

Briefing for MPs on the Independent Safeguarding Authority

1. Introduction

We are a group of Trade Unions and Professional Organisations who collectively represent **several million members** who will be affected by the proposed introduction of the new Independent Safeguarding Authority (ISA) and in particular the 'Vetting and Barring Scheme'.

All our organisations support the principle of safe and effective public protection and we welcome steps being taken by the Government to improve safeguarding and to protect children and vulnerable adults.

We note the Government's decision on 13 September 2009 to ask Sir Roger Singleton, ISA Chair, to undertake a review of the scheme's child protection measures. We have written to Sir Roger to ascertain the likely impact of his review on the scheme in its totality. We are concerned that the Vetting and Barring Scheme is coming into force before the outcomes of this review are considered.

Our organisations share three main concerns surrounding the approach and implementation of the ISA scheme which are set out in this briefing. These are:

- Duplication of registration
- The cost to individuals of registration
- The right to a fair hearing

It is vital that these issues are addressed before the implementation of the ISA scheme, to ensure that the most appropriate, fair, and workable system is put in place to protect the public.

In addition, given the severe delays that were encountered when the Criminal Records Bureau (CRB) scheme was first introduced, we are concerned that similar delays will occur when ISA registration is introduced. This could lead to delays in applicants having their jobs confirmed and being able to commence work, as it will be dependant on a CRB & ISA check

We are calling on Members of Parliament to raise these concerns with the relevant Ministers in the Home Office, the Department of Health, and the Department for Children, Schools and Families, all of whom will have a role in taking forward the implementation of the scheme.

In particular, we are calling for the Government to ensure the following:

- **To make it mandatory for employers to pay for the registration fee for the scheme rather than it being borne by the applicant.**
- **That the ISA process does not duplicate registration and costs for those already on a relevant professional register.**

2. What is the Independent Safeguarding Authority?

The ISA was established in January 2008 after being created by the Safeguarding Vulnerable Groups Act 2006. It is a non departmental public body that was created following the recommendations of the Bichard Inquiry into the Soham murders.

Everyone working or volunteering with vulnerable adults or children will be required to register with ISA. These changes will therefore have an impact on over **11 million people** in England, Wales and Northern Ireland. A separate but aligned scheme is being set up in Scotland under the Protection of Vulnerable Groups (Scotland) Act 2007.

The scheme will replace existing lists such as the Protection of Vulnerable Adults (POVA) list, the Protection of Children Act (POCA) list and List 99 (a list of people considered unsuitable for work with children, held by the Department for Children, Schools and Families) and its remit will be expanded to include previously unregulated employment categories.

Current schemes only list those individuals who are barred from employment. In contrast, the new ISA scheme will be a positive list in that everyone working or volunteering in the relevant areas will have to be on the ISA register to gain employment and work. Applicants who are found to be unsuitable will be placed on an ISA barred list.

From **July 2010**, new entrants to the workforce and those moving jobs will be required to join the scheme before starting that role. Members of the existing workforce will be phased into the scheme over a five year period.

3. Duplication of Registration

Many individuals who will be subject to the new ISA scheme are already included on a professional register and pay an annual fee. The new ISA scheme will duplicate the existing regulation of public protection for almost **4 million public sector workers**.

We believe that individuals who are already on a professional register should not also have to register with ISA.

Currently there are no **practical** arrangements in place for co-operation between the existing professional regulators and the ISA scheme. The Council for Healthcare Regulatory Excellence the overarching regulator for health professions, shares many of our concerns regarding the operation of ISA. We believe that those individuals registered with an existing professional regulator should not in addition be subject to ISA. We believe that this duplication over complicates matters and could have a detrimental effect on public protection.

It is possible to establish a system of co-operation with existing regulatory bodies which would enable ISA to continue to fulfill its statutory function but recognise the existing structures for public protection. We would welcome the opportunity to discuss this and our ideas with government.

Removing this duplication would also bring the overall cost of the scheme down and ensure a more proportionate approach which would be in the best interest of public protection.

We are calling on the Government to ensure that the ISA process does not duplicate existing registration and costs for those already on a relevant professional register.

4. The cost to individuals of registration

Individuals in paid employment will be required to pay **£64** in England and Wales and **£58** in Northern Ireland, when applying for registration with the ISA scheme. The cost is yet to be determined in Scotland. We are concerned that these figures are significantly higher than the original estimated costs of £20 which were predicted in the government's public consultation document

Under existing arrangements, it is the responsibility of the employer to undertake criminal record checks and ensure an individual is professionally registered, where appropriate. It is usually included in the employer's recruitment processes and costs. However, the ISA proposals will alter this and move the cost on to the prospective individual employee.

We have particular concerns that the registration fee proposed for ISA will have a disproportionate and detrimental impact on the low-paid and part-time workers, most of whom are women; a school cleaner or a healthcare assistant will be expected to pay the same amount as a head teacher or chief executive. We believe that the ISA fee is likely to impact on recruitment. It could also influence whether or not an individual chooses to work in public services if working in schools and hospitals costs more than working in jobs where registration is not required. We have seen no evidence that this has been considered by the architects of ISA, nor seen their equality impact assessment.

We are concerned about the impact this could have on the support and services provided to vulnerable groups, if people choose not to apply. It is vital that the system that is put in place does not have a negative impact on public sector service delivery.

We welcome the fact that volunteers do not have to pay to register with ISA. However the cost has been developed based on 11 million people, in effect those on a salary are funding the registration costs of volunteers. Those who register as volunteers will be required to pay the registration fee if they subsequently take up paid employment where ISA registration is required. This could deter individuals from taking up paid employment. Our view is that there should be no retrospective obligation to pay the registration fee. ISA has stated that this is a one-off registration fee. There is therefore no reason why the state or employers should not pay for an individual's registration fee.

We are calling on the Government to make it mandatory for employers to pay for the registration fee for the scheme rather than it being borne by the applicant

5. The right to a fair hearing

Our organisations have significant concerns about the standards by which the ISA will make judgements on when an individual should be placed on the barred list (those prevented from working with vulnerable individuals). We believe it to be unfair and in breach of the Human Rights Act. This is because it will be a paper exercise and an individual's only opportunity to defend themselves and cross examine the evidence will be in a submitted statement. Unsubstantiated allegations could lead to someone having their livelihood taken from them. There is a risk that this process could lead to unnecessary and costly legal challenges.

Every other regulator hears cases in public (excluding ill health cases). ISA will not operate in a similar manner and seems at odds with other government requirements which seek patient and public engagement, openness, transparency and adherence to Human Rights legislation.

Whilst we respect the principle that members of the public should be able to refer their concerns to the ISA or another agency, it is important that they have also made their concerns known locally for example with an employer or social services so that these organisations can conduct their own investigation, try to resolve any concerns and provide the right to a fair hearing for the subject of the complaint. Whilst ISA has a role to play it cannot become burdened with inappropriate or malicious complaints which prevent them from undertaking their statutory function. We are concerned that no guidance has been produced to explain fully what should and should not be referred to ISA.

We agree that those individuals who pose a risk to vulnerable groups should be prevented from working in these environments. However, it is vital that everyone has the right to a fair hearing, and that any new systems or processes comply with existing best practice and with all legislation, including the Human Rights Act.

We are calling on the Government to ensure that everyone has the right to a fair hearing, appeal, and is provided with specific details about any charges.

6. Conclusion

Our organisations are committed to public protection; every day our members care for the most vulnerable in society and are committed to public services. We hope that you will support us in ensuring this untested scheme does not have an unforeseen detrimental impact on staff or on public safety. We are committed to working with Government to deliver effective public protection. However we believe ISA in its current form will not achieve this; it will be burdened down in case work, as the system is based on the false belief that everyone is a risk.

As organisations representing those who will be most affected by the introduction of the ISA scheme, we are calling on MPs to:

- Write to the Home Office, Department of Health and the Department for Children, Schools and Families to raise these concerns.
- Raise this issue in Parliament with the relevant Ministers. We would be happy to provide suggestions of possible Parliamentary Questions, and to provide any supplementary information for debates and questions in the Houses of Parliament.
- Support our joint principles which are detailed in annex 2
- Sign EDM 1875 on the Independent Safeguarding Authority.

For further information, or to arrange for a meeting to discuss this issue, please contact:

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Annex 1

Full list of the TUC coalition on Independent Safeguarding Authority

Allied Trades and Technicians
Aspect
Association for College Management
Association of Educational Psychologists
Association of Managers in Education
Association of Teachers and Lecturers
British Association of Occupational Therapy
British Dental Association
British Orthoptic Society Trade Union
Chartered Society of Physiotherapy
Community and District Nursing Association
Educational Institute of Scotland
FBU
FDA
Fire Brigades Union
GMB
Hospital Consultants and Specialists Association
NAPO
National Association of Schoolmasters Union of Women Teachers
National Union of Teachers
Nation
Prison Officers' Association
Prospect
Public and Commercial Services Union
Royal College of Midwives
Royal College of Nursing
Society of Radiographers
Society of Chiropodists and Podiatrists
TUC
UCAC
Union of Construction, Allied Trades and Technicians
UNISON
Unite
University and College Union

Annex 2

Principles

The following principles have been drawn up in partnership by the Chartered Society of Physiotherapy (CSP), GMB, Royal College of Midwives (RCM) Royal College of Nursing (RCN), National Union of Teachers (NUT), Society of Radiographers, UNISON and Unite. They relate to the introduction of the Independent Safeguarding Authority (ISA). As organisations we collectively represent over 3 million members who will be affected. All of our organizations support the principle of safe and effective public protection, and our principles seek to reflect this, but also identify areas of concern surrounding the approach and implementation of the ISA scheme.

1. Robust and effective national and cross-border mechanisms must ensure public protection across the UK. The role and remit of over arching regulators and ISA and the relationship between both organisations should be clearly defined.
2. There should be no duplication of regulatory mechanisms that would lead to over-regulation. Clear arrangements should exist for the secure transfer of relevant information between existing regulators, employers and ISA.
3. Individuals should not have to pay twice for public protection. All set up and running costs associated with ISA should be met by employers and/ or governments. Individual employees should not have to fund the proposed ISA fee; in particular we believe that the £64.00 registration fee in England and Wales, and £58 in Northern Ireland (fee in Scotland as yet to be announced) if applied, will have a disproportionate impact on low paid women workers and those working part-time.
4. The barring process should adhere to the principles of natural justice and all relevant legislation and not on unproven allegations. This must include the right of individuals to a fair hearing, appeal and to be provided with specific details about charges and relevant supporting information. An individual who suffers loss or damage as a result of a mistake is entitled to seek compensation.
5. Information and data in respect of all ISA processes must be secure and the systems in place must have the confidence of all those who work with vulnerable adults and children.
6. ISA systems and process must not, even unintentionally, deter or disincentivise appropriate individuals from seeking roles that will involve working with or caring for vulnerable adults or children.
7. ISA systems and process should be subject to equality and diversity impact assessment.