

MLA Safeguarding Guidance Bulletin

March 2010



Safeguarding Guidance Supplement

This is the first of three bulletins being produced by the Museums, Libraries and Archives Council to update the sector on current safeguarding and child protection issues. These bulletins will supplement the current MLA NSPCC Safeguarding Guidance Document, which outlines good practice regarding child protection policies and procedures in England's museums and archives. For further information about this, go to the **MLA Safeguarding Guidance** section below.

The Independent Safeguarding Authority (ISA) has introduced a new Vetting & Barring Scheme, which will come into effect in July 2010. Addressing concerns expressed by cultural educators and other children's workforce professionals, a list of Frequently Asked Questions has been collated by Artsworld on behalf of the MLA. Go to **page 2** for the list of questions and answers to these concerns.

Further MLA updates will follow later in 2010 and in early 2011, which will highlight key issues of particular relevance to museums, libraries and archives working with children and young people.

Context

Introduction

Museums, libraries and archives must have policies and procedures in place to meet their statutory duty to ensure the safeguarding of children and young people. This helps to demonstrate that the sector is positively embracing the principles of Every Child Matters and are placing positive outcomes for children and families at the core of service planning, delivery and development.

Policy background

The Children's Plan: building brighter futures (2007) aims to strengthen support for all families to ensure that barriers to learning, health and happiness are tackled for every child. It underlines that keeping children and young people safe from harm is a priority and a responsibility for everyone.

The Staying Safe Action Plan (2008) sets out the government's commitment to improve the safety of children to support them to be healthy, happy and reach their full potential.

MLA Safeguarding Guidance

The current guidance was developed by MLA in partnership with NSPCC. This guidance document:

- supports the sector to understand their duty of care for children and young people
- supports managers to introduce effective policies and procedures
- sets out legislative duty
- sets out obligations for organisations receiving MLA funding
- recognises variations in the sector
- recognises some organisations already have policies and procedures in place, and
- offers advice for those organisations starting from scratch.

It also covers the following areas:

- Policy statement
- Safeguarding procedures
- Safe recruitment
- Code of conduct
- Whistle blowing
- Dissemination and training
- Creating safe environments

To access this document, go to:

http://www.mla.gov.uk/what/programmes/commissioning/CPD/~/_media/Files/pdf/2008/Safeguarding_v5_Updated_2.ashx

Strategic Commissioning

Strategic Commissioning is a two-year cultural learning programme (2009 – 11) funded by DCMS and DCSF. It aims to: build capacity within museums and archives to develop and deliver learning activities; build sustainable partnerships with schools, initial teacher education providers and local authorities, and position the sector within local and regional education and learning infrastructures. MLA is delivering three strands of activity and funding is available to museums and archives to participate:

- Education development programme
- Workforce skills development programme
- Third phase of the national Schools Participation Database

For further information, go to:

<http://www.mla.gov.uk/what/programmes/commissioning>

Frequently asked questions

As part of the MLA Strategic Commissioning Continuing Professional Development programme in 2009-10, a series of 10 safeguarding seminars were delivered by Artsplan (the Artswork training wing) across the nine MLA regions in England. The following frequently asked questions were drawn up in response to the discussions that took place during these seminars.

This information was taken from the ISA website and from direct conversations with the ISA.

For more information, go to the ISA website www.isa.gov.org.uk or contact the ISA helpline: 0300 123 1111

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Registering with the ISA

1. **Who do you apply through to become ISA registered?**
You will be able to register with the ISA via the CRB. If your organisation is not a registered body that can process its own CRB checks and ISA registrations then you can do so through an umbrella body. Once you are registered this will cover you for the whole of your career.
2. **How long will the registration process take?**
The CRB is working towards a target of seven days for the ISA registration process to be carried out.
3. **Who needs to register with ISA**
Anyone undertaking a regulated or controlled activity as part of their paid or voluntary work will need to register with the ISA.
4. **What is the difference between controlled and regulated activities?**

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' refers to cases where this type of activity is frequent (once a week or more) or 'intensive' (takes place on four or more days in a 30-day period).

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 organisations (e.g. a local authority) who 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’ refers to cases where this type of activity is ‘frequent’ (once a week or more) or ‘intensive’ (takes place on four or more days in a 30-day period).

The costs of registering with the ISA

5. **How much will registration cost?**
There is a one-off cost of £64. Registration is free for volunteers.
6. **If you have taken out a recent CRB check when registering with the ISA, do you still need to pay the full registration fee?**
Yes you will still need to pay the full £64 as an enhanced disclosure is carried out as part of the registration process / checks that are undertaken.
7. **If you are registering through an umbrella body could admin fees be added on top of the registration cost?**
Yes, but this is at the discretion of the umbrella organisation.
8. **Will there be funding available for people coming out of being on benefits to work in a controlled or regulated activity?**
No. There will not be any funding available through the ISA. However some organisations may choose to assist their employees or potential employees by paying for some, or all, of the registration fee.

The vetting and barring process

9. What will the CRB check when you are registering?

The CRB will check whether there is any relevant information that needs to be considered as part of your registration. This could be information from the police or referred information from other sources, such as previous employers or professional bodies.

If there is no information, the CRB will inform the applicant that they are ISA-registered.

If there is relevant information, the CRB will pass this to the ISA, who will decide whether the applicant should be placed on a Barred List.

Individuals placed on the ISA Barred Lists will have the right to make a representation against this decision and also to the Care Standards Tribunal, except where they have committed a serious offence.

10. Will the ISA receive all information on all cautions and convictions of people registered with the ISA?

Only information that is relevant to an individual's registration status, that is if it's related to an individual posing a risk to children or vulnerable adults, will be passed on to the ISA.

However, where there is relevant information on an individual, the ISA will have access to all other information held in relation to that person so that it can make a fully informed decision about the person's suitability for a particular post or position.

11. If someone is barred under the new vetting service, will they have the right to appeal?

Yes, in all but the most serious cases an individual can appeal to the Care Standards Tribunal. If the appeal is unsuccessful they have the right to apply for a review after a certain amount of time (this period is not yet decided but is likely to be around 10 years, as now, with a shorter period for young people on the Barred Lists). An individual will only be taken off the Barred Lists following a review if they demonstrate that they are no longer a risk to children or vulnerable adults.

Those who have committed the most serious sexual offences against children or vulnerable adults will be barred with no right to make representation or to appeal the decision. However, they will be able to apply for a review of their case after the minimum barred period.

- 12. Will people be able to ‘opt out’ of the vetting and barring scheme?**
 No – not while working or volunteering with children and/or vulnerable adults, as it will be an offence to do so without being registered by the ISA.

Should an individual no longer wish to work or volunteer in a regulated capacity then they may opt out of the scheme by writing to the ISA. However, if that person decided at a later stage to re-enter regulated activity then they would be required to re-register, as the ISA would not have been monitoring them while they were out of the scheme.

Impact of the ISA on employers

- 13. How will employers check employees and potential employees’ ISA status?**

Current employees: Once their worker is registered, the employer will receive a certificate showing the person’s ISA status (plus any information revealed during the CRB searches). Subsequent employers will be able to check their ISA status online free of charge (unless they are under a duty to apply for an Enhanced CRB check).

Potential employees: Employers will be able to check a potential employee’s ISA status once. This is done online using the employee’s unique registration number and is free of charge.

- 14. Can employers employ someone whilst they are waiting for their ISA status to be approved if they are supervised?**
 No. If an employer wishes to employ a person who will be working with children or vulnerable adults then they must ensure that the individual is ISA-registered before they start work.
- 15. Should employees individual ISA registration numbers be kept on file by organisations?**
 No. There is no reason for individuals’ registration numbers to be kept of file as organisations will be informed if there is a change to an individual’s status. Keeping numbers on file could cause data protection issues.
- 16. If a staff member leaves your organisation do you need to inform the ISA that they have left so that you are no longer informed of any change to their status?**
 This is up to the organisation, but you can de-register your interest in an individual. If the status of someone you have registered an interest in changes the ISA will contact you and check that you have a legitimate reason for being notified of this change before informing you.

- 17. If an organisation has a large number of employees and/or volunteers do they really need to all be ISA registered?**
 Any person in a job role, whether it is voluntary or paid employment, that involves a controlled or regulated activity must be ISA registered by the published role out dates, otherwise both the employee/volunteer and employer will be breaking the law and liable to prosecution.
- 18. If a young person under the age of 18 is undertaking a work placement in your organisation do all staff members need to be ISA registered?**
 No. As this is a working environment and not a regulated or controlled activity staff members do not need to be ISA registered. The only circumstance where a staff member may need to become ISA registered is if they undertake any activity with the young person that is regulated or controlled.

Minimum age of registering with the ISA

- 19. Do people under the age of 18 need to register with the ISA?**
 The minimum age of registration is 16, however registration is only required if a person between the ages of 16 and 18 is working in full time employment and undertaking a regulated or controlled activity.
- If a young person between the ages of 16 and 18 is in full time education and is undertaking a regulated or controlled activity as part of an NCC or a work placement they do not need to be ISA registered.

CRB

- 20. Will CRB disclosures still be required?**
 When an employer checks a potential employee with the ISA, it will only show up whether or not that person is ISA registered, indicating that the ISA has found no known reason why the applicant should not work with children or vulnerable adults. It also means that that person's status will be reviewed if any new information becomes available.
- It does not check for malpractice or all criminal convictions, and therefore registration with the ISA does not guarantee that a person has no criminal history.
- A CRB check provides a fuller picture of a person's criminal history and allows employers to make informed decisions as to whether that person is suitable for a particular role or position.

Job role specific ISA questions

21. **If an artist has a one-off visit to a school to work with young people and a teacher is present do they need to be ISA registered?**
 No they do not need to be ISA registered as the frequency is not of that stated for a regulated or controlled activity (once a week or four times within a 30 day period.)
22. **If someone who works in an archive looks after current or semi-current records about young people or vulnerable adults would this be a controlled or regulated activity?**
 This would be considered as a controlled activity.
23. **Does an organisation's trainer or first aider/s need to be ISA registered?**
 Yes, if they are going to be potentially carrying out first aid on a young person under the age of 18 or a vulnerable adult.
24. **If someone came from abroad to work with young people or vulnerable adults in a controlled or regulated activity, do they need to be ISA registered?**
 Yes. They could register in their own country before coming to work if they have the resources to do so, otherwise they can apply in England before undertaking the work. The ISA will conduct relevant record checks with the individual's country of residence.
25. **Will the new vetting service include Northern Ireland, Scotland and Wales?**
 The service will extend to England, Wales and Northern Ireland, although arrangements for applications and appeals may differ slightly in Northern Ireland.

 A separate but aligned scheme is being set up in Scotland under the Protection of Vulnerable Groups (Scotland) Act 2007. Anyone included on a Barred List in Scotland will also be barred from working with children and vulnerable adults across the UK.
26. **If a freelancer wants to work on projects over the summer of 2010 when the initial phase of ISA registration will begin, when will they need to register?**
 They will have from July 2010 – November 2010 to become registered, therefore this should not affect freelancers' work over the summer.

Making a referral

27. What is relevant conduct?

Relevant conduct is that which endangers or is likely to endanger a child or vulnerable adult. This includes emotional, psychological, sexual and verbal abuse, as well as financial abuse, for example unauthorised withdrawals from a vulnerable adult's account, theft and fraud. It is also neglect, which would include failing to meet basic physical and/or psychological needs including treatment of medical conditions.

28. Who has a legal duty to refer?

The Safeguarding Vulnerable Groups Act 2006 and the 2007 Order (Northern Ireland) set a legal duty for the following groups to refer information to the ISA where there is a concern involving vulnerable adults or children.

- Regulated activity providers (any person who is responsible for the management or control of regulated activity for an organisation and who engages another person to perform that regulated activity).
- Personnel suppliers.
- Local authorities.
- Health and Social Services (HSS) bodies.
- Education and Library Boards.
- Keepers of registers.
- Supervisory authorities.

29. When do I refer?

A referral should be made to the ISA when a regulated activity provider, such as an employer or volunteer coordinator, removes a person from regulated or controlled activity, or that person resigns, retires, is made redundant or is transferred to a position which is not regulated or controlled activity because the regulated activity provider 'thinks' that a person has carried out one or more of the following:

- Engaged in relevant conduct
- Satisfied the Harm Test. This is met when a relevant person (an employer) believes that an individual may harm a vulnerable adult or a child, or may cause them to be harmed, put them at risk of being harmed or may incite another person to harm them.
- Received a caution or conviction for a relevant offence.

If the above criteria have been met, the information must be referred to the ISA. This is regardless of whether the action or offence was in connection with their work. The referral should be made to the ISA when the employer has gathered sufficient evidence as part of their own investigations.

30. How do I make a referral?

By using the ISA Referral Form which is available at http://www.isa.gov.org.uk/PDF/SVGA_referral_form_final.pdf.

How will the new vetting system improve on the current scheme?

31. What improvements will the ISA make?

- One list will replace the existing Protection of Children Act (PoCA) List, List 99 and the Protection of Vulnerable Adults (PoVA) List, as well as the current system of Disqualification Orders, which is operated by the criminal justice system.
- The new service is designed to ensure that anyone who presents a known risk to vulnerable groups is quite simply prevented from working with these groups.
- When new information becomes known about an ISA-registered individual who is in the workforce, the ISA will automatically be informed. The ISA can then reconsider the suitability of this person. Assuming their employer has registered with them for notification, the ISA will immediately advise them if this employee has been put on one of the Barred Lists.
- ISA registration will be required for those wishing to work in several sectors not covered under the current schemes. In particular this improves upon the existing Protection of Vulnerable Adults (PoVA) scheme, which applies only in regulated social care settings.
- As well as integrating the existing lists, the vetting service will bring together information from employers and voluntary organisations, local authority social services, professional bodies such as the General Medical Council and General Social Care Council, and inspectorates such as Ofsted and the Healthcare Commission.

If you are unsure whether a specific job role or job roles in your organisation involve regulated or controlled activities and should therefore be ISA-registered, please check with the ISA by calling the helpline on 0300 123 1111

Leading strategically, we promote best practice in museums, libraries and archives, to inspire innovative, integrated and sustainable services for all.