



## Independent Safeguarding Authority

The murders of Holly Wells and Jessica Chapman in Soham in 2002 highlighted a number of major deficiencies in the system for checking the backgrounds, including criminal records, of those wishing to work or volunteer with children and vulnerable adults. This factsheet covers the Independent Safeguarding Authority and the Vetting and Barring Scheme for employees and, to some extent, volunteers.

### Background to changes in vetting individuals

Following the Soham murders the government set up an Inquiry chaired by Sir Michael Bichard. The inquiry published its report in 2004 and made 31 recommendations.

One of the recommendations stated that:

“New arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. The register would confirm that there is no known reason why an individual should not work with those clients.”

The government accepted the recommendation and, as a result, enacted the Safeguarding Vulnerable Groups Act 2006 and the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.

### The Independent Safeguarding Authority

The Act set out the framework for a new vetting and barring service, covering those who work or volunteer with children (defined as those under the age of 18) and vulnerable adults.

The new system has been operating in a limited form since 26 January 2009. The scheme establishes a single agency to vet all individuals who want to work or volunteer with children or vulnerable adults, known as

the Vetting and Barring Scheme (VBS), run by the Independent Safeguarding Authority (ISA).

The scheme was to be fully introduced on 26 July 2010. However, Home Secretary Theresa May made the following announcement on 15 June 2010:

“The commencement of voluntary registration with the new Vetting and Barring Scheme in England, Wales and Northern Ireland, which was due to begin on 26 July, will be brought to a halt as of today.”

There is now no requirement for individuals who work in regulated activity with children or vulnerable adults to register with the ISA.

### What role does the ISA play?

The ISA is responsible for continuous monitoring. This will mean that when relevant information becomes known about an individual who may pose a risk to children or vulnerable adults, the ISA will, if necessary, move to bar the individual.

Although there is now no requirement to register with the VBS scheme, other aspects of the scheme run by the ISA continue, as outlined below:

- There will be two ISA barred lists, one for work with children and one for work with vulnerable adults.
- The ISA will still retain its function of barring

individuals.

- It will be unlawful for an employer to employ an individual to work with children or vulnerable adults who is barred from working with these groups.
- It will be unlawful for an individual who is barred from working with children or vulnerable adults to work or volunteer, or try to work or volunteer, with those groups.
- Employers will be under a duty to let the ISA know of any relevant recorded disciplinary procedures, or other relevant information, involving their existing employees. Employers must refer information to the ISA where they have dismissed an individual (or they have resigned) because they harmed or may harm a child.

The ISA will accept information not just from employers but from other interested parties. Parents and members of the public can refer information to “a statutory agency (eg social services or the police), who can investigate and refer information to the [ISA] if appropriate”, or to the ISA direct.

Providing relevant up-to-date information will enable the ISA to update its records. It will therefore be important for ATL caseworkers and representatives to be involved in supporting members facing disciplinary action as they could have an impact the ISA deciding to bar an individual.

## Who makes the decision to bar an individual?

All barring decisions have been taken independently by the ISA since 12 October 2009.

## Why are barring decisions made and can an individual challenge them?

There are some serious criminal offences (eg the rape of a child) that lead to automatic barring where the individual does not have the right to make representations. There are other criminal offences (eg the rape of an adult) that lead to automatic barring, but where the individual has the right to make representations.

There will be three barring routes:

- Automatic barring on conviction or caution for the most serious sexual offences against children.
- Automatic barring on conviction or caution for other serious offences, but the individual may make representations. They will not be able to work with

children until a decision is made to remove them from the list.

- Discretionary barring: where the information provided suggests either that the individual harmed a child or put a child at risk of harm, or that the individual may harm a child. As part of the discretionary barring process the ISA will be able to consider a range of information from the police and referrals from employers: offences, evidence of inappropriate behaviour or behaviour that is likely to harm a child or evidence that they may harm a child.

Anyone who is unsuitable to work with children will be barred from doing so and put on the barred list. They may also be included in the list barring them from work with vulnerable adults. The ISA will notify an individual when it is minded to bar them and invite them to make representations where applicable.

When making representations the individual will not be able to challenge any finding of fact made by the General Teaching Council for England and the General Teaching Council for Wales. A conviction or caution cannot be challenged.

The individual will be able to state their case in relation to the information on which the ISA intends to base its decision. The ISA will consider the case put forward and will decide whether the person should be included or remain on the barred list. The individual will need to satisfy the ISA that they do not pose a risk of harm to children or vulnerable adults before the ISA decides whether to lift a bar.

According to the government’s 2007 consultation document, the ISA’s guiding principle is that an individual should be barred unless it is satisfied that they do not present a risk of harm to children or vulnerable adults.

An appeal against a barring decision can be made to the Administrative Appeal Chamber of the Upper Tribunal. An appeal can only be made on the ground that there has been a mistake in law or in any finding of fact on which the decision to bar was made.

## ATL’s view on representation

ATL strongly believes in an individual’s right to make personal representations and to be represented in proceedings where consequences such as barring could be an outcome.

ATL is working with other unions and professional

associations to lobby the government to amend the scheme to enable an individual to be represented in all proceedings that could lead to barring.

## **What about malicious referrals made to the ISA?**

The ISA says that it is staffed by individuals who are experienced in allegations management, that individuals will only be barred if the ISA is satisfied, following close scrutiny of information, that its own criteria for barring are satisfied.

## **What happens after an individual is barred?**

Once barred an individual will not be able to make an application for a review of their case for 5 years if aged between 18 and 24 at the time of barring, or 10 years if aged over 24 at time of barring. The inability to request a review applies regardless of whether the reason for barring is either automatic, automatic and representations are rejected, or after representations.

If a review is allowed then the individual must apply to the ISA for the review. The ISA can only allow a review “if the individual’s circumstances have changed and have changed in such a way that permission should be granted”. There are no guidelines at present as to how this will apply in practice.

If the ISA grants permission for a review, the individual must present a case for lifting the bar and must provide new information showing that the change in circumstances is such that barring is no longer appropriate. The ISA must be satisfied that the person no longer poses a risk of harm to children.

## **ATL’s view of the review period**

ATL believes that the period of review — 10 years for those barred at age 24 or over — is too long a period for a first review to take place.

**There may be further changes to the scheme outlined above, following the Home Secretary’s announcement in June 2010 that a remodelling of the VBS and criminal records is to be undertaken.**



### **Need advice?**

Your first point of contact is the ATL rep in your school/college. Your local ATL branch is also available to help, or you can contact ATL’s member advisors on 020 7930 6441, email [info@atl.org.uk](mailto:info@atl.org.uk). Don’t forget there’s lots more advice on ATL’s website at [www.atl.org.uk](http://www.atl.org.uk).

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