

AMENDMENTS TO MAIN SAFEGUARDING POLICY PROTOCOLS AND GUIDANCE July 2009

Throughout the documents all references to the Commission for Social Care Inspection and CSCI have been changed to Care Quality Commission and CQC

Throughout the document all references to the Protection of Vulnerable Adults List and POVA has been changed to Vetting and Barring scheme managed by the Independent Safeguarding Authority and ISA

Throughout the document all references to adult protection co-ordinators has been changed to safeguarding adults co-ordinators

References to District Managers in Kent have been changed to Locality Head of Service (HoS)

POLICY

Policy – New Section: 4.12 – Deprivation of Liberty (DoLs)

See also Guidance Section 2 – Sub-section 22

DOLS apply to people who:

- are aged 18 and over
- suffer from a mental disorder
- lack the capacity to give consent to the arrangements made for their care or treatment in a care home or hospital, under public or private arrangements
- and for whom a deprivation of liberty is considered, after an independent assessment, to be a necessary and proportionate response in their best interests to protect them from harm
- and detention under the Mental Health Act 1983 is not appropriate for the person at that time

What should I consider when working with people who may be affected by DOLS?

Keep the five principles of the Mental Capacity Act 2005 (MCA) in mind at all times. If a person is at risk of deprivation of liberty because they are subject to frequent, cumulative and ongoing restriction or restraint, consideration should always be given to less restrictive alternatives. If this cannot be achieved, then you must apply for an authorisation under DOLS (see www.kent.gov.uk/mentalcapacityact).

Restraint

- the use or threat of force to help carry out an act that the person resists; may only be used where it is necessary to protect the person from harm and is proportionate to the risk of harm

Restriction of liberty

- an act imposed on a person that is not of such a degree or intensity as to amount to a deprivation of liberty

Deprivation of liberty

- used in the European Convention on Human Rights about circumstances when a person's freedom is taken away

A person may only be deprived of their liberty:

- in their own best interests to protect them from harm
- if it is a proportionate response to the likelihood and seriousness of the harm
- if there is no less restrictive alternative

The difference between deprivation of liberty and restriction upon liberty is one of degree or intensity. It may therefore be helpful to envisage a scale, which moves from 'restraint' or 'restriction' to 'deprivation of liberty'. Where an individual is on the scale will depend on the concrete circumstances of the individual and may change over time.

The European Court of Human Rights and UK courts have determined a number of cases about deprivation of liberty. Their judgments indicate that the following factors can be relevant to identifying whether steps taken involve more than restraint and amount to a deprivation of liberty. It is important to remember that this list is not exclusive; other factors may arise in future in particular cases.

- Restraint is used, including sedation, to admit a person to an institution where that person is resisting admission.
- Staff exercise complete and effective control over the care and movement of a person for a significant period.
- Staff exercise control over assessments, treatment, contacts and residence.
- A decision has been taken by the institution that the person will not be released into the care of others, or permitted to live elsewhere, unless the staff in the institution consider it appropriate.
- A request by carers for a person to be discharged to their care is refused.
- The person is unable to maintain social contacts because of restrictions placed on their access to other people.
- The person loses autonomy because they are under continuous supervision and control.

How can deprivation of liberty be identified?

In determining whether deprivation of liberty has occurred, or is likely to occur, decision-makers need to consider all the facts in a particular case. In general, the decision-maker should always consider the following:

- All the circumstances of each and every case.
- What measures are being taken in relation to the individual? When are they required? For what period do they endure? What are the effects of any restraints or restrictions on the individual? Why are they necessary? What aim do they seek to meet?
- What are the views of the relevant person, their family or carers? Do any of them object to the measures?
- How are any restraints or restrictions implemented? Do any of the constraints on the individual's personal freedom go beyond 'restraint' or 'restriction' to the extent that they constitute a deprivation of liberty?
- Are there any less restrictive options for delivering care or treatment that avoid deprivation of liberty altogether?
- Does the cumulative effect of all the restrictions imposed on the person amount to a deprivation of liberty, even if individually they would not?

What practical steps can be taken to reduce the risk of deprivation of liberty occurring?

Staff should minimise the restrictions imposed and ensure that decisions are taken with the involvement of the relevant person and their family, friends and carers.

- Make sure that all decisions are taken and reviewed in a structured way, and reasons for decisions recorded.
- Follow established good practice for care planning.
- Make a proper assessment of whether the person lacks capacity to decide whether or not to accept the care or treatment proposed, in line with the principles of the Mental Capacity Act.
- Before admitting a person to hospital or residential care in circumstances that may amount to a deprivation of liberty, consider whether the person's needs could be met in a less restrictive way.
- Any restrictions placed on the person while in hospital or in a care home must be kept to the minimum necessary, and should be in place for the shortest possible period.

- Take proper steps to help the relevant person retain contact with family, friends and carers. Where local advocacy services are available, their involvement should be encouraged to support the person and their family, friends and carers.
- Review the care plan on an ongoing basis. It may well be helpful to include an independent element, possibly via an advocacy service, in the review.

The Link between DOLS and Safeguarding Adults Processes

If a Managing Authority's application results in an authorisation not being granted by the Supervisory Body, following completion of the necessary assessments, the DOLS office will raise a safeguarding alert where appropriate.

If a Managing Authority's application results in an authorisation being granted by the Supervisory Body, the care home or hospital must comply with all the conditions attached with the authorisation. Any knowledge of non compliance with the conditions on the part of the Managing Authority should be raised with the DOLS office. This may trigger a review of the authorisation and/ or a safeguarding alert.

Policy Section 6 – Final Paragraph:

Adult protection alerts should ideally be completed within 6 months, except in circumstances agreed with a senior manager. Where investigation and assessment has been concluded but significant concerns remain, a post abuse care plan should identify monitoring and review arrangements.

PROTOCOLS

Protocols Section 3 - Lead Responsibility

A Designated Senior Officer is responsible for the management of individual adult protection cases within the social services agency. The designated senior officer may be:

Locality, Head of Service, Safeguarding adults co-ordinator, Team manager or Senior Practitioner in Kent Social Services,

Service Manager or Team Manager or Senior Practitioner in Medway Adults and Children's Directorate

Associate Director, Service Manager or Team Manager, in a Mental Health Trust.

Hospital Adult Protection Lead Manager (Cases occurring in a service managed by an Acute Hospital Trust)

However the ultimate responsibility for decision making in adult protection cases remains with the Locality, Head of Service for Kent, the Service Manager for Medway and the Associate Director the Mental Health Trust.

Protocols Section 10.1 - How will the investigation be carried out?

b: To assess the support and protection needs of the vulnerable adult(s) using the safeguarding assessment / risk assessment and protection plan form SA1 as appropriate

Protocols Section 10.5 - Compiling a report following investigation

New last paragraph:

The use of the assessment risk and protection planning form is recommended for use to address items c, d, e, f, j, k and n

GUIDANCE

Guidance Section 2: Sub-section 7 - The Care Standards Act 2000 (And Associated Regulations)

Section 7.2 – Reference to Protection of Vulnerable Adults list (POVA) has now been deleted. Sub-section 26 – Safeguarding Vulnerable Groups Act provides further information.

Guidance Section 2: Sub-section 22 – Mental Capacity Act 2005

New Section:

Independent Mental Capacity Advocate (IMCA)

Staff in the Local Authority or NHS, all have a duty under the MCA to instruct an IMCA where the eligibility criteria are met:

A decision is being made about serious medical treatment or a change of accommodation; or about a care review or adult protection procedures (consult individual local authority policy on care reviews and adult safeguarding).

The person lacks capacity to make this particular decision.

The person is over 16 years old.

There is nobody other than paid staff providing care or professionals, who the decision maker considers willing and able to be consulted about the decision. (This does not apply to adult protection cases.)

Under DOLS, there are a number of circumstances when IMCAs must act:

when the hospital or care home has requested an assessment about depriving a person of their liberty, if there is no one else to represent that person, the IMCA then serves to represent the person during the assessment process;

when a hospital or care home has deprived a person of their liberty and that person (or their representative) requests the support of an IMCA in order to ensure that they understand their rights;

when a hospital or care home has deprived a person of their liberty and there is (temporarily) nobody available to act as that person's representative.

Instruction of an IMCA under DOLS must be made by the Supervisory Body responsible for processing the application for authorisation.

Guidance Section 2: New Sub-section 26 - The Safeguarding Vulnerable Groups Act 2006 and Vetting and Barring Scheme (VBS)

The Safeguarding Vulnerable Groups Act 2006 provides the legislative framework for the new Vetting and Barring Scheme. These new arrangements will be introduced in managed phases from 12th October 2009. Individuals will be able to register from July 2010.

See Guidance section 30

Guidance Section 2: New Sub-section 27 - Forced Marriage (Civil Protection) Act 2007

Forced marriage has many parallels with domestic abuse and child abuse. A clear distinction must be made between a forced marriage and an arranged marriage. In arranged marriages, the families of both spouses take a leading role in arranging the marriage but the choice whether or not to accept the arrangements remains with the adult or young person. In forced marriage one or both spouses do not consent to the marriage and some element of duress is involved. Duress may include physical and or emotional abuse.

Guidance Section 10 - Consent and Mental Capacity

Section updated. Updates shown in bold below:

Paragraph 3:

Mental Capacity refers to the **capacity** to understand **and retain the information in relation to a specific** act, decision or transaction, **to weigh up** their consequences **and to communicate the decision, at the time the decision needs to be made.**

- e This will recognise that a vulnerable adult's mental capacity may change (**may be regained or developed with support**) over a period of time and /or they may have a condition that leads to fluctuations in mental capacity.

Guidance Section 11 - The Principle of Best Interests and Duty of Care

Sections added and updated. Updates shown in bold below:

New Section b:

Avoid discrimination and do not make assumptions about the vulnerable adult's best interests simply on the basis of the person's age, appearance, condition or behaviour.

Section b has been amended and is now Section c:

Ensure that the intervention is as **least restrictive** as possible to maintain the safety of the vulnerable adult.

Section d has been amended and is now Section e:

Ensure that the ascertainable past and present wishes and feelings, **beliefs and values** of the vulnerable adult concerned are taken into account.

New Sections h & i:

h Consider any other factors the vulnerable person would be likely to consider if they were making the decision or acting for themselves.

i If it is practical and appropriate to do so, consult other people for their views about the person's best interests.

An Independent Mental Capacity Advocate (IMCA) identified within the Mental Capacity Act 2005 must be instructed (~~delete: and then consulted,~~) for people lacking capacity who have no one else who 'it would be appropriate to consult' (other than paid staff) whenever:

An IMCA **may be** instructed, **subject to individual case discussion with the relevant commissioning Local Authority**, to support someone who lacks capacity to make decisions concerning

- Care reviews when no one else is available to be consulted
- Adult protection cases, whether or not family, friends or others are involved

Guidance Section 15 - Ill-treatment or wilful neglect

This Section has been substantially updated in relation to the Mental Capacity Act 2005.

The Mental Capacity Act 2005 introduces two new criminal offences: ill treatment and wilful neglect of a person who lacks capacity to make relevant decision (section 44). The offences may apply to:

- Anyone caring for a person who lacks capacity – this includes family carer, healthcare and social care staff in hospitals or care homes and those providing care in a person's home
- An attorney appointed under a Lasting Power of Attorney (LPA or an Enduring Power of Attorney (EPA), or
- A deputy appointed for the person by the Court of Protection.

These people may be guilty of an offence if they ill-treat or wilfully neglect the person they care for or represent. Penalties will range from a fine to a sentence of imprisonment of up to five years or both.

Ill treatment and neglect are separate offences. For a person to be found guilty of ill treatment, they must either:

- Have deliberately ill-treated the person, or
- Be reckless in the way they were ill-treating the person or not.

It does not matter whether the behaviour was likely to cause, or actually caused, harm or damage to the victim's health.

The meaning of '**wilful neglect**' varies depending on the circumstances. But it usually means that a person has deliberately failed to carry out an act that they knew they had a duty to do.

Wilful bullying or behaviour likely to engender fear may amount to ill-treatment.

Carers of vulnerable people who wilfully fail to provide adequate food, clothing, medical aid or accommodation for them may be guilty of this offence. Signs to watch for include; failing to thrive, personal hygiene issues, always being hungry, being in fear, hazards within the home and being left alone. The most serious offences may come about in circumstances of neglect. Sometimes these situations can only be properly recorded and evidenced by police exercising their powers to investigate crime. The police should always be informed where serious neglect is likely to cause suffering.

Guidance Section 18 - Statement of confidentiality

This Statement has been updated:

This meeting/conference is held under the multi-agency adult protection policy and protocols and Guidance for Kent and Medway (Updated 2009). The matters raised are confidential to the members of the meeting/conference and the agencies that they represent and will only be shared in the best interests of the vulnerable adult, and with their consent where it is appropriate to obtain it.

Minutes of the meeting/conference are distributed in the strict understanding that they will be kept confidential and in a secure place.

The information you have provided will be held and used by Kent / Medway Councils for the purpose of this Adult protection enquiry. This process may require us to share this information with partner organisations and other local authorities or agencies to support the protection of vulnerable adults or children.

In certain circumstances it may be necessary to make this information and/or the minutes of this meeting available to solicitors, the civil and criminal courts, the Independent Safeguarding Authority in relation to Vetting and Barring, psychiatrists, professional staff employed by other social services agencies or other professionals involved in the welfare of the vulnerable adult(s) or children. Any such disclosure must be recorded. Information may also be disclosed under strict controls in relation to a Freedom of Information Act 2000.

Guidance Section 20 – Adult Protection Referral Checklist

Added new Section c:

If the alert relates to a vulnerable adult in a care setting or a domiciliary agency is involved the CQC must be informed.

Guidance Section 30 - The Safeguarding Vulnerable Groups Act 2006 and Vetting and Barring Scheme (VBS)

This Section has been completely amended in line with the above Act:

The Safeguarding Vulnerable Groups Act 2006 provides the legislative framework for the new Vetting and Barring Scheme. These new arrangements will be introduced in managed phases from 12th October 2009. Individuals will be able to register from July 2010.

Summary of the Act

In summary, the Act explains the following:

- A new body the Independent Safeguarding Authority (ISA) will make all decisions about who should be barred from working with children and vulnerable adults
- The Vetting and Barring Scheme will deal with activities that are classified as 'regulated' or 'controlled'. These activities include both paid and unpaid (voluntary) work.
- There will be two separate but aligned ISA Barred Lists (one for those barred from working with children and one for those barred from working with vulnerable adults). Barred individuals can be placed on one or both of these lists.
- Some offences will automatically result in the individual being barred, without leave to appeal or to make mitigating representations.
- Relevant information about an individual can be referred to the ISA from interested parties such as employers, regulatory bodies or even concerned members of the public.
- Individuals listed on one of the ISA Barred Lists may have the right to appeal to the Upper Tribunal on a point of fact or law but not on the ISA's decision.
- A series of new criminal offences have been created to enforce the new Scheme. These will relate to both employers and employees.

When the new arrangements are phased in from 12th October 2009, they will change the way vetting happens. You will see the following improvements:

- **The replacement of lists** – The Protection of Children Act (POCA) list, the Protection of Vulnerable Adults (POVA) list, List 99 and the court-imposed disqualification order regime will no longer exist. Instead there will be one list of those barred from working with children and a separate, but aligned, list of those barred from working with vulnerable adults.
- **Pre-employment vetting** – Checks will take place before an individual is able to start work. The Scheme will make sure that those who are known to present a risk of harm to children and/or vulnerable adults cannot enter the relevant workforce in the first place.
- **Independent and consistent decision making** –The new ISA will make all decisions on who should be placed on the Barred Lists. It will do this before an individual is employed.
- **The introduction of continuous checking** –When new information, such as a conviction or caution or a referral from an employer, becomes known about an individual already registered with the ISA, the Authority will review its original decision not to bar. Where an employer has already checked on an employee's status with the ISA, that employer will be notified automatically if their employee's status changes.
- **Workforce coverage** – The scope of the new Vetting and Barring Scheme will be much wider than the current arrangements. It is estimated that around 11 million individuals will have to pass through the ISA checking process in its first five years.

• **A reduction in bureaucracy** – Once people have registered with the ISA, future employers will be able to check their status online and free of charge.

• **Wide range of sources of information** – As with the current arrangements, certain organisations will have a legal duty to refer relevant information about individuals to the ISA. Under the terms of the new vetting service, other employers, service providers and individuals will have the opportunity to refer information. The term 'employers' refers to both employers and managers of volunteers. The term 'employees' refers to both paid and unpaid (volunteer) work/activities.

What is the definition of a 'vulnerable adult' under ISA?

- Does not apply to people just because they may be older or have a disability
- The term is defined according to the service, setting or situation where staff or volunteers are in a position of trust and people have a right to expect that trust will not be abused.
- The Safeguarding Vulnerable Groups Act 2006 defines a vulnerable adult in section 59.

Section 59 :

A person is a vulnerable adult if they have attained the age of 18 and –

- a. They are in residential accommodation (including residential special school)
- b. They are in sheltered housing,
- c. They receive domiciliary care
- d. They receive any form of health care,
- e. They are detained in lawful custody
- f. They are by virtue of an order of a court under supervision by a person exercising functions for the purposes of Part 1 of the Criminal Justice and Court Services Act 2000 (c. 43)
- g. They receive a welfare service of a prescribed description includes services which provide support, assistance, advice or counselling to individuals with particular needs
- h. They receive any service or participate in any activity provided specifically for persons who fall within subsection (9), such as listed here:
 - They have particular needs because of their age;
 - They have any form of disability;
 - They have a physical or mental problem of such description as is prescribed;
 - She is an expectant or nursing mother in receipt of residential accommodation pursuant to arrangements made under section 21(1)(aa) of the National Assistance Act 1948 or care pursuant to paragraph 1 of Schedule 8 to the National Health Service Act 1977 (c. 49);
- i. Payments are made to them (or another on their behalf) in pursuance of arrangements under section 57 of the health and Social Care Act (c.15), or
- j. They require assistance in the conduct of their own affairs (e.g. they have an LPA, EPA, a deputy, an appointee, has an IMCA or an independent advocate)

What is a 'regulated activity'?

- Any activity of a specified nature that involves contact with children or vulnerable adults frequently, intensively and/or overnight. (Such activities include teaching, training, care, supervision, advice, treatment and transportation.)
- Any activity allowing contact with children or vulnerable adults that is in a specified place frequently or intensively. (Such places include schools and care homes.)
- Fostering and childcare.
- Any activity that involves people in certain defined positions of responsibility. (Such positions include school governor, director of social services and trustee of certain charities.)

'Regulated activity' is when the activity is frequent (once a month or more) or 'intensive' (takes place on three or more days in a 30-day period).

How does 'regulated activity' work?

Anyone providing a regulated activity must be registered with the ISA. It will be a criminal offence, punishable by up to five years in prison, for a barred individual to take part in a regulated activity for any length of time. It will be a criminal offence for an employer to take on an individual in regulated activity if they fail to check that person's status. It will be a criminal offence for an employer to allow a barred individual, or an individual who is not yet registered with the ISA, to work for any length of time in any regulated activity.

What does this mean for domestic employees, e.g. private tutors and care workers?

It will be an offence for a barred individual to take part in any regulated activity in domestic circumstances. Domestic employers do not have to check an individual they wish to employ – such as a home tutor, nanny or carer – but the new Scheme will give them the opportunity to check the status of an individual (with his/her consent) if they wish to do so.

What is a 'controlled activity'?

Frequent or intensive support work in general health settings, the NHS and further education (such work includes cleaners, caretakers, shop workers, catering staff, car park attendants and receptionists.) Individuals working for specified organizations (e.g. a local authority) that have frequent access to sensitive records about children and vulnerable adults. Support work in adult social care settings (such jobs include day centre cleaners and those with access to social care records.)

'Controlled activity' is when this type of activity is 'frequent' (once a month or more) or 'intensive' (takes place on three or more days in a 30-day period).

How does 'controlled activity' work?

It will be a criminal offence for an employer to take on an individual in a controlled activity if they fail to check that individual's status. An employer can permit a barred individual to work in a controlled activity **only if sufficient safeguards are put in place.**

Registration for those engaged in regulated and controlled activities will take place over the next 5 years as follows:

July 2010	Individual registration commences for regulated activity
November 2010	Mandatory registration of new starters and when moving jobs and so extends to current workforce
January 2011	Those workers who have never had a CRB
January 2012	Those workers with oldest CRB checks usually over 3 years old
January 2013	Those workers who have a more recent CRB of 3 or less years old
January 2014	Anyone else requiring regulated activity registration and commencement of all controlled activity registrations

What are Barred Lists?

The Safeguarding Vulnerable Groups Act 2006 contained the legislation to create two new Barred Lists. These are:

A list of people barred from working with children (replacing List 99, the POCA list and disqualification orders); and a list of people barred from working with vulnerable adults (replacing the POVA list).

What will these lists do?

These lists will be separate but aligned. They will allow the Independent safeguarding Authority (ISA) to keep a record of:

- individuals who will not be permitted to work in regulated activity with children and/or vulnerable adults; and

- individuals who can only work with children and/or vulnerable adults in controlled activities with safeguards.

Certain extremely serious offences result in automatic barring. These offences fall into two distinct categories:

Automatic barring with no right to make representations

This list covers the most serious offences against children and vulnerable adults, which indicate that an individual poses a risk of harm to children or vulnerable adults in every conceivable case. There is no opportunity for the individual to make representation to the ISA as to why they should not be barred because there can be no mitigating circumstances that might explain why these offences were committed.

Automatic barring with the right to make representations

This list covers other serious offences that indicate a very probable risk of harm to children or vulnerable adults but not necessarily in every conceivable case. Therefore it is necessary to give individuals the opportunity to make representations. However, the ISA will not remove a bar unless it is satisfied that the individual does not pose a risk of harm to children or vulnerable adults.

All individuals (aged 18 and over) who have committed sexual offences against children and other specified sexual and violent offences are placed on the relevant Barred List automatically.

ISA decision making

The ISA will consider a range of information from the police and referrals from employers, regulatory bodies and other agencies as part of its decision-making process. The ISA will consider:

- offences – convictions or cautions;
- evidence of inappropriate behaviour; and
- evidence of behaviour that is likely to harm a child or vulnerable adult.

What does this mean for employers and service providers?

It is vital that employers and service providers realize that checking an individual's ISA status will not be enough on its own to implement safe recruitment practices. Checking an individual's status will inform an employer that an individual is not on the Barred Lists and has not been judged to pose a risk of harm to children or vulnerable adults. However, obtaining appropriate references and speaking to previous employers are just two steps that can also help determine whether an applicant is suitable to work with children or vulnerable adults. Automatic barring is a serious measure, which the ISA will use only in the gravest cases. It is a measure that is used where there is strong evidence in the form of a conviction or caution for a serious offence. If there is only a degree of evidence that requires further consideration, a discretionary process will be followed. Referral information, such as allegations, will never lead to automatic inclusion on the ISA Barred Lists. Before a barring decision is made, the individual is given the information on which the decision is based and the opportunity to explain their case. It is a serious offence to make a malicious referral with the intention to mislead. A person found guilty of this may be subject to defamation and damages claims. Criminal sanctions, which include offences, related to wasting police time, perverting or attempting to pervert the course of justice, conspiracy and perjury, could also apply.

Rights of Appeal

The Upper Tribunal will deal with appeals. This can be based only on either points of law or findings of facts that the ISA has made and on which it has based its decision to bar. No appeal can be made against the decision-making process.

Referrals to the Independent Safeguarding Authority

One of the main barriers to a successful vetting service is the possibility that information about a person could be held by a number of different organisations and never shared. To ensure this does not happen to the Independent

Safeguarding Authority, new legislation has been introduced which legally requires certain organisations to refer relevant information to the ISA – where there is concern relating to harm or the risk of harm to children or vulnerable adults. Other organisations or individuals may also refer relevant information if they are concerned about the behaviour or conduct of an individual. By receiving information from a comprehensive range of sources, the ISA will be able to make a decision as to whether an individual poses a risk to children and/or vulnerable adults based on all the evidence.

The following organisations have a legal obligation to refer relevant information to the ISA:

- Adult/child protection teams in local authorities;
- Professional bodies and supervisory authorities named in the Safeguarding Vulnerable Groups Act;
- Employers and service providers of regulated and controlled activity; and
- Personnel suppliers (for example, employment agencies, employment businesses and education institutions).

The following organisations may refer relevant information to the ISA:

- All other employers of those working with children and/or vulnerable adults; and
- Parents/private employers - however, their information should be referred to a statutory agency (for example, the social services or the police), who will investigate the matter and refer information to the ISA, if appropriate (members of the public may also refer information to the ISA in this way.)

Employers and service providers *must* refer information to the ISA when they have dismissed an individual, or an individual resigns, because they harmed, or may have harmed, a child or vulnerable adult.

Social services agencies, professional bodies and supervisory authorities must refer information to the ISA where:

- An individual who is working closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult;
- An individual who might in the future work closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult; or
- They think the ISA may consider it appropriate to bar the individual.

Relevant information should be referred to the ISA as soon as it becomes available.

The new Scheme will only work effectively if the ISA can reduce the time between an individual becoming a known risk and that individual being barred from working with children and/or vulnerable adults.

Referral information, such as allegations, will never lead to automatic inclusion in the ISA Barred Lists. Before a barring decision is made, the individual will be given the information on which the decision is based, and will be given the opportunity to explain their case. If the employee would or could have been sacked on grounds that could lead to barring, the employer must refer the employee to the ISA – even if the employee has stopped working for them.

Professional bodies, supervisory authorities and employers hold significant information about the people they register, regulate, inspect and employ. The ISA will work closely with these organisations to ensure that information is effectively shared and that duplication does not occur.

There will be a new offence, punishable by a fine, for employers who fail to provide relevant information to the Scheme, without a reasonable excuse.

Before the scheme goes live and begins phasing from October 2009, there are a number of transition phases. Since 20th January 2009 the ISA has been making barring decisions on new referrals to the existing lists-PoCA, PoVA and List 99-barring individuals working with children or vulnerable adults. Since this date employers in England and Wales (under PoCA and PoVA) and employers in England (under List 99) have to send new referrals to ISA and provide information on a case to ISA on request. Those with a duty to refer should send new referrals to the new address:

Independent Safeguarding Authority
PO Box 181, DARLINGTON DL1 9FA

Monitoring Arrangements

Any employer or organization wishing to receive updates on the ISA-registration or 'Monitoring' status of an individual or many individuals for employment purposes, and with the consent of that individual can do so using the ISA Online service. When registering an interest in an individual, they will be 'Subscribing to' that individual. If an employer or organization registers an interest in many employees, these will be referred to as the employers or organizations 'Subscriptions'.

When employers and organizations check on online they will only be able to check if the person is ISA-registered if they have the explicit consent of the individual, along with a unique reference number and other personal information. The online check will not state if the person is barred nor the reason for barring, it will only show whether they are ISA-registered or not. Non-registration does not imply someone is barred. The individual may have voluntarily left the Scheme, never applied, or simply provided an incorrect number (such as that given on a CRB disclosure), or they may no longer be undertaking regulated activity and have left the scheme.

More information is available from the ISA website (www.isa.gov.org.uk) and any questions or queries about the scheme can be answered via the contact centre helpline on 0300 123 1111 (charged at local geographical rate).

Responsibility of the Social Services Agency and Police in relation to VBS

The local authority and the police have a duty to carry out an investigation if they receive information that a person, in the course of any regulated or controlled activity, has harmed or may have harmed a child or vulnerable adult. This investigation will be carried out through the safeguarding adults' arrangements.

When an adult protection planning meeting or case conference recommends to the employer that a staff member should be reported to ISA, it is the responsibility of the chair of the planning meeting or case conference to check that the employer has made the referral to ISA.

The chair of the meeting should also liaise with the employer to ascertain what decision ISA made regarding the referral. This information should then be recorded in the adult protection papers for the client(s) who was the subject(s) of the adult protection case(s).

If the employer is reluctant or refuses to make the referral, this should be reported to the Care Quality Commission who will take responsibility for following this up with the employer.

If the employer, private employer or family member has not or cannot make the recommended referral, the local authority must do so with the information that has been collected in the course of the safeguarding adults' investigation. If the police hold specific information in relation to the case the ISA should be informed of this.