

Weston Park Primary School



Disclosure & Barring Service Referral Procedure

Weston Park Primary School has adopted Southampton City Council's model HR Policies and Procedures.

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<u>Contents</u>	<u>Page No.</u>
1. Position statement	2
2. Purpose	2
3. This applies to	2
4. Roles and responsibilities	2
5. Definitions	2
5.1. Child	2
5.2. Regulated Activity Related to Children	2
5.3. Regulated Activity Related to Adults	3
5.4. Relevant Conduct	4
5.5. Examples of Harm	4
5.6. The Harm Test	5
5.7. A Relevant Offence	5
6. Procedure	5
6.1 Identifying Potential Requirement for DBS Referral	5
6.2 Referral Panel	5
6.3 Completing a Referral	6
6.4 Referral Outcome	6
6.5 Guidance	7
7. Review	7

1. Position Statement

1.1 Employers, have a legal duty to notify the Disclosure & Barring Service of relevant information, so that individuals who pose a threat to vulnerable groups can be identified and barred from working with these groups.

1.2 A referral to the DBS will be made where an employee who occupies a post classed as "regulated activity" is dismissed or removed from that activity because the Council/school believes that they have been cautioned or convicted of a "relevant offence", has engaged in "relevant conduct" in relation to children or adults, or has satisfied the "harm test". (See below for definitions of all key terms).

2. Purpose

2.1 The referral procedure sets out how the council and Southampton schools will meet their legal responsibilities in relation to referring employees or ex-employees to the DBS for consideration for barring them from regulated activity work, in instances of misconduct relating to the safeguarding of children and adults.

3. This applies to:

3.1 The referral procedure covers the council and Southampton schools this may include trust, foundation and voluntary aided schools and Academies.

4. Roles and responsibilities

4.1 Any Council Manager/Officer, or the Head Teacher/Teacher/Chair of Governors of a Southampton school, who is involved in the investigation and formal consideration of relevant misconduct allegations must ensure that the statutory reporting requirements as set out in this procedure are met.

4.2 HR Pay / School HR Provider will:

Advise on the potential requirement to make a referral, attend Referral Panel meetings, and support referrals where required.

5. Definitions

5.1 Child

Section 60 of the Safeguarding Vulnerable Groups Act defines a Child as "a person who has not attained the age of 18". There is an exception in employment settings, where the age limit is 16.

5.2 Regulated Activity Relating to Children

Unsupervised activities:

- teaching, training, instructing, caring for or supervising children,
- or providing advice/guidance to children on physical, emotional or educational well-being,
- or driving a vehicle only for children (and their carers/supervisors);

Work for a limited range of establishments ('specified places'), with opportunity for contact: for example, schools, children's homes, childcare premises. (This does not include work by supervised volunteers).

Work is regulated activity only if done regularly. Regularly means carried out by the same person (once a week or more often or four or more days in a 30 day period), or in some cases overnight. ("Overnight" makes these activities regulated activities if carried out - even once - between 2am and 6am and with the opportunity for face-to-face contact with children).

Relevant personal care: for example

- physical help with (or supervision/prompting of/other training and advice related to) eating and drinking - for reasons of illness or disability
- physical help with (or supervision/prompting of/other training and advice related to) toileting, washing, bathing or dressing - for reasons of age, illness or disability;
- health care (all forms of health care relating to physical or mental health) by, or supervised by, a health care professional;

The day to day management or supervision on a regular basis for a person providing activities which would be regulated if unsupervised.

Registered childminding; and foster-carers.

5.3 Regulated Activity relating to Adults

The definition of regulated activity relating to adults identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time, e.g. due to age, illness or disability.

There are six categories of people who will fall within the new definition of regulated activity. A broad outline of these categories is set out below.

Providing health care - Any regulated health care professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a health care professional.

Providing personal care. Anyone who e.g.:

- provides physical assistance with eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin, nails
- prompts and then supervises an adult who cannot make the decision to e.g. eat or drink, go to the toilet, wash or bathe, get dressed or care for their mouth, skin, hair or nails without that prompting or supervision.
- trains, instructs or offers advice or guidance which relates to e.g. eating or drinking, going to the toilet, washing or bathing, dressing, oral care or care of the skin.

Providing social work - The provision by a social care worker of social work which is required in connection with any health care or social services to an adult who is a client or potential client.

Assistance with cash, bills and/or getting shopping - The provision of assistance to an adult, if that includes managing the person's cash, paying their bills or getting shopping on their behalf.

Assistance in the conduct of a person's own affairs - Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example by virtue of an enduring power of attorney. (The Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, identifies further categories).

Conveying - A person who transports an adult either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family, friends or taxi drivers.

The day to day management or supervision on a regular basis for a person providing activities listed in 5.3.

5.4 Relevant Conduct

Relevant conduct is any action or inaction that has harmed or placed a child or adult at risk of harm. It is a legal term which is defined under Schedule 3 of the Safeguarding Vulnerable Groups Act 2006. Relevant conduct is conduct:

- That endangers a child or adult or is likely to endanger a child or adult;
- If repeated against or in relation to a child or adult, would endanger them or would be likely to endanger them;
- That involves sexual material relating to children (including possession of such material);
- That involves sexually explicit images depicting violence against a person (including possession of such images), if it appears to the DBS that the conduct is inappropriate; or
- Of a sexual nature involving a child or adult, if it appears to DBS that the conduct is inappropriate.
- A person's conduct endangers a child/ adult if they:
 - Harms a child/adult
 - Causes a child/adult to be harmed
 - Puts a child/adult at risk of harm
 - Attempts to harm a child/adult
 - Incites another to harm a child/adult

5.5 Examples of Harm

Examples of the types of harm that may be considered in making a referral to the DBS include emotional/psychological, physical, sexual and neglect in relation to children, and emotional/psychological, financial, physical, sexual, neglect and verbal harm in relation to adults. This is by no means a definitive list.

5.6 The Harm Test

There are instances where a person may not have engaged in relevant conduct, but there are still serious concerns. To satisfy the harm test there needs to be credible evidence of a risk of harm to children or adults. For a referral to be made the basis of the harm test, relevant conduct will not have occurred, but there must be tangible evidence (rather than just a "feeling") that a person represents a risk to children or adults.

5.7 A Relevant Offence

A relevant offence is a serious sexual or violent offence that, subject to consideration of representations where permitted, will automatically bar a person from working with children or adults.

If an employee who works in regulated activity has been cautioned or convicted for a relevant offence, the Council must make a referral to the DBS as soon as it becomes aware of the caution/conviction.

6. Procedure

6.1 Identifying Potential Requirement for DBS Referral

When investigating an allegation of employee misconduct linked to a child, or an adult recipient of Council services, the Manager who is undertaking the role of Investigating Officer, in conjunction with an HR Adviser, will consider:

- whether the employee is/was in a post designated as regulated activity, or could be required to undertake regulated activity as a regular part of their role; and if so,
- whether the alleged misconduct is of a nature that if proven, it would be classed as 'relevant conduct', or would meet the 'harm test' under the DBS's criteria.

If the above conditions are met, it is likely to become necessary to refer the individual to the DBS for consideration for barring from working in regulated activity, following completion of the internal disciplinary process.

It may be appropriate to report a fitness to practise concern with the HCPC or other professional body as appropriate in relation to the individual's conduct.

Note: This procedure is additional to the local safeguarding protocols in place and the internal investigation process normally followed in relation to misconduct allegations involving the safeguarding of children and adults. In some cases, referral to an employee's professional regulatory body may also be necessary. HR Pay, or the relevant HR Provider in the case of schools, will advise on a case-by-case basis.

6.2 Referral Panel

Following a dismissal/disciplinary hearing where an employee has been removed from regulated activity, the Hearing Decision Maker (e.g. Head of Service, Head Teacher, Chair of governing body panel) will determine, in conjunction with the HR Adviser, whether it is necessary to convene a Referral Panel meeting.

Where required, a Panel meeting should be held as soon as is reasonably practicable following the completion of a disciplinary/dismissal hearing (and should not await the outcome of any subsequent appeal). The panel can conduct a 'virtual' meeting where it is not possible to meet within a reasonable timescale.

The Panel should consist of the Hearing Decision Maker, the supporting HR Adviser, the relevant HR Business Partner, and an Officer from the People Directorate with the local authority designated officer (LADO). The Investigating Officer who conducted the internal disciplinary investigation may also attend if appropriate.

The panel will consider the details of the disciplinary findings, with a view to agreeing:

- Whether the employee was employed in regulated activity at the time the misconduct took place, and
- Whether there is sufficient evidence to support the belief that the employee has engaged in relevant conduct, satisfies the harm test, or has received a caution or conviction for a relevant offence.

If both conditions are confirmed, a referral must be made and the individual who is subject to referral will be advised in writing. A record of the panel's discussion and decisions will be retained by the Council/school.

6.3 Completing a Referral

The Hearing Decision Maker, will be responsible for completion of the referral (with input from the Investigating Officer, appropriate SCC Officers and an HR Adviser if necessary), with content agreed by the panel. They will be the **Primary Contact Officer** for the referral and for any communication from the DBS relating to the referral. (Where the Hearing Decision Maker is a school governor, the responsibility for completing the referral will remain with the head teacher.)

The completed Referral Form will be agreed by the members of the Referral Panel before it is posted by recorded delivery to the DBS. The completed Referral Form should be posted by recorded delivery to the DBS within 10 working days of the panel meeting. A copy of the referral documentation will be retained by the Council/school. It is not necessary to provide a copy to the employee. The DBS will provide documentation to the employee if it is considering barring.

If additional relevant information becomes available following the referral being made, the Primary Contact Officer will be responsible for providing this to the DBS.

6.4 Referral Outcome

The DBS will consider any referral in line with its Barring Decision Making Process. The Primary Contact Officer will be advised of the referral outcome only where the individual remains in the Council's employment. The Primary Contact Officer will advise the other Barring Referral Panel members of the outcome.

6.5 Guidance

If an employee leaves their employment before an investigation is complete:

The Investigating Officer must complete the investigation in the employee's absence, as far as they are able to. A referral must still be made where the conditions for doing so are met, and as the DBS has no investigatory powers of its own, it is reliant on the information provided in the referral.

The requirement to refer is not triggered by an allegation being made or a temporary suspension taking place:

The DBS requires employers to investigate allegations and gather sufficient evidence and information to establish whether allegations have any foundation, prior to making a referral.

In exceptional circumstances consideration may be given to making a referral prior to an internal disciplinary process being concluded.

If the criteria to make a referral are met, the Council has a legal duty to make a referral to the DBS even where a referral has already been made:

The duty applies irrespective of whether another body, such as a professional regulator or the police, has made a referral in relation to the same person.

Referral - Where There is No Legal Duty to Refer:

Under the DBS's referral protocols, the Council/school may elect to make a referral where:

- Following an internal investigation there are strong concerns but there is not sufficient evidence to justify dismissing or removing the person from regulated activity.
- There are concerns about an ex-employee, and it is known or believed that the individual is working in regulated activity in another setting.

Where either of these situations occur, a Referral Panel meeting will be convened to consider the decision to refer the individual. Where the referral criteria are not met, and the Panel are minded to refer, they must seek advice from Officers within Legal, HR & Democratic Services with regards to relevant employment and data protection laws.

7. Review

This procedure will be reviewed as necessary to ensure that it complies with current employment legislation and the requirements of the council.