

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

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The Disclosure and Barring Service (DBS)<sup>1</sup> helps employers to make safer recruitment decisions and bars individuals it deems pose a risk to vulnerable groups from working in certain roles<sup>2</sup>.

The NMC recognises that a decision to bar a registrant raises a question about fitness to practise, namely public protection, and therefore the NMC needs to consider what steps it needs to take as a regulator to protect the public independently of the DBS.

The DBS' approach is to place restrictions automatically where an individual is convicted of certain criminal offences (automatic barring<sup>3</sup>). At the NMC, we will always consider the appropriate action to take 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](#).

The DBS also bars individuals on a discretionary basis in other types of cases<sup>4</sup> (non-automatic barring<sup>5</sup>). The tests and processes for DBS decisions are different to the tests and processes the NMC follows. For example, the DBS cannot call witnesses or hold a hearing. It is possible for the NMC and DBS to reach different assessments of the facts, risk and how to mitigate it.

A DBS non-automatic barring decision will lead us to look into the underlying conduct ourselves and 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. When assessing risk, the facts and seriousness of conduct, we will take into consideration both the DBS decision and any information secured from them, in addition to any other evidence we gather. We cannot, however, rely on a DBS decision alone to prove the underlying facts or assess the [seriousness](#) of the conduct. There may be cases where we are not satisfied of the facts, or we conclude either that the conduct is not serious enough to impair or that the professional's practice is no longer impaired.

The existence of a DBS barring decision will be a legitimate consideration when approaching sanction – for example, when addressing the workability of conditions of practice. Where a fitness to practise panel is satisfied of the facts but decides that a professional subject to a barring decision shouldn't be struck off or suspended, 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.

1 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 are responsible for the barring of individuals. We refer to the Disclosure and Barring Service ('DBS') throughout this document for ease of reference.

2 Regulated activity with children and/or vulnerable adults

3 In Scotland a similar provision is termed, 'Automatic listing'.

4 If the individual: (i) has engaged in relevant conduct; (ii) presents a risk of harm through their thoughts or beliefs and (iii) 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)

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