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**Protection of Vulnerable Groups**

**Referrals to Disclosure Scotland**

**Policy and Procedure**

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**Policy and procedure amendments**

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1. **PURPOSE AND CONTEXT**

The ‘Referrals to Disclosure Scotland Policy and Procedure’ sets out PKAVS' approach to fulfilling its legal responsibilities in submitting referrals on individuals to Disclosure Scotland.

1. **SCOPE**

This policy applies to all aspects of our work and everyone who works, volunteers or is a contractor working on behalf of the organisation, including permanent and temporary employees.

1. **STATEMENT**

As a provider of ‘regulated work’, as defined by Schedules 2 and 3 of the Protection of Vulnerable Groups (Scotland) Act 2007, PKAVS are legally obliged in certain circumstances (known as referral grounds) to submit referrals on individuals to Disclosure Scotland.

The legal requirement to refer is contained within Section 9 of the Protection of Vulnerable Groups (Scotland) Act 2007.

The obligation to refer to Disclosure Scotland exists irrespective of the involvement of other agencies – e.g., police, regulatory bodies, local authorities etc.

1. **REFERRAL POLICY**

When an employee or volunteer is permanently removed from a regulated work position, there are certain circumstances where the organisation must notify the Protection Unit at Disclosure Scotland about what has happened. This is called ‘Making a Referral’. If we would have permanently removed the individual, the actions detailed in this policy will continue to apply (even if an employee or volunteer leaves their regulated work or placement prior to any action being taken, irrespective of the reason that they leave).

Two conditions must be met before we let Disclosure Scotland know that something has happened:

**Condition 1**

A person has been permanently removed or has removed themselves from regulated work.

**Condition 2**

The person has carried out at least one of the following 5 has happened:

* Caused harm to a child, young person, or protected adult.
* Placed a child, young person, or protected adult at risk of harm.
* Engaged in inappropriate behaviour involving pornography.
* Engaged in inappropriate behaviour of a sexual nature involving a child, young person, or protected adult.
* Given inappropriate medical treatment to a child, young person, or protected adult.

The above list of misconduct is not exhaustive.

When both conditions have been met, it is a legal requirement that we must let Disclosure Scotland know by making a referral within 3 months of the permanent removal of the individual.

**REFERRAL POLICY – continued**

Where there is an historical allegation of harm or inappropriate behaviour about someone who is no longer in regulated work with us but which we believe would, in all probability, have led to the 2 conditions being met, we will consider whether we want to make a referral. No referrals will be made if the allegations took place before the 28th of February 2011 when the PVG requirements were introduced.

1. **HARM**

Harm can include:

* Physical harm (including assault or inappropriate use of restraint).
* Psychological or emotional harm (including placing a child or protected adult in a state of fear, alarm, or distress).
* Damage to property, rights, or interests such as theft, fraud, embezzlement, or extortion.
* Attempts to harm.
* Trying to make others cause harm.
* Encouraging someone to self-harm.
1. **PLACING AT RISK OF HARM**

Placing at ‘risk of harm’ is a wide-ranging category but may include behaviour, negligence or incompetence that may cause an individual to be harmed (even if unintentional or where harm does not actually occur).

1. **CIRCUMSTANCES OF MISCONDUCT**

The misconduct is not limited to happening in the workplace but must be something the organisation becomes aware of that subsequently leads to the actions set out below or equivalent.

1. **PROCEDURE TO REFER TO DISCLOSURE SCOTLAND**

A referral to Disclosure Scotland outlining the misconduct need only be actioned if the behaviour meant that the employee, contractor, or volunteer involved:

* Was dismissed as a result.
* Would have been dismissed but resigned or made no further contact with the organisation immediately after the incident; or after starting but not concluding a disciplinary process; or when an individual’s probation or fixed term contract was not extended because of a type of misconduct outline above.
* Was transferred permanently (not temporarily while under investigation) from regulated work with children or protected adults to a role within the organisation that does not involve regulated work with those groups.

**8.1 Who will make the referral?**

Where it is necessary to make a referral, this will be made by the Chief Executive Officer. In their absence, the referral process will be carried out by the Service Manager. Those who are in a position that may involve conducting the disciplinary procedure that may result in the removal from regulated work or the dismissal of someone in regulated work must notify the Chief Executive Officer or in their absence, the Service Manager in their absence of the legal requirement to make a referral where the conditions set out above have been met.

**8.2 Referral deadline**

The referral must be made within three months of the date of the decision by PKAVS to either dismiss or permanently remove the individual from ‘regulated work’ or the date that the individual would have been permanently removed had they not otherwise already left.

**Referral deadline - continued**

The three-month period to submit referrals to Disclosure Scotland is a statutory requirement, irrespective of any associated dismissal appeals or appeal periods etc. Even where an individual appeals against a decision to permanently remove them from regulated work, the three-month period begins on the date of the decision to either dismiss or permanently remove them from regulated work.

Failure to make a referral where required, may result in our organisation being prosecuted. It is therefore essential that those involved in carrying out disciplinary actions notify the Chief Executive Officer and the Service Manager when both conditions for making a referral have been met.

**8.3 Misconduct must be related to the individual’s regulated work**

The type of conduct committed by the individual must be in relation to the group that the individual is in regulated work with, whether that regulated work is for PKAVS or another organisation. E.g., if an individual is permanently removed from post due to assaulting a child, but they are only in regulated work with protected adults, it is not possible under current legislation for PKAVS to refer that individual to Disclosure Scotland.

**8.4 Employer referral form and information required**

An employer referral form is available on the Disclosure Scotland website, which asks for the information on the individual’s identity, type of ‘regulated work’ involved in for PKAVS PVG Scheme number, information on the harmful behaviour and details (with documentation) relevant to the investigation carried out by PKAVS and the outcome. The form can be accessed at <https://www.mygov.scot/pvg-referrals>

**8.5 GDPR and privacy of children and protected adults**

The referral should not identify any children or protected adults’ name and should use a coded reference (e.g., child A aged 12).

**8.6 Where and how to submit the employer referral form**

The completed referral form and documentation can be submitted via email to pucorrespondence@disclosurescotland.gsi.gov.uk or can be printed out and posted to the address provided in the form.

**8.7 Contacts and further information**

More information on the referral procedure can be found on the Disclosure Scotland website <https://www/mygov.scot/disclosure-types/> or by contacting Disclosure Scotland on 0300 0200 040 or via info@disclosurescotland.gsi.gov.uk

**8.8 Disclosure Scotland Protection Unit**

The Protection Unit or Customer Engagement Team at Disclosure Scotland are available to provide advice on whether a specific situation means a referral must be submitted to Disclosure Scotland.

1. **GENERAL**

It is the view of PKAVS that this ‘Referrals to Disclosure Scotland Policy and Procedure’ meets the guidelines set out within the Protection of Vulnerable Groups (Scotland) Act 2007, the Children (Scotland) Act 1995, Adults with Incapacity (Scotland) Act 2000, Children and Young People (Scotland) Act 2014 and General Data Protection Regulations (GDPR).

**9.1 Review**

The Referrals to Disclosure Scotland Policy and Procedure will be reviewed in line with the recognised arrangements, at the date outlined on the front cover of this document, or earlier if there is a legislative requirement to do so.

**9.2 PKAVS contact details.**

For further information on any part of the policy or procedures contained in this document, please contact the Chief Executive Officer at PKAVS on hr@PKAVS.org.uk