

Protecting Vulnerable Groups Scheme
Stakeholder Information Events
June 2009

**The Process for Referrals and
Consideration of Cases**

Overview

- Ongoing work supporting this project
- POCSA and PVG- what's different?
- What will trigger consideration of a case?
- The framework for making listing decisions
- Roles and responsibilities for making listing decisions

ongoing work

- Learning from existing practice e.g. Disqualified from Working with Children List.
- Considering current risk assessment standards and practice.
- Internal and external consultation e.g. Public Protection Unit, Risk Management Authority.
- Consultation with the Independent Safeguarding Authority.

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POCSA

1. Court referrals
2. Organisational Referrals
3. Regulatory Body referrals
4. Employment Agency referrals
5. Individual named in relevant inquiry

PVG

1. Conviction of automatic listing offence
2. Conviction of an offence contained in Schedule 1 of the PVG Act
3. Discretionary Court referrals
4. Organisational referrals (criteria extended)
5. Regulatory body referrals
6. Employment Agency referrals
7. Individual named in relevant inquiry
8. Vetting Information

Automatic Listing (section 14)

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- A short list of offences suggesting unambiguous unsuitability to work with vulnerable groups.
- Commission and conviction after go live results in automatic listing.
- No regulated work test.
- No opportunity to make representations.
- No right of appeal.
- Application for removal from list following change of circumstances.

Relevant Offences (section 11)

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- Relevant offences are contained in Schedule 1 of PVG Act.
- Commission and conviction after go live results in automatic consideration for the children's list.
- A full assessment will be undertaken.
- Individual has access to all information, the opportunity to make representations and to appeal against a decision to bar.
- Consideration for adults' list also where regulated work test met.

Discretionary Court Referrals (section 11(2))

- Power to refer on conviction of *any other offence* if satisfied *“that it may be appropriate for the individual to be listed”* in either, or both lists.
- Determinations Team apply the competency tests:
 1. *It may be appropriate to list the individual...*
 2. *Must meet the regulated work test.*
- Disclosure Scotland makes the listing decision.
- Individual has access to all information, the opportunity to make representations and to appeal against a decision to list.

Reference following disciplinary action etc (section 3)

Organisations must refer an individual who is, or has been doing regulated work, if it has on the referral ground:

- (i) Dismissed the individual, or*
- (ii) Transferred individual to a position which does not involve that type of regulated work*

Or would have taken such action had the individual not

- (i) Otherwise stopped doing regulated work, or*
- (ii) Been working for a fixed term.*

Referral Ground

section 2(a) and/ or section 2(b)

An individual who is, has been doing (or has been offered or supplied) for regulated work with children or protected adults, has whether or not in the course of their work

- Harmed a child/protected adult
- Placed a child/ protected adult at risk of harm
- Engaged in inappropriate conduct involving pornography
- Engaged in inappropriate conduct of a sexual nature involving a child/protected adult
- Given inappropriate medical treatment to a child/protected adult.

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- Determinations Team apply competency tests.
- Then decide whether it *may* be appropriate for the individual to be included in either, or both, lists.
- If yes, individual is placed under consideration for listing and a full assessment takes place.
- Individual has access to all information, the opportunity to submit representations and to appeal a decision to list.

Examples of Organisational Referrals to DWCL and POVA

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- Taking inappropriate pictures of service users
- Sexual relationships with service users
- Deviating from care plans and organisational policies
- Falling asleep on duty
- Being under the influence of drink / drugs whilst on duty
- Inappropriate use of restraint
- Inappropriate administration of medication
- Theft, obtaining money from service users
- Failure to act on complaints by service users and staff

Vetting Information (section 12)

May arise either on application to join the scheme or through ongoing monitoring.

- (a) Convictions
- (b) Information about notification requirements under Part 2 of the Sexual Offences Act 2003 e.g. registered sex offender, Risk of Sexual Harm Order, Sexual Offences Prevention Order
- (c) Police non conviction intelligence
- (d) Such other information as may be prescribed by Scottish Ministers

The framework for assessing cases and making
decisions-

Structured Decision Making Process (SDMP)

Principles of the SDMP

- The aim is to safeguard vulnerable groups, not punish the individual.
- A consistent, fair, transparent and robust process.
- Onus is on Scottish Ministers to be satisfied on the balance of probabilities that listing is appropriate.
- All relevant and available information will be considered.
- The process and decisions must be proportionate, with due regard for the individual's rights.

Risk Assessment

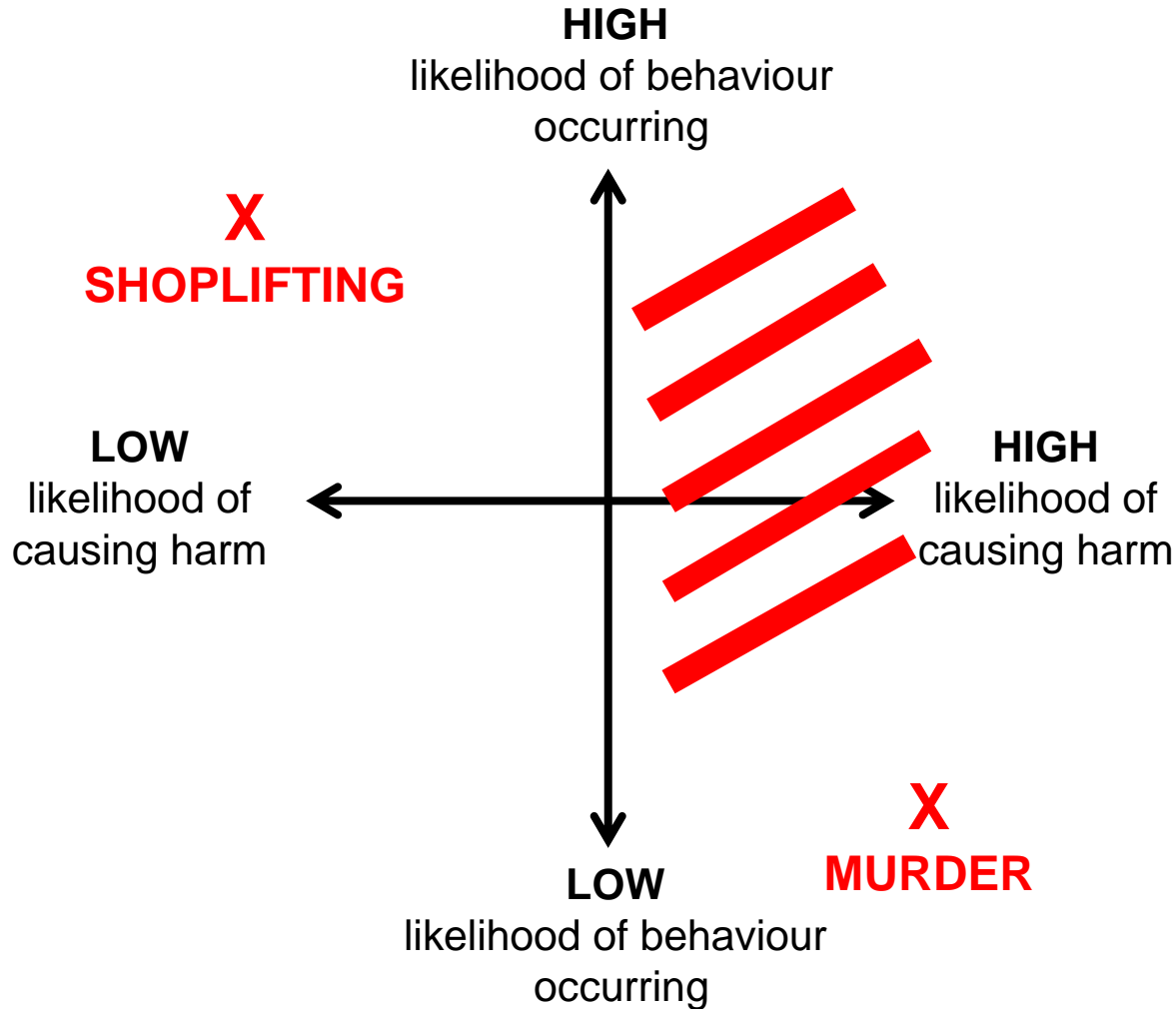
The likelihood of harmful behaviour occurring in the future and who might be affected.

Risk Management

Is listing necessary to protect children and, or, protected adults?

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Stage 1 Assessment

Screening to identify cases where it *may* be appropriate to list the individual.



Stage 2 Assessment

Individual is now under formal consideration for listing.

Decision made at end of Stage 2 by Determinations Team



Stage 3 Assessment

Possible referral to panel for consideration. Panel make a recommendation to Disclosure Scotland.

Stage 1- some areas of interest:

- Behaviour of concern, nature & level of harm.
- Static factors e.g. previous convictions, victims of previous offences, age of individual when offences committed, time since last offence etc...
- Patterns of offending, combinations of offences and signs of escalation.

Stage 2- some areas of interest:

- Dynamic risk factors e.g. personal, environmental.
- Strengths and protective factors.
- Individual's representations.
- Credibility and reliability of information.
- Testimonials.

Risk Formulation

1. The behaviour of concern- *what, how and why?*
2. The presence and relevance of risk factors and protective factors.
3. The likelihood of harmful behaviour occurring in the future.
4. The circumstances in which the harmful behaviour might occur and the degree of harm that might be caused.
5. Who might be harmed? Children and, or, protected adults?

...then answer the question

Is listing necessary to protect children and, or protected adults?

YES- individual will be listed.

NO- individual will not be listed.

All decisions must be supported by a more senior member of staff.

Proposed Structure of Determinations Team

(Chief Executive Disclosure Scotland)

- Senior Listing Officer
- Consideration Team Leader
- Senior Consideration Officers
- Consideration Officers

Skills, Knowledge, Experience Required

- Analytical skills
- Effective written and oral communication skills
- Self awareness, discretion and sensitivity
- Ability to work to timescales
- Knowledge of offending behaviour and harm to vulnerable groups

Panels Members

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- Current pool of panel members will be expanded.
- Recruit from all sectors including health, education, police, social work, voluntary sector etc.
- Minimum number of sittings per year.
- Training will be provided.
- Agreed fees and expenses will be paid.