

PVG Scheme - 'Referrals' by RGU

NB. This is not a complete legal explanation but a basic guide for staff and students.

Explanation of 'Referral'

One of the key aims of the PVG Scheme is to help to ensure that those who have regular contact with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour. It seeks to remove opportunities for those who may be unsuitable from moving undetected within, or across, the workforce.

Harmful behaviour is not restricted to unlawful criminal conduct. It includes other forms of conduct which may not be recognised as a criminal offence but nonetheless might result in harm, or risk of harm, to vulnerable groups such as the inappropriate use of restraint or inappropriate relationships with clients. Employers* are often best placed to spot harmful behaviour.

Where an employer takes action to remove an individual from regulated work as a result of harmful behaviour or potentially harmful behaviour towards a vulnerable person, then they have a duty to refer the individual to the PVG Scheme so that consideration can be given to whether that individual should be barred from any kind of regulated work with vulnerable groups. Without this duty there would be no way of preventing individuals moving undetected to other organisations where they may continue to pose a risk. A full assessment will be undertaken by the PVG Scheme on referrals before a listing decision is made.

**(in respect of students in education and training, this will include also the University as an education provider)*

<http://www.scotland.gov.uk/Topics/People/Young-People/children-families/pvglegislation/FAQs/Referrals>

RGU Procedure for a Referral Decision

In respect of a member of staff, the need for a referral decision may arise as a result of conduct or behaviour in the course of employment with the University. The responsibility for making a decision on any referral lies with the University.

In respect of a student, the need for a referral decision may arise during a period of study or, for example, during placement with an employer, *whether paid or not or simply on a volunteer basis*. Normally the responsibility for making a decision on any referral lies with the University as the course provider and placement organiser. In the case of a potential referral arising from a work or training or volunteer placement, there may be a responsibility on the placement provider to make the referral. However the University may well have an interest also in terms of reputation, as the education provider, as the placement organiser and having wider 'duty of care' responsibilities also. In such cases the University and the placement provider should agree there is a need to make a referral and who will take responsibility for doing so.

It can be an offence not to refer someone who ought to have been 'referred'.

The University's arrangements for any PVG referral necessarily must meet a number of criteria:

- they must enable a 'referral' to be made only on the most scrutinised of evidence but at the earliest appropriate point in the relevant investigation/misconduct process;
- they must capture a potential 'referral' case early on in any investigative process in order to ensure that appropriate academic, professional, legal, HR and other advice can be obtained by the investigating person (usually a senior academic or line manager) at an early stage;
- they must not place any decision in the hands of any individual or group of individuals where there may be a conflict of roles (e.g. to a particular professional body) where the standards for reporting/referral may be different;
- they must not inappropriately conflict with, or obstruct, other procedures, including professional body reporting, student 'non-academic misconduct', staff 'disciplinary' procedures or indeed any relevant police investigations;
- they must ensure that any proposed 'referral' is made having been reviewed at the most senior level within a Faculty or Department (therefore has the relevant SPARG member endorsement) and also approved by the University's statutory PVG/DS 'Lead Counter-Signatory', currently the Executive Director - Human Resources.

It is to be noted that the more complex and serious cases may potentially include *inter alia* all or several of police investigation, PVG referral, professional body reporting, student or staff misconduct procedures.

Appropriate references to 'referrals' have been included in the student 'non-academic misconduct' regulations. Additionally, appropriate references have been included in the guidance to managers relating to investigations under the staff disciplinary procedures.

Procedure for Deciding on a Potential Referral

In the event of an investigating officer (normally a senior academic or line manager) being aware of any alleged harm having been done by one person(s) to another person(s), that may meet the PVG code of practice definition for 'referral', he/she must:

1. alert the relevant SPARG member **and** the University PVG/DS 'Lead Signatory' (LS);
2. receive relevant legal advice from the University Solicitor* and (in the case of it being an employee) from the HR Manager – Client Services and (in the case of it being a student) from the Academic Registrar;
3. conclude the investigation and report, as would be normal and appropriate to the staff or student procedure being followed.

NB. *this may include external legal advice in the more complex cases.

Following receipt of the investigation report, the senior academic or line manager, with appropriate authority to deal with such matters, will decide on further action as appropriate. This may include a formal hearing and, where the misconduct is found to have occurred, appropriate sanctions.

If, due to the misconduct, a decision to dismiss an employee or remove a student from the course of study is reached, or if a decision is otherwise made to remove an employee or student from 'regulated work', a 'referral' under the PVG scheme will almost certainly be required and the PVG/DS Lead Signatory must be further informed at that stage.

Only the PVG/DS LS may approve a 'referral' to be made under the PVG Scheme. Any decision to approve a referral will only be made by the PVG/DS LS after reviewing the circumstances and satisfying him/herself that 'referral' is appropriate and having taken whatever legal advice is considered necessary.

No decision on reporting the offence to a relevant professional body (or indeed any external body, including the police), at any stage in the investigative, disciplinary or dismissal process (from employment) or exclusion from a course of study or removal from regulated work), shall be taken without the agreement of the PVG/DS LS. He will ensure that relevant legal advice has been received by the University, given that there may be a conflict in the requirements governing any academic actions, employer actions and liabilities, professional body regulations, actual or potential criminal proceedings and the PVG requirements.

The referral itself is made in a format specified by the PVG Scheme for that purpose and only that method of referral may be used.

Referral Grounds (extract from the Act)

"The referral ground —

(a) in relation to an individual who is or has been doing (or has been offered or supplied for) regulated work with children, is that the individual has, whether or not in the course of the individual's work—

- (i) harmed a child,
- (ii) placed a child at risk of harm,
- (iii) engaged in inappropriate conduct involving pornography,
- (iv) engaged in inappropriate conduct of a sexual nature involving a child,
- or
- (v) given inappropriate medical treatment to a child,

(b) in relation to an individual who is or has been doing (or has been offered or supplied for) regulated work with adults, is that the individual has, whether or not in the course of the individual's work—

- (i) harmed a protected adult,
- (ii) placed a protected adult at risk of harm,
- (iii) engaged in inappropriate conduct involving pornography,
- (iv) engaged in inappropriate conduct of a sexual nature involving a protected adult, or
- (v) given inappropriate medical treatment to a protected adult.

Reference following disciplinary action etc.

(1) An organisation must give Ministers any prescribed information which it holds in relation to an individual who is or has been doing regulated work if—

(a) it has, on the referral ground—

(i) dismissed the individual, or

(ii) transferred the individual to a position which does not involve that type of regulated work, or

(b) it would or might have dismissed or so transferred the individual on the referral ground if the individual had not—

(i) otherwise stopped doing regulated work, or

(ii) been working for the organisation for a fixed term.

(2) An organisation must give Ministers any prescribed information which it holds in relation to an individual who has been doing regulated work if—

(a) the individual stops doing the regulated work in circumstances not falling within subsection (1),

(b) the organisation subsequently becomes aware of information which it was unaware of when the individual stopped doing regulated work, and

(c) the organisation considers that, if—

(i) it had been aware of that information at that time, and

(ii) the individual had not stopped doing regulated work,

it would or might have dismissed the individual on the referral ground.

(3) In subsections (1) and (2)—

(a) an individual suspended from regulated work is not to be treated as having stopped doing that work, and

(b) the duty to give Ministers information in relation to the temporary transfer of an individual to another position applies only if the organisation subsequently makes a final decision not to permit the individual to resume the type of regulated work from which the individual was transferred.

(4) This section does not apply to personnel suppliers (see sections 4 and 5).