

Lead Employer Trust

Guidance on Referral of Staff to the Disclosure & Barring Service (DBS)

POLICY INFORMATION SHEET

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Summary of Changes

Date of Change	Changes made	Location of changes	Changes approved	Version Control
November 2014	Document review. Removal of ISA references.	All pages	November 2014	2
February 2015	Update to incorporate GP Practices	No changes	May 2015	3
June 2016	General update	All pages	June 2016	4
December 2019	Review to include Foundation Doctors	Appendix B Section 8	March 2020	6
February 2021	None – 3 year review			7
May 2023	Equality Impact Assessment	Page 8	30 th MAy 2023	7
December 2023	Annual Review	All Pages		8

Contents

1. BACKGROUND	5
2. DEFINITION OF REGULATED ACTIVITY	5
3. WHEN IS THE LET LEGALLY OBLIGED TO REFER AN INDIVIDUAL TO THE DBS?.....	5
4. EXCLUSION FROM DUTY	5
5. EXAMPLE OF WHEN TO REFER TO THE DBS.....	6
6. PROCEDURE FOR MAKING A REFERRAL TO THE DBS	6
7. EQUALITY AND DIVERSITY STATEMENT.....	6
8. MONITORING AND REVIEW	7
9. REFERENCES/LEGISLATION.....	7

1. BACKGROUND

The Disclosure & Barring Service (DBS) is an executive agency of the Home Office. The DBS is the result of a merger between the Criminal Records Bureau and the Independent Safeguarding Authority (ISA) in late 2012. One such role of the DBS is to help protect children and vulnerable adults. One of its core functions is to prevent unsuitable people from working with these groups.

The Lead Employer Trust (LET), because it is a **regulated activity provider** within the meaning of the Safeguarding Vulnerable Groups Act 2006, is legally obliged to share information about staff and make referrals to the DBS in appropriate circumstances, based on the information provided the DBS will determine whether someone should be barred from working in regulated activity.

2. DEFINITION OF REGULATED ACTIVITY

A **regulated activity** is one in which care or treatment is provided frequently or intensively. All posts carried out by doctors and dentists employed by the LET will fall within this definition and are therefore subject to the DBS reporting requirements.

NOTE: For information, there is also a second category called controlled activity which covers activities that are ancillary to regulated activities.

3. WHEN IS THE LET LEGALLY OBLIGED TO REFER AN INDIVIDUAL TO THE DBS?

In all cases there are **two conditions** dictating when the LET is required by law to refer a member of staff to the DBS. **Both** conditions must be met to trigger a referral.

An individual must be referred to the DBS when the LET:

- a) withdraws permission for that individual to engage in regulated or controlled activity, or would have done so had that individual not resigned, retired, been made redundant, or been transferred to a position which is not a regulated or controlled activity;

Because:

b) the individual has:

- engaged in *relevant conduct*;
- satisfied the *Harm Test*, or
- received a caution or conviction for a *relevant offence*.

If **both** conditions have been met the individual **MUST** be referred to the DBS.

Relevant Conduct and Harm includes emotional / psychological anguish, physical harm, sexual harm, neglect, financial harm, verbal harm. Further advice on what constitutes relevant conduct or harm must be sought from the LET HR department.

A *relevant offence* for the purpose of referrals to the DBS is an automatic inclusion offence as set out in the Safeguarding Vulnerable Groups Act 2006. Further information is available from the LET HR Department.

4. EXCLUSION FROM DUTY

At times allegations are made against a staff member that requires that employee to be excluded from duty for a period of time. It is important to note that whilst this is withdrawal from regulated or controlled activity, it does not in itself invoke the LET's duty to refer that member of staff to the DBS. At this stage exclusion is a neutral act as there is no clear

evidence to support the allegation that the employee has engaged in inappropriate conduct, or caused harm.

5. EXAMPLE OF WHEN TO REFER TO THE DBS

A is a junior doctor employed by the LET. An allegation is made against A that he hit a patient on the ward where he works. As an employer the LET takes immediate action and excludes A from duty. However, the exclusion is on the basis of an allegation and therefore a neutral act without prejudice and does not constitute withdrawal from regulated activity. Therefore, at this early stage whilst the first condition to refer to the DBS has been fulfilled as A has been withdrawn from regulated activity, the second condition has not been met i.e. there must be evidence and a belief that inappropriate conduct has taken place or harm has been caused by the member of staff.

At this stage an investigation should take place as detailed in the LET's Conduct and Capability procedure. As we proceed through the investigatory process and gather information the exclusion remains a neutral act.

However, once a disciplinary hearing has taken place and the manager chairing the hearing can support the belief that relevant inappropriate conduct has occurred or harm has been caused, the LET's legal duty to refer to the DBS may be triggered. In this instance once the evidence from the disciplinary hearing allows the chair of the hearing to be satisfied that the member of staff A has committed the alleged act then a number of options are open to the disciplining manager:

- a) Issue a warning (either written or final written) and return them to their role in regulated activity;
- b) Dismiss the individual; or
- c) Return the individual to work in a different non regulated activity.

If option b) or c) above are taken then A must be referred to the DBS as both of the conditions in paragraph 3 above have been satisfied. That is A has been withdrawn from regulated activity and allegations of relevant conduct or causing harm were found to be true.

6. PROCEDURE FOR MAKING A REFERRAL TO THE DBS

All referrals made by the LET will be coordinated through the Head of Human Resources of the LET as a record of all exclusions, investigations, disciplinary, dismissals etc. are held centrally.

No referrals to be made without appropriate Medical Director Approval.

The referral must be via the prescribed form available on the DBS website: <https://www.gov.uk/government/publications/dbs-referrals-form-and-guidance>.

7. EQUALITY AND DIVERSITY STATEMENT

The LET is committed to providing equality of opportunity, not only in its employment practices but also in all the services for which it is responsible. As such, an Equality Impact Assessment has been carried out on this policy to identify any potential discriminatory impact. The LET also values and respects the diversity of its employees and the wider community it serves. In applying this policy, representatives of the LET will have due regard for the need to:

- Eliminate unlawful discrimination;
- Promote equality of opportunity;

- Provide for good relations between people of diverse groups.

For further information, please refer to the LET Equality Diversity and Human Rights Policy.

8. MONITORING AND REVIEW

The Head of Human Resources of the LET is responsible for monitoring the application of this policy and to ensure that it is reviewed no later than three years from the date of issue. The Policy can be amended at any time in light of legislative changes.

9. REFERENCES/LEGISLATION

- Safeguarding Vulnerable Groups Act 2006
- Conduct and Capability Procedure

APPENDIX B – EQUALITY IMPACT ASSESSMENT

Preliminary Assessment Form

v1/2009

The preliminary impact assessment is a quick and easy screening process.

It should:

- Identify those policies, procedures, services, functions and strategies which require a full EIA by looking at:
 - negative, positive or no impact on any of the equality groups
 - opportunity to promote equality for the equality groups
 - data / feedback
- prioritise if and when a full EIA should be completed
- justify reasons for why a full EIA is not going to be completed

Division/Department

LET HR Department

Title of policy, procedure, function or service

Guidance on Referral of Staff to the Disclosure & Barring Service (DBS)

Type of policy, procedure, function or service

Existing

New/proposed

Changed



Q1 - What is the aim of your policy, procedure, project or service?

To outline the circumstances and procedure to be followed when a member of staff is to be referred to the ISA.

Q2 - Who is the policy, procedure, project or service going to benefit?

All LET employees
LET

Q3 - Thinking about each group below, does, or could the policy, procedure, project or service have a negative impact on members of the equality groups below?

Group	Yes	No	Unclear
Age		X	
Disability		X	
Race		X	
Gender		X	
Transgender		X	
Sexual Orientation		X	
Religion or belief		X	
Marriage & Civil Partnership		X	
Pregnancy & Maternity Leave		X	
Relationships between groups		X	
Other socially excluded groups		X	

If the answer is “Yes” or “Unclear” you *MUST* complete a full EIA

Q4 – Does, or could, the policy, procedure, project or service help to promote equality for members of the equality groups?

Group	Yes	No	Unclear
Age	X		
Disability	X		
Race	X		
Gender	X		
Transgender	X		
Sexual Orientation	X		
Religion or belief	X		
Marriage & Civil Partnership	X		
Pregnancy & Maternity Leave	X		
Relationships between groups	X		
Other socially excluded groups	X		

Q5 – Do you have any feedback data from equality groups that indicate how this policy, procedure, project or service may impact upon these groups?

Group	Yes	Yes	No	Unclear
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	No Impact	Impact		
Age			X	
Disability			X	
Race			X	
Gender			X	
Transgender			X	
Sexual Orientation			X	
Religion or belief			X	
Marriage & Civil Partnership			X	
Pregnancy & Maternity Leave			X	
Relationships between groups			X	
Other socially excluded groups			X	

Q6 – Using the assessments in questions 3, 4 and 5 should a full assessment be carried out on this policy, procedure, project or service?

Yes		No	x
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If you have answered “Yes” now follow the EIA toolkit and complete a full EIA form

Q7 – How have you come to this decision?

No indication that equality groups will be adversely affected by this procedure

Q8 – What is your priority for doing the full EIA

High	Medium	Low
		X

Q9 – Who was involved in the EIA?

HR Employment Advisor, Lead Employer Trust.

This EIA has been approved by:

Head of Human Resources, Lead Employer Trust.

Date: 27.12.23

Contact number:

0191 275 4769

Please ensure that this assessment is attached to the policy document to which it relates.

