

# Disclosure (Scotland) Bill – Voluntary Sector Focus Group

## Tuesday 12 November 2019

**MSPs present:** Clare Adamson MSP (Convener), Iain Gray MSP, Liz Smith MSP

This note provides a summary of the issues which were raised during the discussion between members of the Education and Skills Committee and representatives of eight. The comments are not attributed to any particular individual or organisation.

### **Personal employers and Self-Directed Support**

Personal employers accessing Self-Directed Support (“SDS”) don’t see any vetting information detail (e.g. convictions and alternatives to prosecution) on a PVG scheme membership statement whereas a registered intermediary body would. (Members were presented with a redacted example of a PVG scheme membership statement as well as a corresponding PVG scheme record document which contained additional vetting information about the same individual). The PVG scheme member statement is the issue. Disclosure Scotland doesn’t treat the scheme membership statement as a disclosure. It was hoped that the Bill would address this discrepancy.

It is possible that an SDS support service could seek the disclosure, but the service doesn’t want to be seen as the employer. It is there to support, not to make recruitment decisions on behalf of the employer.

There is an issue with self-employed people as they are not contracted to an employer so they are not entitled to full scheme membership. This will change for carers under the Bill proposals but it’s not clear how it will change for people who are self-employed. If they then go on to contracted employment will have to pay the full scheme membership fee (currently £59).

The scheme member statement doesn’t contain vetting information so if someone with a scheme statement goes on to become barred then there’s no way of the organisation knowing.

One major disadvantage of being a personal employer is that a personal assistant wouldn’t be registered with SSSC and often PA’s will move frequently between roles with different people.

### **Trustees**

A concern was raised regarding the status of charity trustees. Children’s charity trustees and adult charity trustees qualify for a trustee check, but if working more widely with both groups they don’t currently qualify although this may be addressed by the new legislation.

The Code of Practice from Disclosure Scotland used to advise seeking support from a lawyer in terms of trustee disclosure. Small organisations don’t have the capacity to do that.

There can be an issue in small communities about the level of paperwork required for charity trustees in processing the Disclosure checks. It is helped by having a local organisation act as an accredited body, but small organisations also face issues regarding secure storage of disclosure forms, etc.

In a small rural community there may be many people who are vulnerable but who don't meet the criteria listed. Is there discretion to increase protection for them?

### **Sports organisations**

Sports governing bodies represent hundreds of small groups and if an incident occurs or something goes wrong the onus is on the small group has to make a referral to the governing body and Disclosure Scotland, but these small groups are often run by families, close friends or neighbours so may not be keen to do so. The governing body could make referral instead but haven't been allowed to do so historically because they are not the employer/supervisor. If someone volunteers with young people and also works with young people, then they could lose their job not just volunteering role which is why some smaller organisations are not always keen to make a referral.

This process should be about safeguarding and child protection and not just the sharing of conviction information – it isn't just about convictions but information sharing.

### **Confusion about requirements**

People are confused about what they have to declare on a self-declaration form because some convictions may be self-declared despite being spent and then the PVG disclosure does not match. Employers then have to disregard the information they have seen on the self-declaration form. It is difficult to “unsee” what was on the self-declaration.

This issue can sometimes put people off volunteering in addition to the time it can take to complete the process. It's also a challenge for the people making the decision on placing volunteers. If they get information on a self-declaration that doesn't appear on the PVG, or if the potential volunteer hasn't disclosed something that then appears, it makes it a very difficult judgement call. Sometimes a person can be offered a different volunteering role or occasionally there isn't an alternative. This has the result of putting people off volunteering altogether.

### **What is the solution?**

Clear guidance is the answer. Small organisations don't all have access to resources to get advice.

More consistency about who needs PVG checks would be appropriate. Not everyone requires it. For example, a janitor in a school needs a PVG but a janitor in a community centre doesn't.

### **5-year membership**

There was general agreement that this proposed change was sensible.

## **Support from Disclosure Scotland**

There was a strong desire for Disclosure Scotland to give more detailed advice about who needs a PVG check. Experience had been that staff tend to quote regulations back to individuals seeking advice. There remains widespread confusion.

Continuing training opportunities should be made available to organisations who use the scheme.

Preparation of case study examples would be useful to help organisations make decisions about seeking PVG or disclosure checks.

## **Role of intermediary organisations**

Part of the role of a Third Sector Interface (“TSI”) is to deliver training around disclosure. It was felt that PVG is very good at stating the black or white i.e. suitable or barred, but the challenge comes with the grey areas in between.

1 in 3 adult males and 1 in 9 adult females in Scotland will have some information on a PVG check. This doesn’t make them barred but there is a lack of awareness or guidance about what this means in practice. TSI’s don’t make recruitment decisions for member organisations. Small organisations will come to the TSI to ask if they can recruit but the TSI cannot make that decision for them. Small employers don’t feel confident to decide for themselves.

## **Self-declaration**

The group reported that inclusion of self-declaration on application forms is wide spread in voluntary sector. Some charities (often large charities) have a standard application form for volunteer positions that might never require a PVG check. This is inappropriate and could constitute a breach of an individual’s human rights.

## **Risk assessment**

Careful risk assessment can help organisations take on more people with convictions. One participant reported delivering training about the disclosure system for potential employers which highlighted a concerning lack of awareness and poor practice among most organisations whether large or small. Although the current focus is on the legislation there needs to be a lot more outreach in terms of the guidance.

## **Contextual information**

There needs to be a way to present contextual information around a conviction. Information provided on the certificate is limited and very prescriptive (formal description of offence and disposal). It would be helpful if there was support for organisations to help them to understand what the conviction was actually for.

As an example, a person setting up a small play group who accesses a PVG for a prospective employee who is under consideration for listing. It will state that the individual has breached a particular section of a particular Act, but it can be difficult to establish exactly what this means. If it came with explanatory notes it would be

more helpful. It is legitimate to have a conversation with the individual about it, but small organisations don't always know this or feel comfortable to do so.

### **Interaction with other regulators**

Various professional regulators such as the SSSC need an individual to be a member of the PVG scheme prior to registration. When applying, the individual must include details about existing registration with other regulators. Therefore, Disclosure Scotland doesn't receive details of the prospective SSSC registration. This means that SSSC won't automatically be informed if in the future the individual is barred.

If someone is removed from a post then the employer has to let these bodies know. The vast majority of organisations have no knowledge about referrals even although information is sent to them.

Often the same information is required on forms for all (e.g. SSSC, Care Inspectorate, Police, Council) but you can't copy and paste information between them. Why can't the system be joined up and allow completion of one form with various tick box options for submission to relevant bodies?

### **The number of regulated roles**

The Bill appears to increase substantially the number of job roles likely to be caught within the definition of "regulated role".

The phrase in the Bill, "engaged in the provision of" needs to be more clearly defined.

People in the voluntary sector often take on dual roles. Organisations can check against list of existing roles but will be unlikely to go back and check if it has been added to.

It was suggested that it may be easier to define an activity than create a pre-determined list of roles. A list will never stand still. Who will update it? The nature of activity rather than job title is the better option. "Support worker" could be admin support, training support for staff but is also traditionally thought of as care support.

### **U16's not being subject to a PVG check**

People don't realise how widely regulated work happens. Under 16's wouldn't be in sole charge of people but it perfectly common to have scouts, churches, sports bodies having under 16's working with younger children. U16 can carry out regulated work but don't need to be PVG checked. Organisations are going to have to put in more admin because young volunteers will have to join the scheme for their 16<sup>th</sup> birthday or they won't be allowed to carry on with their role.

### **Single organisational signatories**

Some organisations may only nominate one signatory which is not an issue unless that person becomes barred or is moved to consideration for listing. In these circumstances, there is no one else within the organisation who can be notified of the

change of status. - the bill does not address this. This further emphasises the importance of providing good guidance.

### **Transition period**

It is vital that the transition period is right this time around. It wasn't handled well the last time the scheme was changed. For example, what happens to the people already registered? At what point will they move over to the 5 year membership?

Continuing dialogue with Disclosure Scotland will be extremely important.