

The voice of the Voluntary Arts

## Child Protection Part III – An Update

Briefings 82 and 83, published in September 2004, introduced a number of child protection procedures and recommended some simple ways of putting them into practice. Since then, new legislation has been introduced to help clarify the responsibilities of all those working or volunteering with children. This briefing explains the ramifications of these changes and suggests a range of precautions to help you ensure the safety of every child that comes into contact with you or your organisation.

While many of the good-practice measures described in this briefing are suitable for all organisations, the references to recent legislation are specifically for groups in England and Wales. If you are based in Scotland, Northern Ireland or the Republic of Ireland, and want to know more about how child protection regulations apply to you, contact Voluntary Arts Scotland – [info@vascotland.org.uk](mailto:info@vascotland.org.uk), or Voluntary Arts Ireland – [info@vairland.org](mailto:info@vairland.org).

This briefing should be read in conjunction with:

- VAN Briefing 82: **Part I – An Introductory Guide** (September 2004);
- VAN Briefing 83: **Part II – Putting Child Protection into Practice** (September 2004).

These are available to download from the VAN website at [www.voluntaryarts.org](http://www.voluntaryarts.org).

### A. What has happened since 2004?

#### I. The Children Act 2004

The Children Act 2004 puts into law the recommendations of the *Every Child Matters* report, published following the murder of Victoria Climbié in 2001. The report's key message was that children can only be properly safeguarded if education, health and social services bodies – and the organisations that provide services on their behalf – share responsibility and work together effectively. It places a statutory duty on these people, bodies and organisations to make arrangements to safeguard and promote the welfare of children.

The Act, which received Royal Assent on 15 November 2004, created a **Children's Commissioner** in each of the four nations of the UK. The job of the Commissioners is to promote awareness of the views and interests of children, including physical and mental health, emotional well-being and protection from harm and neglect.

The Act also created **Children's Services Authorities (CSA)**. These are any type of council in England and the Isles of Scilly (county/district/metropolitan etc.). In Wales they are county councils or county borough councils, and in Scotland they are local authorities. These CSAs were set up to ensure that key local services work collaboratively. Unfortunately, although the statutory regulations came into force on 1 April 2006, few authorities were consulted during the creation of the Act, and many were slow to realise that the Act made them responsible for ensuring that everyone working with children within their remit was operating safely.



To help fulfil their legal responsibilities, each Children's Services Authority was told to establish a **Local Safeguarding Children Board** (LSCB) for their area, consisting of representatives of the CSA and key partners – including other departments within the local authority, health bodies, the police and others. The job of the LSCB is to co-ordinate the work of each person or body represented on it. It replaces the former Area Child Protection Committees (ACPCs).

## 2. The Safeguarding Vulnerable Groups Act 2006

The Safeguarding Vulnerable Groups Act, which was created in response to the Bichard Inquiry following the 2002 Soham murders, received Royal Assent on 8 November 2006.

The **Bichard Inquiry** found that:

- inconsistent decisions were being made by employers on the basis of Criminal Records Bureau (CRB) disclosure information;
- CRB disclosure information is only certain to be accurate on the day of issue;
- there are inconsistencies between the current lists of people barred from working with vulnerable groups;
- the current barring system is reactive to harmful behaviour rather than preventative;
- there are inconsistencies between police authorities in the disclosure of police information.

The new Act, which will be phased in from autumn 2008 in England and Wales, introduces a new centralised vetting and barring scheme. This will combine the current lists of people barred from working with children and vulnerable adults (see below – all of which currently operate under different legislation and with different criteria and procedures) into two barred lists. One will be for those who are barred from working with children, and the other for those who are barred from working with vulnerable adults.

The **Safeguarding Vulnerable Groups Act** will combine the following lists:

- List 99 (for people banned from working as teachers);
- the Protection of Children Act (POCA) list;
- the Protection of Vulnerable Adults (POVA) list;
- disqualification orders made by a court barring individuals from working with children.

Under the new law there are a series of criminal offences, including employing someone to work with children and vulnerable adults (in a paid or voluntary capacity) if you know that that person is barred. In addition, failure to make a background disclosure can result in fines of up to £5,000.

The new law specifies a number of 'regulated' and 'controlled' activities that might pose a risk to children, and which the new vetting and barring scheme will apply to.

**Regulated activity** covers any activity where the contact with children is of a specified nature or takes place in a specified place, as laid down in the Act. It applies where the activity is frequent or takes place on three or more days in a 30-day period. In practice, this will cover most activities involving children, including social work, social care, teaching, training, sports coaching, chaperoning, workshop facilitating and so forth, whether paid or unpaid.

**Controlled activity** covers support work in general health settings, further education settings and adult social care settings. It also covers work which gives a person the opportunity for access to sensitive records about children and vulnerable adults, including education and social services records.

The new vetting and barring scheme will continue to operate through the CRB.

**Note:** Certain provisions in the new Act, such as the establishment of an Independent Barring Board (IBB), will extend to Northern Ireland, with the intention that the remainder will be mirrored by separate Northern Ireland legislation. The Act does not extend to Scotland, but it does provide for appropriate information sharing to be established with the parallel scheme that is to be set up in Scotland.

## B. What do we need to do to stay safe?

The legal developments that have taken place since 2004 have been designed to coordinate a range of measures to ensure that no child slips through the net. You can never be 100 per cent safe, but by following the example of the legislation and combining a number of measures you can minimise the risk that children face when coming into contact with you and your organisation.



## I. Take a range of measures – do not just rely on disclosure

Getting a disclosure, while an important element of child protection, is in itself imperfect. As the Bichard Inquiry showed (see *previous page*) it can be slow, inaccurate, and in any case is only relevant on the day it is issued.

The following list comprises the bare minimum measures you should be taking in order to stay safe:

- **Child protection policy** – the important thing to remember with a child protection policy is that it must be tailored to your organisation and what you do, not copied from another organisation that may have a different set-up and different needs (see *VAN Briefings 82 and 83 for more details*).
- **Project work** – do a simple risk assessment at the outset, and monitor risk throughout the project. Identify the person or people who will be responsible for co-ordinating child protection procedures for the project from its inception to its conclusion and beyond. As these people will be making decisions about children, holding information about children and working with children, it is imperative that they are given clear job descriptions that note whether or not they require an enhanced disclosure. This applies whether they are a volunteer or paid member of staff – there is no distinction in the law.
- **Produce simple job descriptions** – for *all* prospective staff and volunteers, specifying their duties and responsibilities, the nature of the contact they will have with children, and the behaviour expected of them. You need to decide what will constitute regular or substantial contact. Will the person have the opportunity to build a relationship with children day on day or week on week? Or will the person be in close contact with children in an activity where they may exchange email addresses to continue contact at a later date? Where you feel that applicants will have regular or substantial contact with children, include in the job description a notification that an enhanced disclosure will be required and give the name of the person or umbrella body that will be processing it. If you don't have job descriptions for your current staff or volunteers, or if these are unclear, create new ones (making sure not to breach the terms of their employment contracts).
- **Self-certification form** – if you are asking someone to undergo a CRB disclosure you must give applicants a self-certification form with an opportunity to state whether or not they have been convicted of a criminal offence or been the subject of a 'Caution' or 'Bound Over Order', and if so state the date and nature of the offences. You should tell him/her that it is an offence to give incorrect information about spent or unspent convictions on this type of form – information that might appear later on a disclosure. An example self-certification form is available on the CRB website (see *Further Resources section for website details*).
- **Storage and handling of information** – before you can ask a prospective staff member or volunteer details of his or her background and before you apply for a disclosure, you must first know what you are going to do with that information and who is going to hold it. A 'storage and handling of information policy' is essential. If you are going to require someone to undertake a CRB disclosure, then you must give them this policy at the same time. An example storage and handling of information policy is available on the CRB website (see *Further Resources section for website details*).
- **Rehabilitation of offenders** – under the provisions of the Rehabilitation of Offenders Act 1974, applicants for positions involving contact with children or vulnerable adults are required, when asked, to declare all convictions, including spent convictions. If you are asking someone to be disclosed you must give applicants, along with the CRB form and the self-certification form, your 'rehabilitation of offenders policy' which explains what happens with this information once it has been submitted and how it might affect the application. An example rehabilitation of offenders policy is available on the CRB website (see *Further Resources section for website details*).
- **Other recruitment forms** – on a separate form, get applicants to write down why they want to be involved in working for your organisation and ask for details of any prior voluntary work. Knowing you have a robust procedure in place at the application stage with all these standard forms which are part of CRB recommended procedure will alert people that you are building up a picture and will dissuade many undesirable applicants.
- **References** – ask applicants for referees and ensure that you take up references of prospective staff and volunteers using a thorough reference form. For those applying for jobs with regular or sustained contact with children, include a section



for referees to state whether they have any reason to be concerned about the applicant having contact with children, and why they think this person is suited to working with children. Get at least two references.

- **Interviews** – during interviews for staff and volunteers, ask the applicant about his or her experience of working with children and what type of contact this entailed. Provide guidance to interviewers on what to do with sensitive information arising as a result of an interview.
- **Have an induction programme** – for new staff and volunteers to reiterate the kind of behaviour that is expected from them, and get them to sign copies of your child protection policy and procedures. Make sure they know who to tell in the event of an incident.
- **Have a probationary period** – for new staff and volunteers. This ensures that you are able to cease or review their employment if information about them has come to your attention (e.g. via an enhanced CRB disclosure) after the recruitment process. When the results of a CRB disclosure mean you cannot place the individual in the position you had offered, an option is to move that person to a position within the organisation where contact with children does not occur – though this may be sensitive and difficult. In addition, if you alert the individual to the fact that you have additional information, this may prejudice a police enquiry and you may incur a fine. You should always take advice from your HR department, from the CRB or from a consultant on children's matters before terminating or changing an appointment on receipt of this type of information.
- **Complaints and whistle-blowing procedures** – ensure that everyone in your organisation knows who to go to with complaints or to report an incident. Introduce a system to allow children to speak to an independent person, and ensure that there is a private place for this to happen and that the procedure for doing so is clear and known to all who need to know it, so that any referral is as discreet as possible. All complaints and reports must be actioned as soon as they come to the attention of the relevant person.
- **Annual appraisals** – for every member of staff will ensure they are maintaining the standards that are expected of them, and may bring to light causes of concern regarding that member of staff and/or their colleagues.
- **Regulate the contact** – have a procedure for dealing with all types of contact and ensure that all who work with children on behalf of your organisation receive a copy. Ensure that everyone who has contact with children signs in and out of the premises or place of activity, and that this is constantly monitored by a specified person who is present at all times. Use supervision as a means of protecting children – you should only ever allow one-to-one contact with a child if there is no other way of delivering that activity. Try to avoid always teaming the same people together. Maintain a safe and appropriate distance and only ever allow an adult to touch a child when it is absolutely necessary for the arts activity and that child has agreed to the physical contact beforehand. Have a strict policy on exchanging emails or phone numbers, in the knowledge that children may be pleased to be asked to email, or meet up with, say, workshop leaders, to continue talking about the work they have been doing together.
- **Photography** – have a policy for taking, using and storing photographs, with procedures to ensure that the individual knows what's being captured, why and where it may be seen. If you wish to publish a picture of a child up to the age of 18, get a consent form signed by their parents. Include in the form why you need the photograph, what it will be used for and who might look at it. Although it is not against the law to take pictures of people in a public place where people might expect to have their photograph taken, you should still consider displaying signs saying that pictures may be taken for publicity purposes.
- **Web-based activities** – these must be carefully monitored by a specified and responsible person who has been suitably disclosed and all pictures used must be with permissions for that type of use from parents, carers or guardians. Moderators of internet chatrooms likely to be used wholly or mainly by children must be CRB disclosed.
- **Parents** – do you expect them to take on some of the responsibility? If so, make sure they know beforehand. Check how they receive this information – is it clear in your leaflets that, for example, they must not leave children unattended? Do you have a policy for dropping off and picking up children? If so, how are the parents informed of this? Do they agree to undertake any responsibilities to supervise their children when they apply for their child take part in your activity?



- **Advertise the hotlines** – to give adults and children every opportunity to report abuse:  
NSPCC – T: 0800 800 5000;  
Childline – T: 0800 1111;  
Crimestoppers – T: 0800 555 111.
- **Discovery** – your child protection policy should state that you have procedures on what to do in case of a discovery or suspicion of abuse and that these include guidance on how and when to report to the police and local authority social services.

## 2. Get disclosure for those that need it

The following roles should be subject to CRB disclosures.

Remember, the law does not distinguish between paid and unpaid workers – paid staff and volunteers alike will need to be vetted. This covers a wide range of people, including:

- anyone who has regular or sustained contact with children;
- people that supervise anyone who has regular or sustained contact with children;
- decision-makers who decide who has regular or sustained contact with children. This may go right up the management chain to Chief Executive or Director;
- ‘the great and the good’ – people who by virtue of their position would be expected to be suitable to work with children. This includes charity trustees;
- all staff that carry out work of any sort in organisations exclusively or mainly for children;
- record keepers, or anyone who may have access to information on the whereabouts of children at any time, or their personal details;
- people who work at home, such as music teachers;
- moderators of internet chatrooms likely to be used wholly or mainly by children.

In deciding whether to apply for enhanced disclosure, you must assess whether the contact is or will be ‘regular’ and ‘substantial’.

In defining substantial contact you must think carefully about your work and your venue. Would the person in question be in sole charge of children and, thus, in the position to make contacts that could be followed up? Would the person be in, say, the darkened wings of a stage with a nervous child waiting to perform? Would anyone be manning changing rooms? Or working for a full day with an individual child on a project?

Regular contact is largely defined as week-by-week contact with children. As such, the activity leader is in a position to

decide if a child looks withdrawn, upset, or different in some way. He or she is also in the position of having the child’s contact details.

Anyone meeting either of these definitions must be disclosed and, when a CRB disclosure is returned, a copy goes to the individual and another to the employer, or umbrella body, who made the disclosure. In the case of a standard disclosure those forms are exactly the same. In the case of an enhanced disclosure, the employer’s (umbrella’s) form may be different from the one sent to the individual if agencies like the police hold any additional information other than spent or unspent convictions and CRB feels that these apply to the job being offered. Where this is the case, notice of this will appear on the employer’s (umbrella’s) copy only – i.e., not on the individual’s copy, so it is *absolutely vital* that you see the employer’s (umbrella’s) copy. You must then keep record of its detail in line with your storage of information policy.

Some individuals may have many disclosures – one for each employer – as a necessity. CRB is looking into ‘portability’ of disclosures, but, at present, portability works only where a disclosure is held by, say, a local authority and your organisation is linked to that authority. Where this is the case, you should ask for a letter from the authority for your file which makes it clear that you have their assurance that disclosure has taken place and that you may employ the applicant, or accept the volunteer.

As noted above, good umbrella bodies will ensure you receive the employers’ copy. Other indications of a good umbrella body are that they do not charge huge amounts (about £10, or £5 for voluntary organisations, is about right) and that they offer advice and guidance on situations that may arise as a result of disclosure. A full list of umbrella bodies is available on the CRB website (see *further resources section for more details*).

## 3. Approach your council

The Children Act 2004 states that councils are responsible for how organisations interact with children within their remit. This is a good incentive to get them to fund and assist in your child protection initiatives.

Try contacting your Local Safeguarding Children Board (LSCB) and remind them of this, and ask for funding to put proper procedures and practices in place which will fulfil your, and their, obligations. Contact details for your local council can be found at [www.direct.gov.uk/en/dll/directories/localcouncils](http://www.direct.gov.uk/en/dll/directories/localcouncils).



## Further Resources

This briefing would not have been possible without the help of **Liz Whitehead** (Chief Executive of The British & International Federation of Festivals), who is running a series of 'Safety Audit: Child Protection' training events on behalf of VAN during 2007. For the latest training opportunities, visit [www.voluntaryarts.org](http://www.voluntaryarts.org) or email [info@voluntaryarts.org](mailto:info@voluntaryarts.org)

The **NSPCC** has published three helpful step-by-step guides for organisations to safeguard children:

- **stopcheck** – free single download or £2 per copy online. Free to individual organisations – telephone for details.
- **firstcheck** – £20 online, pack includes step-by-step guide.
- **safetycheck** – £5 online.

T: 020 7825 2775

E: [infounit@nspcc.org.uk](mailto:infounit@nspcc.org.uk)

[www.nspcc.org.uk/inform](http://www.nspcc.org.uk/inform)

**Keeping Arts Safe: Protection of children, young people and vulnerable adults involved in arts activities** – published by Arts Council England.

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**Free From Harm** – published by the Department of Health, now revised by and held by the Department for Education and Skills. [www.publications.teachernet.gov.uk/eorderingdownload/dfes-1834-2005.doc](http://www.publications.teachernet.gov.uk/eorderingdownload/dfes-1834-2005.doc)

### Every Child Matters

[www.everychildmatters.gov.uk](http://www.everychildmatters.gov.uk)

### Criminal Records Bureau – England and Wales

T: 0870 90 90 811

[www.crb.gov.uk](http://www.crb.gov.uk)

### Voluntary Arts Scotland briefing – *The Protection of Children (Scotland) Act 2003*.

This is available to download from [www.vascotland.org.uk](http://www.vascotland.org.uk).

A vetting and barring scheme for Scotland is currently going through Parliament. The Protection of Vulnerable Groups (Scotland) Bill is expected to be in place by the end of 2007, at which time Voluntary Arts Scotland will publish a new briefing.

### Disclosure Scotland

T: 0870 609 6006

[www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

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Contact T: 029 20 395 395 E: [info@voluntaryarts.org](mailto:info@voluntaryarts.org)

#### VOLUNTARY ARTS NETWORK



The Voluntary Arts Network, 41 Plasturton Gardens, Pontcanna, Cardiff CF11 9HG  
T: 029 20 395 395 E: [info@voluntaryarts.org](mailto:info@voluntaryarts.org) W: [www.voluntaryarts.org](http://www.voluntaryarts.org)

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