



Independent Safeguarding Authority (ISA)

Frequently Asked Questions Document for the Drug and Alcohol Sector

Background

What is the Independent Safeguarding Authority and why is it relevant to the drug and alcohol sector?

The Independent Safeguarding Authority (ISA) was set up in 2008 to continue the work of the Department of Children Schools and Families in relation to the management of safeguarding lists of those 'barred' from working with vulnerable people (PoVA, PoCA and List 99). On the 20th January 2009 the ISA was given powers to commence making decisions using its own barring process to strengthen the protection of children and 'vulnerable adults' following the Safeguarding of Vulnerable Groups Act 2006.

The ISA will require all relevant employers ('regulated activity providers') to register their staff and volunteers who work in 'regulated activity' (see below) with the ISA for monitoring purposes. They [the ISA] will have the authority to put those they find unsuitable on a 'barred list' and prevent them from working with vulnerable groups. Strengthened safeguards for children and vulnerable adults is a welcome development, however these changes could have a potential negative impact on the employment options of people with substance misuse problems or histories. It has particular significance for drug or alcohol services that employ ex-service users.

Many roles within drug and alcohol services will be seen as 'regulated activity' and therefore required to register with the ISA. *Regulated activity is defined as anyone who undertakes an activity of a specified nature or in a specified place that involves contact with children or vulnerable adults on a frequent or intensive basis* (frequent = once a week or more, intensive = four or more days a month or overnight). This definition therefore encompasses most frontline drug and alcohol treatment or advice roles.

ISA barred individuals can only work with vulnerable adults in 'controlled activity', and only 'if sufficient safeguards are put in place by the employer'. Controlled activity is defined as 'frequent or intensive support work in more general settings' such as cleaners, caretakers, and receptionists.¹

Do I need to worry about this now? What is the timetable for the ISA's introduction? How will it fit into current safeguarding procedures and what will the new legal requirements be?

From October 2009:

- Regulated activity providers, social services and professional regulators have a duty to refer to the ISA any relevant information² about individuals who may pose

¹ In December 2009 the Chair of the ISA, Roger Singleton, published a report which recommended a review of the continuing need for 'controlled activity'. His recommendations have since been accepted by the Government: 'Drawing the Line', Roger Singleton, 2009: <http://publications.everychildmatters.gov.uk/eOrderingDownload/DCSF-01122-2009.pdf>

² 'Relevant information' is if an employer both thinks that the individual has engaged in *relevant conduct*, satisfied the *Harm Test*, or received a caution/conviction for a *relevant offence* (as set out in the Safeguarding Vulnerable Groups Act 2006) and

a risk ensuring potential threats to vulnerable groups can be identified and dealt with.

- There are criminal penalties for barred individuals who seek or undertake work with vulnerable groups and for employers who knowingly take them on. There are also criminal penalties for employers who fail to refer safeguarding concerns about employees on to the ISA.
- From October 2009 the eligibility criteria for Enhanced CRB checks have been extended to include anyone working in a 'regulated' position.

From July 2010:

- From July 2010 those who are new to the workforce, those who are changing roles to take on regulated activity and those changing jobs whilst working in regulated activity *may* apply for ISA registration and there will be a new application form that incorporates both ISA and CRB. By registering early the employee and employer may save future recruitment delays.
- When a person becomes ISA-registered they will be continuously monitored and their status reassessed against any new information which may come to light.

From November 2010:

- **The legal requirement for employees to register with the ISA and employers to check their status will come into force in November 2010.**

Existing employees

- Those who currently work with vulnerable groups but are staying in their current role will not have to become registered until later in the five year phasing period that begins in 2010.

Individuals with drug/alcohol related offending histories potentially barred from employment with vulnerable groups

Many staff members in the drug/alcohol sector, particularly former service users, may have past offences that would class as 'acquisitive crime' or 'addictive behavior or persistent offending', how likely is it that this would lead to them becoming barred?

The barring decision will be dependent on whether past offences caused harm to children or vulnerable adults. Acquisitive or persistent offending related to drug and alcohol use is in itself unlikely to lead to a decision to bar. Offences that would be of more concern are those that relate to the 'supply' of drugs because this quite commonly affects vulnerable adults and young people.

What are the implications for training schemes that work with people with offending histories? Will any guidance be developed for those with convictions/drug history concerning likelihood of being allowed to work with vulnerable adults?

Because the ISA is only responsible for the decision process, the Home Office's overall 'Vetting and Barring Scheme' will be responsible for producing guidance and communications. However the ISA do intend to develop some sector specific guidance that will hopefully help to clarify specific offences or circumstances that would be of concern to the ISA to help the sector decide when and what to refer.

In Roger Singleton's recent review of the ISA, 'Drawing the Line', he acknowledges that: 'Those with histories of offending are often well placed to work with others in deterring them from criminal activity...The process of ISA registration is viewed by many as a potential and significant disincentive to ex-offenders who may wish to engage in this work. The ISA is

engaged in discussion with rehabilitative organisations'.³ LDAN/DrugScope will continue to work with the ISA on this issue.

The scope of the ISA

Is every adult being treated for a drug or alcohol problem a 'vulnerable adult' for the purposes of the ISA?

This depends what you mean by 'treated'. If the adult is receiving prescription based treatment, such as methadone, or one-to-one counseling then yes. Someone who is engaging in a peer-support group may not. Whether an individual is defined by the ISA as a vulnerable adult depends on their relationships to services, rather than it being seen as an individual characteristic.

Will staff in drug and alcohol services working with young people be subject to additional or more stringent requirements than those working with vulnerable adults?

There are no additional requirements as such, however more roles within young people's services are likely to be defined as 'regulated' and therefore required to register with the ISA. This is because children or young people are seen as more easily influenced by adult staff.

What are the implications for volunteering and mutual support networks (for example, AA or NA or those involved in peer mentoring schemes in prisons)?

AA or NA sessions fall outside of 'regulated activity' because they are based on peer support rather than a professional/client relationship. There is a particular exemption from 'regulated activity' around support groups in prisons because of the level of supervision and security involved in that environment.

Would working at a needle exchange service be classed as a 'regulated' or 'controlled' activity? What about dispensing a prescription in a drug service?

The chemist who dispenses the prescription would be working in 'regulated activity' but the chemist's assistant who handles the cash and forms and hands over the medication is probably not because it relates to the professional responsibility as well as the 'frequency and intensity' of contact. If the assistant talks to the client on their own in a 'break out room' this may become 'regulated'. A similar dynamic to this is likely to exist in a needle exchange service if there is a health professional and an assistant present.

Head office personnel who do not directly take part in regulated activity need not register. If you are unsure whether a position would be 'regulated' or not, you can contact the ISA on their advice line (0300 123 1111) and explain the particular circumstances.

The vetting and barring process

Will individuals be able to influence/challenge the ISA decision making process? How will they be informed of their rights to make representations and supported to do this effectively? Will they be able to access legal representation? Is there an expectation that they will be supported by staff in drug services? If so, will any training be available to staff to equip them for this role?

There are a number of offences (mainly sexual or serious violent offences) that if an individual has been convicted of, they will receive an 'autobar' with no right to representation or appeal.

³ 'Drawing the Line', Roger Singleton, 2009: <http://publications.everychildmatters.gov.uk/eOrderingDownload/DCSF-01122-2009.pdf>

The Representation Process

Other serious offences will receive an 'auto-bar with representation rights', and some other less serious offences will be considered under the discretionary route and may result in a 'minded to bar' decision with representation rights. Individuals will be informed by a letter, which will give them 8 weeks to make representations. There will be guidance included with the letter as to the types of documents that might support their case (see answer to Q9 for details).

The Appeal Process

If a barring decision is made after the representation period, people can appeal the decision on the basis that the facts used for the decision making were wrong or that there was an abuse of the procedure. Otherwise there is a right to a review after a certain number of years dependent on age:

Age 16-17: After one year

Age 18-25: After 5 years

Age 25 or over: After 10 years

There is currently no legal aid provision to accompany the representation or appeal process. Individuals can employ a solicitor or seek support from the Citizens Advice Bureau or their employer.

What kind of evidence would be accepted as proof that someone has moved on in their lives? What about if the individual has a recent offending history and/or is just starting employment or volunteering?

The types of evidence that would be accepted include:

- A period free from offences that involve vulnerable people
- Testimonials from employers
- Testimonials from other professionals
- Evidence of sustained volunteering or employment
- Evidence of successful engagement with drug or alcohol treatment

The ISA will also look into documents and information produced at the time of an offence trial such as witness statements. Also risk assessments, conducted by police or probation services, would be of interest to the ISA.

Will ISA caseworkers receive training in drug and alcohol issues? If so, will there be opportunities for service providers and service users to contribute to this training?

Yes. The ISA caseworkers are taking part in a training process that is accredited by Teeside University involving modules and information sessions on the wider issues that relate to safeguarding vulnerable adults and children, such as ex-offender or service user employment schemes. The ISA is working with the NTA to ensure that the caseworkers are adequately trained on drug and alcohol issues.

How will The ISA ensure that there will be enough capacity within the caseworker team so that sufficient time is taken on each case and people receive a fair hearing?

The responsibility for funding adequate staffing levels lies with the Home Office and the overall Vetting and Barring Scheme; however, the ISA will not create a time limit, so that sufficient time can be taken on each individual case.

How will the ISA take account of and be responsive to equality issues?

The barring process will be monitored to ensure that it is adhering to a fair diversity and equality policy. The statistics on the demographics of who has been barred will be available in the public domain. If one group appears to have been barred at a disproportionate level, the ISA has given a commitment to investigate this.

What are the implications for employers who highlight concerns about staff members to the ISA, and their claims are then found to be false or unfounded e.g. whether they are likely to be sued or go through employment tribunals? What will be the process for examining and assessing the circumstances where employers report concerns, and will there be opportunities for employees to challenge or contest them?

At the point of referral of a concern to the ISA, an employer is likely to have initiated internal disciplinary procedures and the employee in question suspended from work. If an employer is able to fill out the long and comprehensive application form to the ISA (including sufficient evidence) then it is very unlikely that the claim could be construed as malicious. If a decision is made to bar an individual, employers will need to dismiss them or redeploy them into 'un-regulated' activity.

Equally, if an individual receives an auto-bar with representation rights (without the employer making a referral), then the view of the ISA is that an employer would be expected to suspend or dismiss them or redeploy them into 'un-regulated' activity. If the ISA has 'minded to bar' an individual then the employer can still legally employ them in their existing role throughout the representation process. Employer's may want to consider the risk involved in doing this.

How can employers be confident that individuals subject to an auto-bar will disclose this to them? Is there any warning sent to employers if an employee has been sent an 'auto-barring' letter?

If the employer has made the referral then they will be aware of the process and informed of the decision if that person remains in their employment. Employers will also be contacted for information if a discretionary barring decision is made by the ISA, so they will be aware that investigations are taking place. The employer can then log their interest in the decision with the ISA. If the employee is ISA registered then it is likely the employer will have registered an interest on the website and as a consequence will be informed if the individuals monitoring status changes. If the employee is dismissed prior to the barring decision then the employer no longer has a 'legitimate interest' in the decision so will not be informed.

Administration and human resources

What changes, if any, will employers need to make to their policies and procedures. Will guidance be developed for employers?

Employers will need to adapt their recruitment processes to ensure that applicants are being asked if they are ISA registered. Referrals to the ISA will also have to be built into internal disciplinary and safeguarding procedures. There is some guidance on the ISA's website; however the ISA is working with HR professionals on how this will sit with current internal processes and employment law, so this is likely to be expanded.

Will the new checks add an additional delay to the recruitment process?

The ISA says that the process of registering with them will take no more than 7 days. If so, most employers will be waiting for the enhanced CRB to return rather than the ISA registration before they employ an individual. If an employee then receives an 'auto-bar' letter 'with representation' then they cannot be employed until the representation period is over and this is resolved. If an employee receives a 'minded to bar letter' then they can be employed with 'appropriate safeguarding measures'.

Will any help be available for individuals or small organisations who have difficulty affording the registration fee for ISA?

As with the CRB process, volunteers will not have to pay a registration fee, but all paid employees will have to (or their employers). The cost for registering with the ISA is £64.00 in England and Wales and £58 in Northern Ireland.

More information: For more details on the ISA see <http://www.isa-gov.org.uk>

Contact : If you have comments on any of the above issues, then please contact Esther Sample, LDAN Policy Officer, email: esthers.ldan@drugscope.org.uk