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Mr Justin Wyllie

Reference: T6133/17

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Dear Mr Wyllie

Thank you for your email dated 25 June about Disclosure and Barring Service (DBS) checks.

While the legislation relating to DBS checks refers to eligibility rather than a legal requirement to obtain checks for certain roles, there is statutory guidance from government departments (such as Keeping Children Safe in Education<sup>i</sup>) that places a requirement on employers to request DBS checks and make appropriate suitability decisions regarding an individual's employment in regulated activity. Employers in other sectors may request a DBS check as part of their pre-employment checks, where roles are eligible.

You are correct that the Safeguarding Vulnerable Groups Act 2006 (SVGA) creates an offence for an employer to knowingly allow a barred individual to undertake regulated activity with the group from which they are barred. It is also an offence for a barred individual to seek, offer or engage in regulated activity with a group from which they are barred from working. Again there is no general statutory requirement to request a barred list check beyond those sector specific requirements outlined above.

I have provided links to the detailed guidance issued by the DBS<sup>ii</sup>, Department for Education<sup>iii</sup> and Department of Health<sup>iv</sup> on which activities with which groups of people constitute regulated activity at the end of this letter.

You have also raised further questions which I will respond to below:

1. *Is legal aid available for making representations against inclusion on the barred lists?*

Eligibility for legal aid depends on the particular details of the issue and the individual's financial circumstances. For more information please see <https://www.gov.uk/legal-aid/overview>.

2. *Can a person appeal against inclusion on the barred lists?*

A person can appeal to a tribunal to reverse a new barring list decision. The tribunal may remove someone from the barred list if it agrees, or refer a person back to DBS for a further decision. A person can appeal if:

- They were automatically added following a relevant caution or conviction
- They believe the DBS has made a legal mistake
- The DBS barred the person based on information that was wrong.

For more detailed information see <https://www.gov.uk/government/publications/dbs-barring-appeals/dbs-barring-appeals>.

Tribunals are made up of Judges and panel members with specific areas of expertise. For further details see <https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/tribunals/tribunals/>.

3. *Who makes the barring decisions?*

Decisions are made by DBS caseworking staff. The DBS is a non-departmental public body which was created in 2012 from the merger of the Criminal Records Bureau and Independent Safeguarding Authority and its staff are public servants.

4. *What are references to the “barring lists” intended to include?*

Previous lists, including the list held under section 142 of the Education Act 2002 were phased out and replaced by the Children’s Barred List as part of the roll out of the Vetting and Barring Scheme in 2009. References to the “barring lists” in guidance should be understood as referring to the Children’s Barred List and the Adult’s Barred List maintained by the DBS.

I hope that the information above clarifies the position.

Yours sincerely

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<sup>i</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550511/Keeping\\_children\\_safe\\_in\\_education.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550511/Keeping_children_safe_in_education.pdf)

<sup>ii</sup><https://www.gov.uk/government/publications/dbs-workforce-guidance>

<sup>iii</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/216900/Regulated-Activity-Adults-Dec-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/216900/Regulated-Activity-Adults-Dec-2012.pdf)

<sup>iv</sup>[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/550197/Regulated\\_activity\\_in\\_relation\\_to\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/550197/Regulated_activity_in_relation_to_children.pdf)