

# An employer's duty to refer information

This factsheet explains the duty of referring information to the Independent Safeguarding Authority. You can read the full Act and its explanatory notes on the Office of Public Sector Information website at [www.opsi.gov.uk](http://www.opsi.gov.uk).

## Why is it important to refer information to the Independent Safeguarding Authority?

One of the main barriers to a successful vetting service is the possibility that information about a person could be held by a number of different organisations, and never shared.

To ensure this does not happen to the Independent Safeguarding Authority (ISA), new legislation has been introduced which legally requires certain organisations to refer relevant information to the Authority – where there is concern relating to harm or the risk of harm to children or vulnerable adults.

Other organisations or individuals may also refer relevant information if they are concerned about the behaviour or conduct of an individual.

By receiving information from a comprehensive range of sources, the ISA will be able to make a decision as to whether an individual poses a risk to children and/or vulnerable adults based on all the evidence.

## Which are the organisations that *must* refer information to the ISA?

The following organisations have a legal obligation to refer relevant information to the ISA:

- adult/child protection teams in local authorities;
- professional bodies and supervisory authorities named in the Safeguarding Vulnerable Groups Act;
- employers and service providers of regulated and controlled activity; and
- personnel suppliers (for example, employment agencies, employment businesses and education institutions).

## Which are the organisations that *could* refer information to the ISA?

The following organisations *may* refer relevant information to the ISA:

- all other employers of those working with children and/or vulnerable adults; and
- parents/private employers. However, their information should be referred to a statutory agency (for example, the social services or the police), who will investigate the matter and refer information to the ISA, if appropriate. (Members of the public may also refer information to the ISA in this way.)



## An employer's duty to refer information (page 2)

**When *must* information be referred to the ISA?**

Employers and service providers *must* refer information to the ISA when they have dismissed an individual, or an individual resigns, because they harmed, or may harm, a child or vulnerable adult.

Local authorities (in their social services capacity), professional bodies and supervisory authorities must refer information to the ISA where:

- an individual who is working closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult;
- an individual who might in the future work closely with vulnerable groups has harmed, or may harm, a child or vulnerable adult; or
- they think the ISA may consider it appropriate to bar the individual.

Relevant information should be referred to the ISA as soon as it becomes available.

The new Scheme will only work effectively if the ISA can reduce the time between an individual becoming a known risk and that individual being barred from working with children and/or vulnerable adults.

**When *must* organisations start referring information to the ISA?**

From 12 October 2009.

**How will the ISA deal with malicious allegations?**

Referral information, such as allegations, will never lead to automatic inclusion in the ISA Barred Lists. Before a barring decision is made, the individual will be given the information on which the decision is based, and will be given the opportunity to explain their case.

It is a serious offence to make a malicious referral with an intention to mislead. A person found guilty of this may be subject to defamation and damages claims. Criminal sanctions, which include offences related to wasting police time, perverting or attempting to pervert the course of justice, conspiracy and perjury, could also apply.

**What happens if an employee leaves a job before they are sacked?**

If the employee would or could have been sacked on grounds that could lead to barring, the employer must refer the employee to the ISA – even if the employee has stopped working for them.

**Won't the requirement for professional organisations to refer information to the ISA result in duplication?**

One of the failings identified in the Bichard Inquiry Report was that pieces of information about an individual could be held by a number of different organisations, and never shared. Professional bodies, supervisory authorities and employers hold significant information about the people they register, regulate, inspect and employ. The ISA will work closely with these organisations to ensure that information is effectively shared and that duplication does not occur.



**An employer's duty to refer information (page 3)****Should local authorities refer bad parents to the ISA?**

No, it would not be appropriate for local authorities to refer information about someone who does not work with children or vulnerable adults. If a parent (for example, a mother with post-natal depression) has harmed their own child but does not pose a wider risk to children or vulnerable adults, the matter should not be referred to the ISA.

**Is there a penalty for failing to refer relevant information?**

Yes. There will be a new offence – punishable by a fine – for employers who fail to provide relevant information to the Scheme, without a reasonable excuse.

In this factsheet the term 'employers' refers to both employers and managers of volunteers. The term 'employees' refers to both paid and unpaid (volunteer) work/activities.

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