

Professor Alexis Jay
Chair
Independent Inquiry into Child Sexual Abuse
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London
SW1P 9LF



MandateNow

10th September 2019

Dear Professor Jay,

Child Sexual Abuse in Residential Schools
Disclosure and Barring Service
Referrals mandated by the SAFEGUARDING VULNERABLE GROUPS ACT 2006

There are very serious questions over the reliability of the Disclosure and Barring Service (“DBS”) which is often mistakenly oversold as a functioning barrier that stops perpetrators working with children and vulnerable adults in Regulated Activities. It is almost certain the DBS does not see itself this way.

The DBS was formed in 2012 by merging the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) under the Protection of Freedoms Act 2012. The DBS started operating on 1 December 2012 from offices in Liverpool and Royal Wootton Bassett.

It is a **mandated** legal requirement in England and Wales for regulated activity providers to notify the DBS if a person leaves or changes their job having harmed someone or been dismissed or resigned in specific circumstances. It is an offence for any person who has been barred by the DBS to work or apply to work with the group (children or adults) from which they are barred.

An employer which is entitled to ask exempted questions of any prospective and prescribed employees must register with the DBS, or a registered DBS Umbrella Body before they can request a DBS check on an applicant. The employer applies to the DBS with their application form countersigned by the DBS Registered Organisation or Umbrella Body. The applicant’s criminal record is then accessed from the Police National Computer, as well as checked, if appropriate, against lists of people considered unsuitable to work with children and vulnerable people maintained by the DBS (formerly maintained by the Independent Safeguarding Authority). A copy of the completed certificate is sent by the DBS to the applicant’s home address.

Unfortunately the reliability of the DBS is in urgent need of review. All Regulated Activities, including those which are inspected by inspectorates such as Ofsted, CQC, ISI, SIS, as well as those which are not inspected, such as football clubs, other sports clubs, scouts, taxi and coach companies &c., must secure DBS clearance for certain personnel.

The Chair of an uninspected setting (it is the Chair who has statutory responsibility for safeguarding, a responsibility that cannot be delegated), is **mandated** under Sections [35](#) + [37](#) of SVGA 2006 (as amended by the Protection of Freedoms Act 2012) to return a referral to the DBS in circumstances directed by the Act. The Chair and perhaps one other may be the only persons in the organisation to have some knowledge whether the Chair has fulfilled the legal obligation by returning the referral or not. If the Chair for whatever reason decides not to submit a referral, and in so doing breaks the law, because for example s/he has reached a compromise agreement with the alleged perpetrator, or the alleged perpetrator has agreed to leave quietly, the Chair is permitting the former employee to continue to work in children's settings unimpeded. **How might the Chair's criminal behaviour be discovered?**

Such a discovery might come to the attention of the DBS / Local Authority/ Department for Education / A National Governing Body of the respective sport, significantly after the event, possibly as a result of an adult disclosing abuse s/he suffered at the setting in childhood which prompted the 'compromise departure' of the alleged perpetrator. The difficulty of making such disclosures (in childhood or adulthood) is well understood and most often causes long delay before coming to light, if ever. The potential delay in the discovery of a DBS referral having not been made makes non-referrals and the cost they carry exceptionally hard to expose. In the intervening time between the alleged abuse having occurred and its eventual discovery, the potential harm caused to other children stemming from the alleged perpetrator being moved on to another setting cannot be measured.

[Section 38 \(1\)b and \(2\) of SVGA 2006](#) 'Duty to provide information' states that a person found guilty of failing to make a referral to the DBS is liable on summary conviction to a fine not exceeding level (5). **But the question for Regulated Activities is: who initiates a complaint, to whom, and how does it lead to prosecution? An unenforced law is of no value and this is a safety critical matter.**

Surprising as it may seem, the DBS does not prosecute. It is a quango and a non-prosecuting authority. The Local Authority also does not prosecute, nor does the Department for Education or any other ministry prosecute because they are all non-prosecuting bodies. In the case of a sporting Regulated Activities the National Governing Bodies of Sport do not prosecute. No one prosecutes, despite the seriousness of the matter. I have found it impossible to get the number of prosecutions in this realm from the Ministry of Justice via Freedom of Information. One has to conclude therefore that the law is little more than decoration, and this seems to be increasingly understood by some Regulated Activity groups. **What does it say about the competence of the Department for Education that 'pretend' legislation is at the heart of safeguarding children and vulnerable adults?**

An example of its failure occurred in November 2009 at St Benedict's School Ealing which was inspected by the INDEPENDENT SCHOOLS INSPECTORATE. Safeguarding was given a positive report. Five months later on 30th April 2010 an unannounced inspection commissioned by the DEPARTMENT FOR EDUCATION began. Safeguarding was slated. **Highlighted in this inspection was the absence of any referrals to the Independent Safeguarding Authority (as the DBS was then named) by the administration of the school.** Since the late 50's it has been a duty to return what was then called a 'notification' to the Teacher Misconduct Section in Darlington which was then inspected against by child welfare School Inspectors. This

arrangement subsequently was incorporated into the Independent Safeguarding Authority and then the DBS.

The relevant extract from the ISI report¹ on St. Benedict's said:

'At the time of the follow-up inspections, the school did not have a fully established policy for reporting directly to the Department for Education and Skills or to the Independent Safeguarding Authority, responsible for such referrals since 20 January 2009. The advisability of making such referrals is now clearly understood even when there may not be a strict legal obligation to do so'

The extract reveals that not even the inspectorate was aware that a referral to the DBS is **mandatory**. This limp and inaccurate statement belies the existence of a **mandatory** obligation. But then safeguarding inspection by the school inspectorates is in a poor state and despite people such as ***** *****, who I understand has made a submission to the inquiry's 'residential schools strand' on a related matter, and my and others informing the department repeatedly of these shortcomings, no changes are delivered. This needs urgent attention.

In the St Benedict's case, neither the ISI nor the DfE made any attempt to bring anyone to court for failing to return the referrals, which the ISI had to be told were missing before the inspectorate 'discovered' the shortcoming on the commissioned inspection, and which saw the school move abusers to other settings. [One abuser, a former teacher called Skelton, was eventually jailed for abusing at another school, this time in Hampshire, following his dismissal from St Benedict's.](#) As you will be aware, St Benedict's was part of IICSA's Catholic investigation. Here is an article from the Sunday Times following publication of IICSA's report on this strand entitled: ['Who knew about the abuse? The entire Catholic Church did'](#).

As a result of **mandated** referrals not being returned to the DBS, the providers of Regulated Activities of all types can unknowingly employ perpetrators who unknown to the Regulated Activity provider has been moved there from another setting. This important matter can of course be addressed but there appears to be an absence of political will by the DfE to address the crime of failure to make the necessary referrals to, perhaps on cultural grounds as this Times article by Jenni Russell on 19th August 2012 seems to indicate². The article coincided with the passage of the Protection of Freedoms Act 2012 which inflicted such serious damage on the DBS framework, when what it needed was sensitive adjustment to make it less onerous but more effective. Unfortunately the amendments were an example of political dogma trumping safeguarding needs.

IICSA must address this important function which at present suffers from loopholes and can have no reliance placed upon it working properly.

There is a further related matter. Within IICSA's '**Children in the Care of Nottingham Councils**' report, just like the aforementioned ISI report, IICSA has diluted the making of mandatory referrals to the DBS from 'must' to a 'should.' So concerned was I about this

¹ [April 2010 report on St Benedict's by ISI](#)

² [Times article - Jenni Russell 19/8/19: Let us play – and beat the CRB zealots](#)

aspect of the report that I wrote to Martin Smith (Solicitor to the Inquiry)³ on 9/8/19. His reply to me is factually wrong⁴ and demonstrates an absence of safeguarding understanding which he shares with the ISI and I am sure many others.

In England and Wales there is only an 'expectation' on staff working in Regulated Activities to report known and suspected abuse to the appropriate statutory agency but a referral to the DBS is **mandatory**. Yet Mr Smith declines to correct the incorrect statement in IICSA's Nottingham report. His reply is extraordinarily complacent and frankly a poor reflection on the inquiry. It looks like a face saving exercise grounded on his opinion at the expense of safety critical legislative fact. All too often similar behaviour been seen from witnesses giving evidence to IICSA and a correction must be made as I suggested in my email. I would appreciate your confirmation this will happen.

It is also our strong suggestion that the DBS be constituted a competent prosecuting authority in cases of the non-return of a mandatory Referral to the D.B.S. under S.V.G.A. 2006.

This important aspect of safeguarding requires attention which affects not only Residential Schools but all Regulated Activities.

Sincerely

Tom Perry
Founder
Mandate Now

³ [Email to Martin Smith 9/8/19 regarding content in the Nottingham Councils report](#)

⁴ [Reply from Martin Smith IICSA 16/8/19](#)