Decisions of the Disclosure and Barring Service (DBS) and Disclosure Scotland

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Barring agencies in the UK[1] help employers to make safer recruitment decisions and bar individuals they deem to pose a risk to vulnerable groups from working in certain roles.[2]

Although these agencies and the NMC perform similar roles in terms of our obligation to protect the public, the manner in which we do so is different.

We can only take action if the allegations about the fitness to practise of nurses, midwives and nursing associates that we receive, fall within one of the legal bases of impairment[3]. A decision by a barring agency to bar a professional does not amount to a determination by other health or social care organisations. Therefore when the NMC considers an allegation that a professional has been subject to a barring decision, it must be considered under one of the other heads of impairment, whichever is appropriate in the circumstance. A decision to bar a professional raises a significant question about fitness to practise, namely public protection, and therefore the NMC needs to consider what steps it must take as a regulator to protect the public independently of the barring agencies.

Automatic or discretionary decisions to bar a professional:

Although they use different terminology the DBS and Disclosure Scotland can make automatic or discretionary decisions to bar individuals.

Automatic barring:

The DBS will place restrictions automatically on a professional who has been convicted of certain criminal offences (automatic barring). In Scotland a similar provision is termed ‘automatic listing’.

At the NMC, we will always consider the appropriate action to take in accordance with our criminal cautions and convictions guidance when we become aware that a professional on our register has received a criminal conviction. Serious convictions could lead to immediate restriction from practice as well as eventual striking off.

While a decision to bar a professional is a factor we will take into account when assessing the risk that professional poses to public safety, public confidence and to professional standards, we will always consider each case in line with our guidance and on its own merits.

Discretionary basis for a barring decision:

The DBS also bars individuals on a discretionary basis in other types of cases[4] (non-automatic barring[5]). The tests and processes for DBS decisions are different to the tests and processes the NMC follows. For example, the DBS considers the facts of the case on the basis of the information before it, It has no investigative powers, it cannot call witnesses or hold a hearing. The NMC has investigative powers and where necessary we can hold a hearing where witnesses can give evidence in person. It is possible for the NMC and DBS to reach different assessments of the facts, risk and how to mitigate it.

Where a non-automatic barring decision is made, we will consider the underlying conduct ourselves, in the context of our Rules and guidance. This also means any regulatory concern will focus on the professional’s conduct and not that there is a barring decision.

We will consider any action we need to take to protect the public and maintain professional standards and the public's trust and confidence in nurses, midwives and nursing associates, which may include taking proportionate investigatory steps.

When assessing risk, the facts and seriousness of conduct, we will take into consideration both any barring decision and any information secured from the barring agency, in addition to any other evidence we gather.

We cannot, however, rely on a barring decision alone to prove the underlying facts or assess the risk to public safety, public confidence in the professions and to professional standards that the professional’s conduct may pose. Rather it will be a factor that we will take into consideration when considering this risk in line with our guidance.

The existence of a barring decision will be a legitimate consideration when approaching sanction – for example, when addressing the workability of conditions of practice. If a panel is informed that a professional is subject to a barring decision and decides to impose a sanction which is not a suspension or a striking off order, it will need to explain carefully how it has reached that decision, with reference to public protection, public confidence and maintaining proper professional standards in the profession.

The Disclosure and Barring Service ('DBS') covers England, Wales, the Channel Islands and the Isle of Man and applications for DBS checks are made through them. In Scotland the relevant body is Disclosure Scotland. In Northern Ireland applications for DBS checks are made through Access NI but the Disclosure and Barring Service is responsible for the barring of individuals.

Regulated activity with children and/or vulnerable adults

Article 22 NMC Order 2001

When a non-automatic barring decision is made, the DBS must have information that: the person has engaged in relevant conduct in relation to children and/or adults (meaning that an action or inaction has harmed a child or vulnerable adult or put them at risk of harm) or there has been no relevant conduct but a risk of harm to children or vulnerable adults still exists. There must also be evidence that the person has previously worked in, is currently working in, or might in the future work in regulated activity. In Scotland, Disclosure Scotland must be satisfied that the individual is unsuitable to work with children/protected adults because they have: caused harm to 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 or given inappropriate medical treatment to a child or protected adult (s.2 of The Protection of Vulnerable Groups (Scotland) Act 2007)

In Scotland, a similar provision is "the inclusion in Child/Adult list after consideration".