the person's expression of his/her thoughts, attitudes or beliefs indicates a general risk of harm rather than a specific risk to children or vulnerable adults.
24. Where there has been an act or omission that is not directly related to children or vulnerable adults but the nature of the act or omission suggests that the person poses a significant risk of harm to children or vulnerable adults the referral should be made under the relevant conduct provisions.
25. As with the relevant conduct criteria there must be sufficient, compelling evidence that the person poses a risk of serious harm to a vulnerable adult or child. This means that where a person assaults another person unknown to them, for example, in a pub or at a football match, in the absence of any other information that may indicate risk of harm to vulnerable groups including children, this will not usually satisfy the relevant conduct or Harm Test provisions for referral to the DBS under the SVGA.
26. In general, there are four key factors that decision-makers need to consider when making a decision about whether to refer information to the DBS under the Harm Test.
 - How credible or compelling is the information that has been provided to the professional regulator?
 - What specifically is the person deemed to be at risk of doing in the future? How does this link to harm or risk of harm to a child or vulnerable adult?
 - What are the chances of the behaviour which underpins the harmful thoughts actually materialising?
 - What is the likely level of harm if it does? Is it more than trivial or fleeting?

May bar test

27. Where a professional regulator has established that relevant conduct has taken place or that the Harm Test has been satisfied and the person is or has been or might in future be engaged in regulated activity, before referring information to the DBS the regulator must think that the DBS may consider it appropriate to include the person in a barred list. This is the 'may bar test'.
28. In the first instance the threshold for whether the DBS may consider it appropriate to bar someone will depend on the seriousness of the harm caused or likely to be caused or where there is a pattern of behaviour. The DBS is unlikely to consider it appropriate to bar a person in cases involving an isolated incident of harm such as low-level rudeness or sarcasm towards a patient or person who uses services (rather than serious or persistent verbal abuse). Any ongoing risk arising from such one-off

cases that may appear trivial will not normally, and in the absence of other evidence be sufficiently serious to require the DBS to consider including the person in a barred list, taking into account the proportionality of the bar against any identified risk.

29. However, even for apparent 'one-off, low level harm', each case should be treated on its merits in accordance with this guidance and with particular reference to any previous behaviour that may indicate a pattern of abuse and to the future risk of harm to vulnerable groups including children. In these cases, the regulator should consider contacting the DBS helpline to discuss whether a referral may be appropriate. The DBS may have evidence of cumulative behaviour or have received a referral from the person's employer and be seeking any additional relevant information that may be held by the regulator. As a general rule, if the person's employer has made or should have made a referral to the DBS, the regulator should also make a referral supplying any additional relevant information that they hold.
30. In some cases action taken by the regulator is solely to maintain confidence in the profession. The may bar test will not be met in such cases where there is no harm or risk of harm posed to children or vulnerable adults by the underlying concern. However, it may be met where the underlying concerns are likely to harm or cause risk of harm to children or vulnerable adults.
31. The may bar test is unlikely to be met in cases solely concerning professional competence (i.e. competence in the profession in relation to which the individual is registered to practise). In such cases, where there is no wider risk to vulnerable adults or children because the action taken by the regulator to restrict or remove the individual's right to practise has removed the risk of harm, a referral to the DBS is not required. Examples of professional competence issues may include failure to diagnose, poor follow up and poor record keeping. Again, all cases should be considered carefully on their merits.
32. However, there are a number of scenarios where the action taken by the regulator cannot mitigate the wider safeguarding risk outside the individual's professional sphere. For example, where a person engages in violent or sexually predatory behaviour, lies with the intention of gaining access to vulnerable groups in order to harm them, falsely reports in order to conceal a safeguarding risk or demonstrates a serious and reckless or callous disregard for procedure (such as callous mishandling of a patient).

Children and Vulnerable Adults

33. For the purpose of the SVGA / SVGO, children (people aged under 18 years of age) are always considered to be vulnerable. An adult (a person 18 years of age or older) is only defined as vulnerable for the purposes of SVGA / SVGO when they are being provided with or receiving a service that is a regulated activity. For example receiving health care or relevant personal care.

When to make a referral to the DBS

34. The DBS will only progress cases when it has sufficient evidence to do so. If no relevant offence or connected offence has been committed, the professional regulator should usually wait until its own fitness to practise or conduct process has concluded before referring any information about the person to the DBS.

35. In general, referral of information to the DBS will only follow a decision by the professional regulator to issue a warning, to take substantive (rather than interim) action on an individual's registration or to refuse an application for registration or restoration. A referral to the DBS may also be made where a hearing into a person's fitness to practise or conduct is adjourned before the case has concluded, but following findings of fact being made which demonstrate that the doctor engaged in relevant conduct.
36. In certain circumstances a professional regulator may make a referral to the DBS prior to the conclusion of 'in-house' proceedings under the Harm Test (see paragraph 22 above).
37. Note, where professional regulators receive a notice that a relevant offence has been committed regulators should not wait until the conclusion of regulatory proceedings before making a referral to the DBS.
38. In changes to the SVGA / SVGO commencing on 10 September 2012, the duty to refer prescribed information to the DBS if the referral criteria were met was changed to a power to refer any relevant information to the DBS if the referral criteria are met. However, regulators must provide prescribed information if requested to do so by the DBS.
39. In cases where relevant conduct was committed before 12 October 2009 professional regulators can make a decision as to whether to refer this to the DBS at their discretion. For relevant offence cases and the Harm Test, while the legislation does not limit the power to events occurring on or after 12 October 2009, the DBS do not expect regulators to conduct a trawl for historical cases but have advised that regulators should consider whether it may be appropriate to refer 'live' fitness to practise cases where the conduct occurred before 12 October 2009 and meets the Harm Test.
40. Please see Annex B (Page 19) for further guidance on the power to refer historical relevant conduct cases.

Scope of referrals to the DBS

41. It is important to be clear about which people fall within the scope of the power of professional regulators to refer information to the DBS.
42. The power to refer information applies where the person is or has been, or might in future be, engaged in regulated activity. It should also be noted for clarity that 'relevant conduct' is not confined to the workplace.
43. If the person is not or has not engaged in regulated activity at the time the relevant conduct occurred or the referral to the DBS is being considered, professional regulators should consider whether they might in future engage in such an activity before referring information to the DBS. The Government does not consider that professional regulators should undertake any investigation to establish whether this is likely to be the case.
44. The SVGA / SVGO refer to 'persons' rather than 'registrants'. As, for most regulators it will be unusual for them to hold substantiated evidence about a person who is not either a registrant, a previous registrant or an applicant for registration, therefore

referrals will usually relate to registrants, previous registrants or applicants for registration.

Offences, harm and risk of harm in Scotland and overseas

45. A separate scheme has been established in Scotland under the Protection of Vulnerable Groups (Scotland) Act 2007, where the body responsible for making barring decisions is Disclosure Scotland. If a person is barred under provisions of the SVGA / SVGO they will be automatically barred in Scotland, and vice versa. This means that, despite there being two separate barring regimes, professional regulators will not need to make dual referrals to the DBS and Disclosure Scotland.
46. Situations may arise where a regulated professional practises in both England and Scotland. In these cases, the professional regulator should refer to the body responsible for making barring decisions in the country where the conduct took place. For example, if the conduct took place in Scotland, the matter should be referred to Disclosure Scotland. The DBS and Disclosure Scotland will consult and agree which is the appropriate body to lead on such cross-border cases where required.
47. If the conduct took place overseas, the person should be referred to the body responsible for making barring decisions in the country (England, Wales and Northern Ireland or Scotland) that corresponds to the registered address the person maintains with the professional regulator. For example, if the regulated professional is registered with their professional regulator at an English address and conduct occurs or has occurred while they are or have been working overseas, the matter should be referred to the DBS. If they are registered with a Scottish address, the referral should be made to Disclosure Scotland.

Information Sharing

48. The SVGA / SVGO provide a power for a keeper of register to apply to the DBS to ascertain if a person is included in a barred list or to seek relevant information. The DBS must provide barring information and may provide such relevant information as the DBS considers appropriate. A keeper of register may apply for information only about a person who appears in the register or is being considered for inclusion in the register. Relevant information is information relating to the protection of children or vulnerable adults in general or in particular and is relevant to any function of the keeper of register.
49. Health and social care regulators have varying powers under their own legislation to require bodies, including the DBS, to provide information usually relating to a fitness to practise case. The professional regulators with relevant powers are the Nursing and Midwifery Council, General Medical Council, General Pharmaceutical Council, General Dental Council, General Optical Council, General Chiropractic Council, the General Osteopathic Council and the Health and Care Professions Council.

Annex A: Clarification of key legislative terms

50. This section provides clarification of the definition of a number of the terms used within the SVGO / SVGA in the context of the professional regulator's referral powers.

Regulated activity

51. Regulated activity relating to children and regulated activity relating to adults is defined in Schedule 4 of the SVGA 2006 and Schedule 2 of the SVGO 2007. The Department of Education has published a factual note on regulated activity relating to children and the Department of Health has published a factual note on regulated activity relating to adults. The Secretary of State for Education has also published Statutory Supervision Guidance in relation to regulated activity relating to children.

Vulnerable Adults

52. The SVGA / SVGO define a vulnerable adult as a person aged 18 years or over who is being provided with or receiving a regulated activity.

Children

53. The SVGA / SVGO define any person under the age of 18 years as a child.

Harm

54. Harm may be caused by action or inaction and it can involve a single episode or a sustained course of conduct. Harm is not defined in the SVGA / SVGO and should be considered in its widest context.

55. The different types of harm may include emotional/psychological, physical, sexual, neglect, verbal and financial. This is not a definitive list and harm can take many forms. In relation to all types of harm, the detriment, damage, loss, pain, distress or danger caused by the action or inaction must be real, that is, more than just trivial or fleeting.

Annex B: Historical cases

56. Section 41(5) of the SVGA 2006 and article 43(5) of the SVGO 2007 confer a power for Professional Regulators to refer any cases of 'relevant conduct' occurring prior to the commencement of the referral provisions on 12 October 2009. A Professional Regulator may, in the interests of safeguarding children or vulnerable adults, refer information to the DBS in relation to 'relevant conduct' occurring prior to 12 October 2009.

57. While it is up to individual Professional Regulators as to how they may wish to exercise the power in section 41(5) or article 43(5), the DBS provides the following guidance to assist Professional Regulators in considering the application of this power:

- a. The DBS does not expect Professional Regulators to conduct a lengthy or onerous 'trawl' of previous cases to identify 'relevant conduct' cases for referral to the DBS under these provisions.

- b. Professional regulators should consider for referral, current cases that involve conduct prior to 12 October 2009 that would be considered 'relevant conduct' if the conduct occurred after 12 October 2009.
- c. For completed cases with extant sanctions, Professional Regulators should focus on high risk cases involving harm or risk of harm to a child or a vulnerable adult where the professional regulator thinks the DBS may consider barring the person. This includes old cases with sanctions that are re-considered and a decision taken to leave the sanctions in place, where there are safeguarding risks for a vulnerable group or where sanctions may be removed but the person not re-registered and safeguarding concerns are still present.

58. The DBS would not expect Professional Regulators to consider closed cases with no extant sanctions for referral to the DBS under this provision, unless there are exceptional circumstances involving risk of harm to a vulnerable group including children.

APPENDIX 3: PRESCRIBED INFORMATION FOR KoRs

The information to be provided in a referral or on request is outlined in Regulation 9 and Paragraphs 1, 2, 3, 5, 6, 9 and 10 of the Schedule to:

- The Safeguarding Vulnerable Groups Act 2006 (Prescribed Information) Regulations 2008 (No. 3265 of 2008) (as amended); and
- The Safeguarding Vulnerable Groups (Prescribed Information) Regulations (Northern Ireland) 2009 (No. 40 of 2009) (as amended).

The information is as follows:

Regulation 9

In addition to the information requested in the following paragraphs of the Schedule, Regulation 9 also requires the KoR to provide any other information relating to the person's conduct which is likely to, or may, be relevant in considering whether the person should be included in (or if relevant, removed from) a barred list including information relating to any decisions made, actions taken, complaints received or inspections undertaken by the KoR in relation to the person.

Paragraph 1 requires the provision of personal information (if known) about the person being referred namely:

- a) full name and title;
- b) any other name or names by which the person may be known e.g. maiden name, aliases;
- c) date of birth;
- d) gender;
- e) last known address (including postcode); and

Paragraph 2 requires a description of the regulated activity that the person is, or was, engaged in.

Paragraph 3 requires information as to whether or not the person is included in a register maintained by a keeper of a register or a supervisory authority.

Paragraph 5 requires the GDC to provide the following information relating to the persons conduct, (including copies of relevant documents):

- a) a summary of the conduct including details of the setting and location in which such conduct occurred;
- b) details of any harm suffered by any child or vulnerable adult resulting from or arising from the conduct or any risk of harm that a child or vulnerable adult was, or may have been, exposed to as a result of such conduct;
- c) the following details of any child or vulnerable adult referred to above;
 - i. the name and date of birth of the child or vulnerable adult;
 - ii. details of the relationship between the person and the child or vulnerable adult;
 - iii. information relating to the vulnerability of the child or vulnerable adult that may be relevant to DBS's consideration of whether to include or

remove the person in or from a barred list including any emotional, behavioural, medical or physical condition;

- d) whether the person has accepted responsibility for or admitted the conduct or any part of it;
- e) any explanation offered by the person for the conduct or any remorse or insight demonstrated by the person in relation to the conduct;
- f) any information other than that relating to the persons conduct which is likely to, or may, be relevant in considering whether the person should be included in or removed from a barred list including information relating to any previous offences, allegations, incidents, behaviour or other acts or omissions.

Paragraph 6 requires information relating to the reason why the referring party considers that the Harm Test is satisfied in relation to the person (if referring on the basis of satisfying the Harm Test).

Paragraph 9 requires details of any other proceedings before any court, tribunal or any other person taken or to be taken in relation to the person's conduct including the outcome of any such proceedings (and in proceedings commenced under the Children Act 1989).

Paragraph 10 requires details of any action taken, or to be taken, by the person referring or providing information under the Act to the DBS in relation to the person's conduct including whether or not the matter has been referred to the police or to any other person.

APPENDIX 4: SECURITY AND AUDIT ASSURANCE

Introduction

Information created or used by the DBS are Public Records under the Public Records Act (notwithstanding data exempt under the Data Protection Act 1998) and must be compliant with the relevant legislation and guidelines (see below) and managed in accordance with the relevant information management principles.

Objectives

The objectives are to preserve:

- **Confidentiality** - Access to Data must be confined to those with specific authority to view the data on a need to know basis.
- **Integrity** – Information is to be complete and accurate. All systems, assets and networks must operate correctly, according to management approved specification.
- **Availability** - Information must be available and delivered to the right person and/or system, at the time when it is needed.

Aim

The aim is to establish and maintain the security and confidentiality of information, information systems, applications and networks owned or held by the organisations receiving DBS data by:

- Ensuring that organisations are aware of and fully comply with the relevant legislation.
- Describing the principals of security and explaining how they must be implemented in the organisation.
- Introducing a consistent approach to security across the safeguarding community, ensuring that all organisations fully understand their own responsibilities.
- Creating and maintaining within the organisation a level of awareness of the need for information security as an integral part of the day to day business.
- Protecting information assets within the organisation that support DBS data.

Scope

This section applies to all DBS information and organisations' information systems, networks, applications, locations and users accessing and/or processing DBS information.

Security Responsibility

- Ultimate responsibility for security rests with the Information Security Officer of the organisation.

Not protectively Marked

- The organisation should appoint a DBS Data Guardian (DGD) who must be responsible for the security of day to day handling of DBS data within the organisation and safeguarding information received from and/or sent to the DBS.
- The organisation must ensure that their permanent and temporary staff and contractors are aware of:-
 - The information security policies applicable in their work areas, roles and responsibilities
 - Their personal responsibilities for information security
 - How to access advice on information security matters
 - How security incidents must be reported and managed.
- All applicable staff must comply with security procedures supporting this section, including the maintenance of data confidentiality and data integrity

Legislation

The organisation is obliged to abide by all relevant UK and European Union legislation. The requirement to comply with this legislation must be devolved to employees and agents of the organisation, who may be held personally accountable for any breaches of security for which they may be held responsible. The organisation should comply with the following legislation and other legislation as appropriate:

- The Data Protection Act (1998)
- The Copyright, Designs and Patents Act (1988)
- The Computer Misuse Act (1990)
- Human Rights Act (1998)
- Regulation of Investigatory Powers Act 2000
- Freedom of Information Act 2000

In terms of security requirements for information, the main areas which organisations should comply with are:

- HMG Security Policy Framework
www.cabinetoffice.gov.uk/spf

The above is for government departments and public services; however, some partners may not follow these standards and hence ISO 27001 should be adhered to as the minimum level required for security management.

Whether or not a partner has adopted the HMG Security Policy Framework, partners would still be expected to ensure that the level of security would comply with the protective marking and not downgrade information to favour a lesser level of security.