



*Changing Society to put the
Hope of Christ at its Centre*

**Briefing Paper on the
New Independent Safeguarding Authority
DECEMBER 2008**



*Changing Society to put the
Hope of Christ at its Centre*

Christian Concern for our Nation
Contact Andrea Minichiello Williams
020 7467 5427
07712 591164
andrea@ccfon.org

Short Briefing Paper on the New Independent Safeguarding Authority and How it will Impact Churches

Impact: Paid and Volunteer Children's Workers in Churches and Christian Organisations

There is a new vetting and barring system that will impact on all volunteers and paid employees who work with children or vulnerable adults, which will include those in paid and volunteer roles within Churches and Christian organisations.

To understand this new system, it is worth first considering the background to how it arose in the first place. The main impetuses for change were the horrific murders of Jessica Chapman and Holly Wells resulting in the conviction of Ian Huntley on 17th December 2003, which led to calls for an inquiry. An inquiry was then set up called the Bichard Inquiry, which reported in June 2004.¹ One of the recommendations of the report was that new arrangements should be introduced requiring those who wish to work with children or vulnerable adults, to be registered by a central body who would have the responsibility for judging police intelligence for prospective workers.

As a result of the Bichard Inquiry, the Safeguarding Vulnerable Groups Act 2006 ('SVGA 2006')² now provides the legislative framework for a new vetting and barring scheme for people who work or act as volunteers with children or vulnerable adults.

This new vetting and barring system will be operated by a newly-formed central body called the Independent Safeguarding Authority (ISA)³ and originally known as the Independent Barring Board in the legislation.⁴ The ISA has been created to help prevent unsuitable people from working, or volunteering to work, with children and vulnerable adults. The ISA will perform this function by working in partnership with the Criminal Records Bureau (CRB), which will gather relevant information concerning every person who wants to work or volunteer with children or vulnerable adults.

The new vetting system will treat paid and unpaid voluntary work in the same way. This system makes an important distinction between 'regulated activity' and 'controlled activity'. It will be a criminal offence to take someone on in a regulated activity without checking their status and obtaining ISA registration. In addition, it will be mandatory to check the status of someone before the person works or volunteers in a controlled activity. A "controlled activity" is where there is frequent or intensive support work in general health settings, the NHS or further education.⁵

The main impact for Churches and Christian organisations will be in relation to a regulated activity, not only for paid employees but also any volunteers who work with children or vulnerable adults. A regulated activity includes any activity of a specified nature that involves contact with children or vulnerable adults frequently, intensively and/or overnight. Such activities include teaching, care, supervision, advice, treatment and transportation. This means that Church and Christian organisations activities for

children or vulnerable adults for both volunteers and employees will be caught and will require both prospective workers and volunteers to be registered by the ISA.

The ISA factsheet says that a 'regulated activity' is an activity that is undertaken frequently (once a month or more) or 'intensive' where it takes place on three or more days in a 30-day period.⁶ The SVGA 2006 states that an activity that is carried out *frequently* by the same person or where the 'period condition' (time period) is satisfied is a regulated activity. The period condition is satisfied if the person carrying out the activity does so on more than two days in any period of 30 days. This also applies if the person carrying out the activity does so at any time between 2 a.m. and 6 a.m., and the activity gives the person the opportunity to have face-to-face contact with children or vulnerable adults (as the case may be).⁷

The Act does not clarify what 'frequently' means, but the ISA fact sheet defines it as once a month or more. This also means that sleepovers in a church or elsewhere will be covered, due to the '2 a.m. to 6 a.m.' provision. The advice on time periods could be improved and further clarified, but the simplest rule for churches to operate by, is to assume that any volunteer or paid employee who works with children or vulnerable adults will need to be ISA registered.

The system will come into operation on 12th October 2009, but is expected to be phased in over a period of 5 years; however no details are currently available from the ISA as to how the transition period will operate in practice.⁸

It will cost £64.00 to register a paid employee as a one-off fee, but volunteers can register free.

There will be two barred lists: one for those who are prohibited from engaging in regulated activity with children (the 'children's barred list') and one for those who are disqualified from engaging in regulated activity with vulnerable adults (the 'adults' barred list').

Four types of cases will be included in the barred lists. Firstly, an automatic inclusion in the barred list will apply for the most serious cases with no right to make representations and no right of appeal. The criteria for this list are likely to include being cautioned or convicted of the most serious offences against vulnerable individuals. Secondly, serious offences against vulnerable individuals, where there is a right of representation for the employee or volunteer. Thirdly, where an individual is barred because of concerns about his/her behaviour where there is information available that an individual has engaged in behaviour that harms, attempts to harm, puts at risk of harm, or incites another to harm a child or vulnerable adult; involves child pornography or inappropriate conduct involving violent pornography; or is of an inappropriate sexual nature involving a child or a vulnerable adult. And fourthly, where information is given that an individual may be at risk of harming, attempting to harm, putting at risk of harm or inciting another to harm a child or vulnerable adult (although the individual has yet to engage in such behaviour). In this case, the ISA Board will, if minded to bar, allow the

individual to make representations, and having considered any such representations decide whether the individual should be included in one or both barred lists.⁹

In answer to the question, whether someone has been barred under the new vetting system has a right of appeal? The ISA has stated as follows:

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.¹⁰

The ISA have produced some simple fact sheets,¹¹ but no more detail is yet available on the type of criteria that will be used for the ISA to review such decisions or as to how this review will relate to the appeal to the Care Standards Tribunal.

The legislation¹² allows for regulations to be made governing the procedure that the ISA must follow in making its barring decisions. This also enables time limits to be specified within which decisions must be taken, along with time limits within which the ISA must carry out reviews and representations.¹³

There are many details still to be decided in relation to the operation of the ISA and it is advisable to watch the ISA website for any changes in the arrangements prior to 12th October 2009.¹⁴

The administrative burden may be of concern, especially to the smaller churches, who may wish to ask the ISA what practical assistance will be available to help, particularly as there already appear to be communication difficulties before commencement on 12th October 2009: the low cost telephone line appears to be an automated service and the ISA also indicate they receive 'a high volume of e-mails each day so it may take some time to respond'. However, the newsletter of November 2008 indicates that they expect to have telephonists to answer calls before Christmas.¹⁵

Of course it goes without saying that it is vitally important to protect children or vulnerable adults from the risk of abuse. But we have grave concerns that this will create an onerous burden for Churches and Christian organisations. We also know that many Christians, since becoming born again, leave behind them a messy history which might now preclude them from working with children. There are many examples of the greatest saints in history who would be precluded from working within the system that is being set up here because of their antecedent history. The concerns about behaviour

that are taken into account and the perceived risk categories into which individuals are placed, are obviously areas which are less clear cut and where the potential risk of being wrongly accused lies, so that there is a greater need for checks and balances.¹⁶ However, the response to such doubts may be the argument that there would be the opportunity to make representations and appeal to the Care Standards Tribunal, except where automatic barring applies. Whilst each case may be decided on its own merits, it is not at all clear what criteria the ISA will be using to make its decisions, and this together with the need for checks and balances needs further consideration.

Churches and Christian organisations may wish to consider how such matters may affect any employees or volunteers and whether they wish to make any general representations to the ISA in relation to any particular areas of concern, as the ISA are still in the process of refining the details on how the system will operate in practice. Their latest newsletter, November 2008, intimates that they do not expect to provide general guidance—including the ISA decision-making process—until spring 2009, so there may still be a window of opportunity to raise concerns.¹⁷ The ISA news sheet also refers to the possibility of speakers on this topic being available ‘with enough advance notice, and if you have a potential audience of 100 people or more’.¹⁸

Churches are very likely to have safeguarding practices and policies in place and to have undertaken enhanced CRB checks for specific jobs or roles already. It is presumed that the ISA will indicate what the situation will be with regard to ISA registration for those who already have enhanced CRB checks in relation to the phasing-in of the legal requirement of ISA registration. It would be worthwhile for churches to monitor the ISA website between now and 12th October 2009, to ensure that the legal requirement for ISA registration is met.¹⁹

This briefing is designed to alert Churches to this legislative change and to inform them of its implications. There are a couple of Charities that specialise in advice for Churches on Child Protection and safeguarding issues, which may be able to assist with further information.²⁰

End notes

¹ See: <http://police.homeoffice.gov.uk/publications/operational-policing/bichard-inquiry-report?view=Binary>

² See SVGA 2006 at: http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060047_en_1. See also the explanatory notes at: http://www.opsi.gov.uk/ACTS/acts2006/en/ukpgaen_20060047_en_1.

-
- ³ See: <http://www.isa.gov.org.uk/Default.aspx?page=0>.
- ⁴ See: <http://www.isa.gov.org.uk/default.aspx?page=9>.
- ⁵ See ISA factsheet http://www.isa.gov.org.uk/PDF/283896_ISA_A4_FactSheetNo3.pdf.
- ⁶ See: http://www.isa.gov.org.uk/PDF/283896_ISA_A4_FactSheetNo3.pdf.
- ⁷ See Schedule 3, Parts 1, 2 and 3 at: http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060047_en_8#sch4-pt1.
- ⁸ See 'Frequently asked questions' at the ISA's website: <http://www.isa.gov.org.uk/default.aspx?page=4>. See also 'Frequently asked questions' of the CCPAS: <http://www.ccpas.co.uk/Documents/ISA%20FAQs.pdf>.
- ⁹ See explanatory notes at points 8 and 26: http://www.opsi.gov.uk/ACTS/acts2006/en/ukpgaen_20060047_en_1.
- ¹⁰ See: <http://www.isa.gov.org.uk/default.aspx?page=326>.
- ¹¹ See: <http://www.isa.gov.org.uk/default.aspx?page=303>.
- ¹² See paragraph 15 of Schedule 3 of the SVGA 2006.
- ¹³ See paragraph 15 of Schedule 3 at: http://www.opsi.gov.uk/ACTS/acts2006/ukpga_20060047_en_7#sch3 and see point 30 at: http://www.opsi.gov.uk/ACTS/acts2006/en/ukpgaen_20060047_en_1.
- ¹⁴ See: <http://www.isa.gov.org.uk/default.aspx?page=0>.
- ¹⁵ See: <http://www.isa.gov.org.uk/default.aspx?page=284> regarding the information line (0300 123 1111) and in connection with the high volume of e-mails, see: <http://www.isa.gov.org.uk/pdf/VBSStakeholdernewsletter-Nov08.pdf>. The newsletter of November 2008 refers to 'an automated service', which is expected to have live operators 'before Christmas'.
- ¹⁶ For example, rogue internet dialers secretly download virus software to transfer dial-up internet connections from low-cost or freephone numbers to expensive 090 premium rate numbers. The rogue dialer is installed on your computer without your knowledge, usually when you open a spam email or visit a website where the software is hidden. You can run up vast bills—often running into several hundred pounds per month, see: http://www.consumerdirect.gov.uk/watch_out/scams/phone-scams/, <http://www.premium-rate-number.com/premium-rate-guide/icstis/diallers.html> and http://www.theregister.co.uk/2005/04/12/smut_dialler_sentence_italy/. This may be a pornography dialler scam. Such a scam may potentially lead to an innocent victim being wrongly accused of inappropriate behaviour; see for example: <http://news.scotsman.com/computerviruses/Internet-scam-hits-300-a.2630918.jp>, http://www.bbc.co.uk/northernireland/oyb/goods_services/premium_rate_calls2.shtml and <http://www.independent.co.uk/money/invest-save/trojan-horse-viruses-send-telephone-bills-soaring-544670.html>. Trojan horse viruses have also been known to upload pornographic material to the computer of an unsuspecting victim.
- ¹⁷ See 'Scheme Guidance' note heading in the November 2008 newsletter: <http://www.isa.gov.org.uk/pdf/VBSStakeholdernewsletter-Nov08.pdf>.
- ¹⁸ See 'Speak up' heading in the November 2008 newsletter: <http://www.isa.gov.org.uk/pdf/VBSStakeholdernewsletter-Nov08.pdf>.
- ¹⁹ See: <http://www.isa.gov.org.uk/default.aspx?page=0>.
- ²⁰ CCFON does not recommend any organisation in particular and it is entirely up to individual churches to choose a source of information and advice. They do so at their own risk—these links are given for information purposes only. There may also be membership fees in relation to these organisations. For further information, see the Churches Agency for Safeguarding (CAS), which describes itself as 'an ecumenical organisation used by denominations and Christian organisations to make effective recruitment decisions through the Criminal Records Bureau (CRB) Disclosure process'. It has a lists of its members, who are said to include the Baptist Union of Great Britain, the Methodist Church, the United Reformed Church, the Society of Friends and the Congregation Federation: <http://www.churchsafe.org.uk/> (home page) and <http://www.churchsafe.org.uk/page13.htm> (links to contacts in the churches). The website also contains links to other websites of organisations said to be members or informal members: <http://www.churchsafe.org.uk/page11.htm>. See also the Churches' Child Protection Advisory Service (CCPAS), which describes itself as 'the only independent Christian charity providing professional advice, support, training and resources in all areas of safeguarding children and for those affected by abuse': <http://www.ccpas.co.uk/> (home page).