



Disclosure &
Barring Service

Meeting your Legal Duty to Refer

Presented by: Lyn Gavin

Aims for today

- To introduce the changes of the Protection of Freedoms Act 2012
- To clarify the referral process
- To allow you to identify who and when to refer to the DBS
- To improve your confidence in referring to the DBS



Background

- Bichard Inquiry
- Safeguarding Vulnerable Groups Act 2006
- Protection of Freedoms Act 2012



Our Role

- To help employers make safer recruitment decisions and to prevent unsuitable people working with vulnerable groups, including children
- Four Statutory responsibilities
- DBS powers are not investigatory



What has changed ...

- Repeal of registration and monitoring
- Repeal of controlled activity
- Repeal of additional information
- More rigorous 'relevancy' test
- Minimum age (16) DBS certificate



What has changed

- Filtering
- Update Service
- Applicant-only Certificate
- New definition of regulated activity



Future Changes

- Legal requirement to check barred status prior to employment
- Notification Service
- Legislation extended to Channel Islands and Isle of Man



Regulated activity adults

There are six categories within the new definition of regulated activity for adults:

- **Healthcare**

- doctors, nurses, health care assistants

- **Personal Care**

- washing and dressing, eating, drinking and toileting

- **Social work**

- social work required in connection with health or social services



Regulated Activity Adults

- Assistance with Household Affairs
 - Cash, Bills or Shopping
- Assistance with conduct of affairs
 - Power of attorney, Deputies appointed under Mental Health Order
- Conveying an Adult
 - Must be for health, personal or social care due to age, illness or disability



Regulated Activity Children

■ Unsupervised Activities

- Teaching, training or instruction, care for or supervise children, provide advice / guidance on well being, drive a vehicle only for children

■ Work for a Limited Range of Establishments (Specified places)

- opportunity for contact, for example schools, children's homes, childcare premises (but not work by supervised volunteers)



Regulated Activity Children

- **Healthcare / Relevant personal care**
for example washing or dressing; or health care by or supervised by a professional, even if done once
- **Registered Childminding**
Domestic premises for reward
- **Foster- Carers**
Local authority, agency or private fostering



Who has a Duty to Refer?

■ Regulated Activity Providers

- Employers or voluntary organisations who are responsible for the management or control of regulated activity and make arrangements for people to work in regulated activity

■ Personnel suppliers

- An employment business, employment agency or an educational institution that makes arrangements with a person with a view to supplying that person to employers to undertake regulated activity



Who has a Power to Refer?

■ Local Authorities

- As defined in section 1 of the Local Authorities (Goods and Services) Act 1970 (c.39)

■ Keepers of Registers

- Regulators as defined in our legislation, also known as competent bodies e.g. the General Medical Council

■ Supervisory Authorities

- Generally inspectors, defined in our legislation e.g. the Care Quality Commission, Ofsted



When Must You Refer?

When the two main conditions below have been met:

ONE: Permanent removal from regulated activity

TWO: Referring party thinks that the person has either:

- Engaged in relevant conduct or
- Satisfied the harm test or
- Received a caution for, or been convicted of, a relevant offence

For most cases, the DBS only has the power to bar a person who **is, has been** or **might in future** engage in regulated activity



Case Scenario One

Mr A was teacher in a secondary school. A 14 year old female pupil made a complaint of sexual assault against Mr A. The Police were called and both Mr A and the pupil were interviewed.

Mr A denied the offence and the case was referred to the CPS who chose not to prosecute. Following an investigation into this allegation Mr A was dismissed by his employer.

Is he in **Regulated Activity**?

Has he been **permanently removed** from Regulated Activity?

Has **Relevant Conduct** occurred or is the **Harm Test** satisfied?

Is there a **legal duty to refer**?



Case Scenario Two

Miss B is a Dentist. She made her practice manager aware that she had received a conviction for drink driving.

Miss B was not dismissed by her employer.

Is she in **Regulated Activity**?

Has she been **permanently removed** from Regulated Activity?

Has **Relevant Conduct** occurred or is the **Harm Test** satisfied?

Is there a **legal duty to refer**?

Case Scenario Three

Mr C was employed as a carer and provided domiciliary care for service users in their own homes. Mr C's employer advised that he had taken an amount of money from the staff tea fund on two occasions.

Mr C denied the offences and the police took no further action. Mr C was dismissed by his employer.

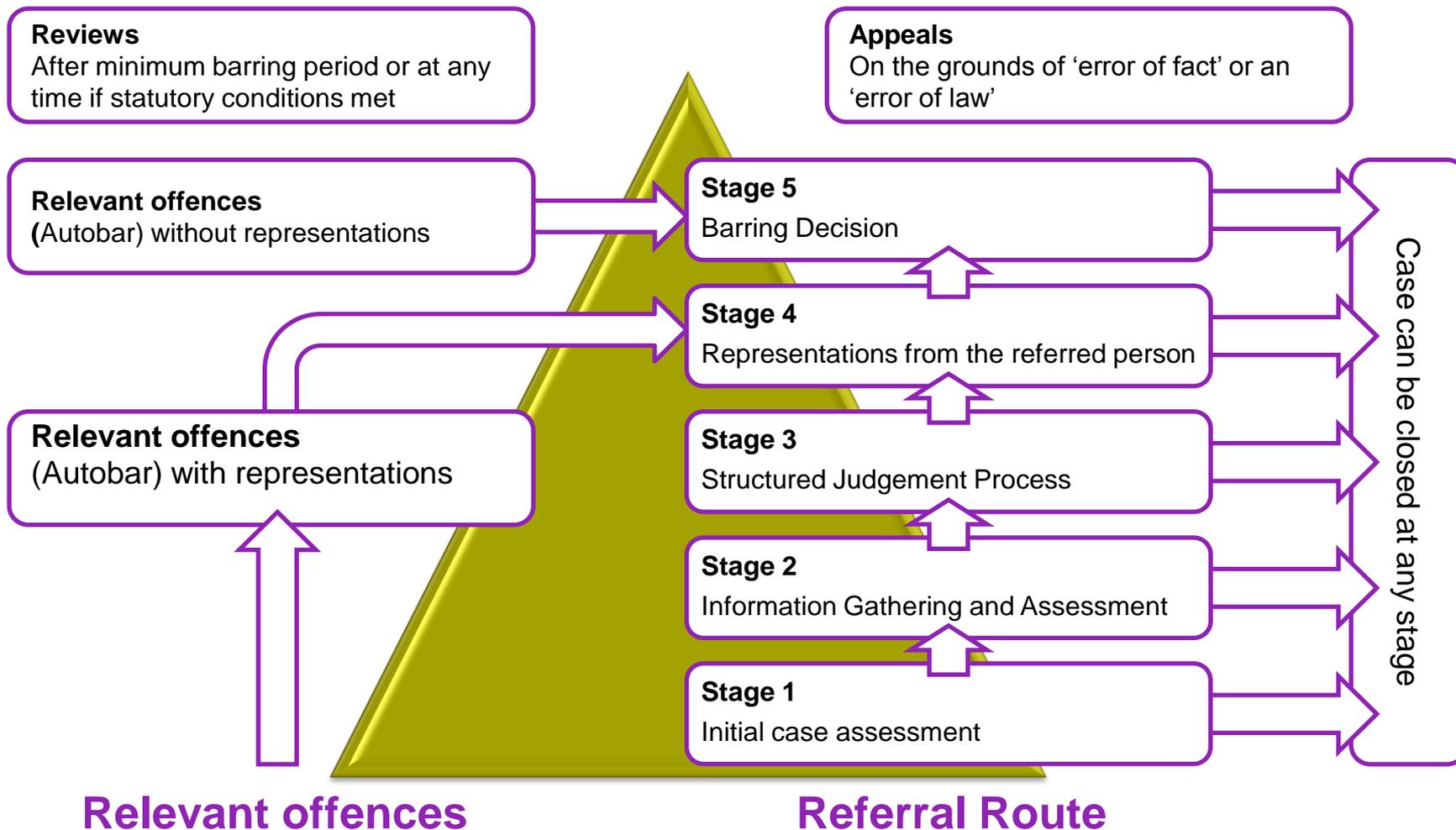
Is he in **Regulated Activity**?

Has he been **permanently removed** from Regulated Activity?

Has **Relevant Conduct** occurred or is the **Harm Test** satisfied?

Is there a **legal duty to refer**?

Typical Barring Decision Making Process



Review of Aims

- Understand the changes of the Protection of Freedoms Act
- Know who and when to refer to the DBS
- Understand the referral process
- Improved confidence in referring to the DBS



How to contact us

Further information - Barring:

- **Helpline:** 01325 953795
- **Email:** dbspartnerships@dbs.gsi.gov.uk

Further information - Disclosure:

- **Customer Services:** 0870 90 90 811
- **Email:** customerservices@dbs.gsi.gov.uk

Website: www.gov.uk/dbs

