

## PVG REFERRAL PANEL GUIDANCE & PROCESS

### 1. PURPOSE

- 1.1 This guidance is designed to assist members of the council's internal PVG Referral Panel in determining whether a referral to Disclosure Scotland is merited under the provisions of the Protection of Vulnerable Groups (Scotland) Act 2007.
- 1.2 The document comprises relevant extracts from the [Protecting Vulnerable Groups Scheme](#) and should be read in conjunction with the council's [Policy and Procedure on Protection of Children and Protected Adults](#)

### 2. DUTY TO MAKE A REFERRAL

- 2.1 The PVG Act aims to provide a robust system by which unsuitable people are prevented from doing regulated work with children or protected adults, and by which people who become unsuitable are identified. To facilitate this aim, it is necessary for the council to pass on information to Disclosure Scotland that indicates an individual may be unsuitable to do regulated work so that it can be properly evaluated and appropriate action taken. The process of providing such information to Disclosure Scotland is called 'making a referral'.
- 2.2 The PVG Act places a duty on the council to make a referral when certain criteria are met. Broadly speaking, the criteria are that:
  - a) An individual doing 'regulated work' has done something to harm a child or protected adult and,
  - b) The impact is so serious that the council has (or would) permanently remove the individual from regulated work
- 2.3 Failure to refer an individual may mean that an individual who is unsuitable to do regulated work does not get barred from doing that type of work and can go on and harm other vulnerable people in other settings.
- 2.4 If, as a result of any of the referral grounds being met, the council dismisses an individual who was doing regulated work or transfers them to other duties that do not involve that type of regulated work the council must make a referral.
- 2.5 The referral process to Disclosure Scotland is entirely separate from any dispute with the individual as to whether the dismissal was fair or otherwise. Even if a dismissal is challenged by the individual through an internal appeal or Employment Tribunal claim, the referral must still be made to Disclosure Scotland.

### 3. FAILURE TO REFER

- 3.1 It is an offence not to make a referral **within 3 months** of the criteria for referral being met. Failure to refer can result in a fine and a prison sentence of up to 5 years. Individuals within the council may be prosecuted, alongside the council itself, if it can be demonstrated that the offence was committed with their consent, connivance or through their negligence.

#### **4. GROUNDS FOR REFERRAL**

- 4.1 A prerequisite for the council to make a referral is that at least one of the referral grounds set out at Section 2 of the PVG Act has been met. First of all, the individual must be doing '*regulated work*'. The definition of regulated work is provided in Appendix 1 to this guidance document.
- 4.2 An individual must also have done something *harmful or inappropriate* in respect of a child or protected adult.
- 4.3 The referral grounds for those doing regulated work with children and referral grounds for those doing regulated work with adults mirror each other. The subject of the referral must have done one or more of the following:
- Harmed a child or protected adult
  - Placed a child or protected adult at risk of harm
  - Engaged in inappropriate conduct involving pornography
  - Engaged in inappropriate conduct of a sexual nature involving a child or protected adult
  - Given inappropriate medical treatment to a child or protected adult.

#### **5. MEANING OF HARM**

- 5.1 The meaning of the word harm is key to the first two grounds for referral. Harm is defined in Section 93 of the PVG Act and includes:
- Physical harm;
  - Psychological harm (e.g. causing fear, alarm or distress); and
  - Unlawful conduct which appropriates or adversely affects another person's property, rights or interests (e.g. theft, fraud, embezzlement or extortion)
- 5.2 The PVG Act also provides a meaning for 'risk of harm' which includes:
- 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.
- 5.3 Examples of harmful behaviours include:
- Emotional abuse, perhaps by controlling a child with extreme verbal threats
  - Neglecting a person's needs, for example by inappropriate feeding or failing to provide appropriate sanitation

- Inappropriate physical restraint
- Failing to attend to whatever health and safety requirements may be in force
- Supplying illegal or unauthorised drugs

## 6. REFERRAL INFORMATION

- 6.1 Schedule 1 of the Protection of Vulnerable Groups (Scotland) Act 2007 (Referrals by Organisations and Other Bodies) (Prescribed Information) Regulations 2010 sets out the information required for referrals by organisations, employment agencies and employment businesses.
- 6.2 Disclosure Scotland provide an [employer referral form](#) along with guidelines for its completion, to assist organisations in ensuring they include all necessary information when making a referral. Use of the form is not mandatory but it makes the referral process easier for both the referring organisation and Disclosure Scotland if it is used.
- 6.3 In brief, the information which must be submitted with any referral includes identity details relating to the individual; details about the referral ground; contact details for the referring organisation; details of the regulated work done by the individual; details of any relationship between the child or protected adult involved; and details of any action taken by the referring organisation.

## 7. KEY ISSUES TO BE DETERMINED BY THE PANEL

- 7.1 In determining whether or not a referral is appropriate, the PGV Assessment Panel should consider the following questions in the light of supporting evidence (disciplinary documentation etc);
- **Was the employee engaged in regulated work, either with children or protected adults as defined within the PVG (Scotland) Act 2007 (see Appendix for definition of regulated work)?**
  - **Has the individual done something to ‘harm’ a child or protected adult or placed a child or protected adult at risk of harm?**
  - **If so, was the impact of the individual’s actions sufficiently serious to require the permanent removal of that individual from regulated work?**
- 7.2 If the answer to the foregoing questions is in the affirmative, a referral to Disclosure Scotland will be required.

## 8. REFERRAL PROCESS

- 8.1 The table in Appendix 2 summarises the PVG referral process and identifies the officer responsible for each action in the process. Further details are contained in section 6 of the [Policy and Procedure on Protection of Children and Protected Adults](#)

## REGULATED WORK

### 1. Identification of Regulated Posts

- 1.1 To determine whether a post requires a disclosure check to be carried out on an applicant, a risk assessment must be conducted. The risk assessment will involve an analysis of the duties of the post and the potential for the post holder to come into contact with children and/or protected adults.
- 1.2 Risk assessments should be reviewed on an annual basis or earlier if changes to posts and working arrangements arise in order to identify any implications for protection of vulnerable groups.
- 1.3 A Regulated Post Self-Assessment Tool designed to assist employers to conduct the risk assessment process can be found on Disclosure Scotland's website at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk) A record of the risk assessment decision should be recorded on a Regulated Post Risk Assessment form as attached at Appendix 2.
- 1.4 A list of Regulated Posts in the council for which a PVG check must be carried out on applicants is held by Human Resources.

### 2. Regulated Work with Children

The PVG Act defines children as an individual aged under 18 years.

- 2.1 An individual may be doing regulated work with children if their work involves any of the following activities as part of their normal duties:
- Caring for children
  - Teaching, instructing, training or supervising children
  - Being in sole charge of children
  - Unsupervised contact with children under arrangements made by a responsible person
  - Providing advice or guidance to a child or to particular children which relates to physical, emotional well-being, education or training
  - Moderating a public electronic interactive communication service which is provided exclusively for children
  - Providing, or working for an organisation which provides an independent health care service which is provided exclusively or mainly for children
  - Work on any part of day care premises at times when children are being looked after in that part.
  - Being a host parent.
- 2.2 An individual may be doing regulated work with children if they work in any of the following establishments as part of their normal duties:
- An institution which is exclusively or mainly for the detention of children

- A hospital which is exclusively or mainly for the reception and treatment of children
  - A school
  - A further education institution
  - A hostel used mainly by pupils attending a school or further education institution
  - A home which is exclusively or mainly for children and is provided by a council under social work or mental health legislation.
- 2.3 One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with children.
- 2.4 An individual is doing regulated work with children if they hold any of the following positions without exception:
- Manager, or member of a governing body, body of trustees or other body responsible for the management, of a school, further education institution or hostel – as defined in establishments (but not a member of a council).
  - Member of certain council committees, joint committees or sub- committees concerned with the provision of education, accommodation, social services or health care services to children
  - Member of a children’s panel or certain related committees
  - Chief Social Worker of a council
  - Commissioner for Children and Young People in Scotland or member of that Commissioner’s staff
  - Registrar of Independent Schools in Scotland
  - Foster Carer
  - Charity trustee of a children’s charity
- 2.5 An individual may be doing regulated work with children if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.
3. Regulated Work with Adults
- 3.1 The PVG Act defines a protected adult as an individual aged 16 or over who is provided with (and thus receives) a type of care, support or welfare service.
- 3.2 There are four categories of services receipt of any one of which makes an individual a protected adult:
- Registered Care Services – a service by a person carrying on a support service; an adult placement service; a care home service; or a housing support service
  - Health Services

- Community Care Services – social work and mental health services provided or secured by a council, or self-directed support paid for by a council
  - Welfare Services – a welfare service includes any service which provides support, assistance, advice or counselling to individuals with particular needs, meeting out the following conditions. The service must be a service that:
    - (a) is provided in the course of work to one or more persons aged 16 or over
    - (b) is delivered on behalf of an organisation
    - (c) requires training to be undertaken by the person delivering the service
    - (d) has a frequency and formality attached to the service and
    - (e) either requires a contract to be agreed between the service provider and the recipient of the service prior to the service being carried out or is personalised to an individual adult's needs.
- 3.3 Most adults are likely to be a protected adult at some time in their lives, for example receiving treatment in hospital or receiving care in later life. But an individual is only a protected adult at the time they receive the service.
- 3.4 It is possible for individuals aged 16 and 17 to be both children and protected adults. The assessment as to whether or not they are protected adults is no different to that undertaken in respect of any other adult.
- 3.5 An individual may be doing regulated work with adults if their work involves any of the following activities as part of their normal duties:
- caring for protected adults
  - teaching, instructing, training or supervising protected adults
  - being in sole charge of protected adults
  - providing assistance, advice or guidance to a protected adult or particular protected adults which relates to physical or emotional well-being, education or training
  - inspecting adult care services (including inspecting any premises used for the purposes of providing such services).
- 3.6 An individual may be doing regulated work with adults if they work in any of the following establishments as part of their normal duties:
- a care home – meaning accommodation occupied mainly or exclusively by individuals aged 16 or over which is provided by an organisation carrying on a care home service
  - a residential establishment or accommodation occupied exclusively or mainly by individuals aged 16 or over which is provided by, or the provision of which is secured by, a council under social work or mental health legislation
- 3.7 One exception applies to positions in all these establishments, namely that such positions are not regulated work unless doing anything permitted or required in connection with the position gives the person the opportunity to have unsupervised contact with protected adults; and any contact with protected adults, when the holder of the position is doing anything permitted or required in connection with the position, is more than incidental.

3.8 An individual is doing regulated work with adults if they hold any of the following positions without exception:

- member of certain council committees, joint committees or sub- committees concerned with the provision of education, accommodation, social services or health care services to protected adults.
- Chief social work officer of a council
- Charity trustee of certain charities

3.9 An individual may be doing regulated work with adults if they are responsible for the day to day supervision or management of an individual doing regulated work through the activities the individual performs or the establishments in which the individual works. This provision on supervision of an individual does not cover supervising an individual who is in one of the particular positions of trust or responsibility.

#### 4. Normal Duties

4.1 The concept of normal duties is extremely important in limiting the scope of regulated work. For an activity or work in an establishment to be regulated work, the carrying out of an activity or the work in the establishment must be part of the individual's normal duties.

4.2 An activity or work is likely to be normal duties when:

- it appears in an individual's job description, task description or contract
- it can be reasonably be anticipated; or
- it occurs regularly

4.3 An activity or work is unlikely to be 'normal duties' when:

- done in response to an emergency (unless by an emergency worker)
- arranged at the last minute to stand in for sickness or other unexpected absence of another worker; or
- done as a one-off activity of short duration which is not part of the individual's normal routine or occupation.

Further guidance on the definition of regulated work can be found in 'Protecting Vulnerable Groups Scheme Guidance for individuals, organisations and personal employers' which can be accessed at [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

### PVG REFERRAL PROCESS

The table below summarises the steps in the PVG referral process and identifies the officer responsible for each action in the process. Further details are contained in section 6 of the Policy and Procedure on Protection of Children and Protected Adults

<b>Process</b>	<b>Action</b>	<b>Responsible Officer</b>
Step 1	Notify the Head of Corporate Services of a matter for consideration by the PVG Referral Panel.	Head of Service/ Nominated Officer
Step 2	Convene a PVG Referral Panel (comprising 3 panel members and relevant officers) within 4 weeks of the decision to dismiss or permanently remove an individual from regulated work.	Head of Corporate Services
Step 3	Ensure that all relevant information is made available for consideration by the PVG Referral Assessment Panel in order to determine whether the criteria for referral to Disclosure Scotland has been met.	Nominated Officer/ Human Resources
Step 4	Meet and reach a conclusion as to whether the criteria for referral has been met.	PVG Panel
Step 5	Ensure that the decision whether or not to make a referral to Disclosure Scotland and the reasons for the decision of the panel are recorded on a PVG Referral Record (Appendix 3) and seek endorsement of the panel's decision by the Chief Executive.	Panel Chairperson
Step 6	Endorse the decision whether or not to make a referral to Disclosure Scotland.	Chief Executive
Step 6	Where a decision to make a referral to Disclosure Scotland, notify the subject of the PVG referral panel of the outcome of the panel in writing.	Panel Chairperson
Step 7	Complete the <a href="#">employer referral form</a> ready for sign off.	Nominated Officer/ Human Resources
Step 8	Sign off PVG referral documentation and ensure referral is made to Disclosure Scotland within 3 months of the decision to dismiss or permanently remove an individual from regulated work.	Panel Chairperson
Step 9	Record the decision of the PVG referral panel and date of referral on case management.	Human Resources

## PVG REFERRAL RECORD

<b>PANEL MEMBERS</b>	
<b>Members required at each panel:</b> <i>(tick to confirm attendance)</i>	<b>One additional Panel Member from:</b> <i>(tick to confirm attendance)</i>
Head of Corporate Services: <input type="checkbox"/> Name:	Head of Social Policy: <input type="checkbox"/> Name:
Chief Solicitor: <input type="checkbox"/> Name:	Head of Education: <input type="checkbox"/> Name:
Panel Chair:	
Other officers in attendance:	
Date of Panel Hearing:	Click or tap to enter a date.
<b>REFERRAL SUBJECT</b>	
Name:	
Regulated Role:	
Service:	
Status:	Choose an item.
<b>REGULATED WORK</b>	
<b>Which protected group does the referral subject work with?</b> <i>(select as appropriate)</i>	
Children: <input type="checkbox"/>	
Protected Adults: <input type="checkbox"/>	
Both: <input type="checkbox"/>	
<b>ACTION LEADING TO REFERRAL PANEL</b> <i>(tick as appropriate)</i>	
Employee/volunteer dismissed:	<input type="checkbox"/>
Employee/volunteer permanently removed from regulated work:	<input type="checkbox"/>
Employee/volunteer resigned during disciplinary process – outcome would likely have been dismissal or permanent removal from regulated work:	<input type="checkbox"/>
Information received regarding an ex-employee that would have led the council to dismiss or permanently remove the individual from regulated work:	<input type="checkbox"/>
<b>INCIDENT</b>	
Please describe the incident that led to the decision above:	

<b>EVIDENCE</b>	
What evidence has been considered by the panel:	
<b>GROUNDINGS FOR REFERRAL</b>	
<b>Having considered the evidence, it is the opinion of the panel that the subject of the referral:</b> <i>(tick as appropriate)</i>	
*Harmed a child or a protected adult:	<input type="checkbox"/>
*Placed a child or a protected adult at risk of harm:	<input type="checkbox"/>
Engaged in inappropriate conduct involving pornography:	<input type="checkbox"/>
Engaged in inappropriate conduct of a sexual nature involving a child or protected adult:	<input type="checkbox"/>
Gave in appropriate medical treatment to a child or protected adult:	<input type="checkbox"/>
None of the above – grounds for referral not met:	<input type="checkbox"/>
<i>* For a definition of 'harm' refer to section 5 of the PVG Referral Panel Guidance.</i>	
<b>DECISION RATIONALE</b>	
Provide rationale for decision as to whether grounds for referral have been met or not:	
<b>PANEL OUTCOME</b> <i>(tick as appropriate)</i>	
It is the decision of the PVG referral panel that the subject of the referral should be <b>Referred to Disclosure Scotland</b> :	<input type="checkbox"/>
It is the decision of the PVG referral panel that the subject of the referral should <b>Not be Referred to Disclosure Scotland</b> :	<input type="checkbox"/>
Signed (Panel Chair):	Click or tap to enter a date.
<b>CHIEF EXECUTIVE ENDORSEMENT</b>	
Panel decision endorsed <i>(select as appropriate)</i> :	Choose an item.
Signed (Chief Executive):	Click or tap to enter a date.

**Completed form to be passed to the Senior HR Adviser who will arrange for the decision to be recorded on case management.**