

## Call for evidence on the Protection of Vulnerable Groups (Scotland) Bill Response of the Scottish Council of Jewish Communities

The Scottish Council of Jewish Communities welcomes the Bill's intention to '*[keep] Scotland's children safe from those who pose a danger when working with them.... whilst reducing bureaucracy for those that provide services to children.....and [to afford] Scotland's adult population.... appropriate protection*' (Policy Memorandum 26-27).

However, although we are strongly of the opinion that every effort must be made to ensure the safety of people in all vulnerable groups, this should not be at the expense of reducing their access to activities and services. If the requirement for Disclosure Checks is perceived as being too onerous many people will choose not to become a volunteer, as has been the case with the current Disclosure system. In addition, if the administrative burden is too great for small voluntary sector groups to bear, these will withdraw their activities to the detriment of the very people the Bill seeks to benefit.

### **Q1. How effective is the Bill likely to be in providing children and protected adults with additional protection from harm?**

We are concerned that, in some respects, the Bill will not be as effective as we and, we presume, the Scottish Executive would like.

#### **a) Requirement to request a Disclosure Record**

We are concerned that the Bill perpetuates the current situation in which the requirement for a Disclosure Check rests not on direct legislation, but is only indirectly mandated as: '*the only way an employer can be sure that an individual is not barred from regulated work (and therefore be sure that he is not committing an offence in employing that individual) is by requesting a disclosure record*' (Explanatory Notes 83)

This is compounded by clause 34(3) of the Bill: '*It is a defence for an organisation charged with an offence under subsection (1)(a) [namely to 'offer regulated work to an individual barred from that work'] to prove that it did not know, and could not reasonably be expected to have known, that the individual was barred from doing that regulated work.*' We anticipate that unscrupulous – or overworked – organisations might rely on this to justify not requesting Disclosure Records.

By contrast, the Westminster 'Safeguarding Vulnerable Groups Bill' states that:

*11 (1) A regulated activity provider commits an offence if he permits an individual (B) to engage in regulated activity without making an appropriate check.*

and, in fairness to employers as well as in the interests of clarity, we strongly urge that a similar approach be taken by the Scottish Bill.

#### **b) Regulated work**

We agree that '*in some situations.....it may be quite complicated to determine whether the work is regulated work or not*' (Explanatory Notes 73) but do not agree that the response to this should be '*a new defence of not knowing that the work was regulated work*' (ibid).

The lack of clarity surrounding the PoC(S)A definition of 'childcare' has caused great difficulties to organisations and individuals alike, and we strongly urge that this confusion must not be carried forward into new legislation. All definitions, of vulnerable groups and of regulated work, must be capable of being easily understood by everyone concerned. . It may be impossible to avoid creating some new technical terms, but these must be clearly defined and should never be ordinary English expressions that have a clear – and different – meaning.

### **c) Definition of 'Protected Adults'**

We are concerned that the meaning of 'Protected Adult' (Bill 94) is not comprehensive and therefore leaves a large number of people at risk. The Policy Memorandum points out (54) that *'it is the fact that someone is in receipt of services that brings them into contact with "care workers"'* to justify using a service definition. However, the Bill definition relates exclusively to the professional care sector and takes no account of the very many services provided by the voluntary sector, in particular by faith communities, which also bring potentially vulnerable people into contact with care providers. The voluntary sector is more at risk of exploitation by unscrupulous and abusive individuals wishing to gain contact with vulnerable people than are professional care agencies, and the Bill must ensure that it cannot become a safe refuge for those whose intention is to abuse vulnerable people.

However, voluntary sector organisations will not be able to request a Scheme Record as a matter of course for an employee or volunteer doing what would otherwise be regulated work. In order to know whether they are permitted to request a Scheme Record, voluntary sector organisations will be obliged to closely question service users to ascertain whether they are in receipt of the designated services. This may be distressing for the (as yet unprotected) adults who may not know whether services they already receive are provided under one of the prescribed Acts.

This is also likely to result in many inconsistencies with voluntary sector organisations being permitted to request Scheme Records for some employees and volunteers but not for others, even though both groups are doing exactly the same work with the same type of clientele.

We are also concerned that organisations may only make referrals to the list if an individual has *'harmed a protected adult', 'placed a protected adult at risk of harm', 'given inappropriate medical treatment to a protected adult'* etc (2(a) and (b)). Providing that an individual confines him/herself to abusing vulnerable but un-protected adults s/he may be able to avoid being referred to the list and thus be free to continue working with and victimising vulnerable adults.

Taken together, these points mean that someone with deliberate evil intentions would confine his or her activities to the voluntary sector – and could then not even be referred to the list if caught!

### **d) Positions whose functions mean the holder will undertake regulated work** (Schedules 2 and 3, Part 4)

We support the view stated by Elizabeth Sadler (Scottish Executive Justice Department) in her evidence to the Justice 1 Committee (19 April 2006, Official Report col 2858) when she highlighted *'a deficiency in the previous regulatory regime that Sir Michael Bichard identified in his report. He argued that the distinction involving a test of regular contact was unclear and had produced an inconsistency of approach between the standard and enhanced disclosure. He also felt that the distinction was wrong in principle because the true risk analysis was whether the person worked in a position where a child or an adult at risk was likely to trust that individual, not frequency of access.'*

We therefore recommend an expansion of the list of positions in Part 4 of Schedules 2 and 3 to include posts whose holders occupy a position of trust in relation to vulnerable groups, regardless of whether or not those people have regular contact with people in vulnerable groups. In particular, where an organisation's usual activities normally include regulated work with children and/or protected adults, we recommend that all members of its management committee should be required to have Disclosure. (This recommendation is in line with the requirement for Charity Trustees of children's charities and of charities whose workers normally include individuals doing regulated work with adults to have disclosure.)

## **Q2. What are the likely impacts of the Bill on employers, employees and volunteers who work with children and protected adults?**

### **a) Streamlining administration**

The requirements and administration of PoC(S)A have caused considerable confusion and frustration among employers, employees and volunteers working with children and protected adults and we welcome the provisions in this Bill which are designed to address these problems. In particular, we welcome the fact that employees and volunteers will no longer have to submit a new Disclosure application for every activity they undertake with children and protected adults. We are also pleased that the Bill makes provision for employers to access Scheme Records online, and we believe that this will contribute to reducing the administrative burden particularly for small voluntary sector organisations.

### **b) Costs to organisations**

We are concerned that the costs involved in administering the Scheme may be prohibitive, especially for small voluntary sector organisations. Many of these organisations struggle to provide services on a very low budget, and, whilst we welcome the continuation of free Disclosures for volunteers we are concerned that any increase in the level of Disclosure fee may force them to dismiss paid staff, and consequently to withdraw services and facilities.

We would wish to highlight the costs to organisations of administering the system and of providing information and training, and are concerned that these may result in further reductions of services and facilities in the voluntary sector.

### **c) Costs to individuals**

The Bill provides for Scheme Members to pay joining and annual fees to participate in the Scheme. We urge that these fees should not be charged to volunteers otherwise they will prove a deterrent to volunteering and will result in reduced services and facilities.

### **d) Transition to the Scheme**

i) We are concerned that, unless the status of current Enhanced Disclosures and the requirement for retrospective checking are clarified, some employers may choose not to request a Disclosure for relevant new employees on the grounds that they will shortly have to request (and pay for) a Scheme Record for the same employee.

This could result in a period during which there is a higher risk of inappropriate people entering the relevant workforce. We therefore suggest that provision should be made to enable individuals who request an Enhanced Disclosure during the 6 months prior to the Scheme coming into effect to give permission for their personal details and Disclosure information to be automatically moved into the Scheme on its commencement.

ii) In the interests of equity as well as of protecting vulnerable groups we believe it to be important that retrospective checking should be required at an early stage. However, many voluntary sector organisations will not be able to afford to employ additional staff to administer the transition and will require a realistic and proportionate timescale in which to introduce the Scheme to their whole workforce.

### **e) Requirement for notification**

We note that listed individuals and Scheme members will be required to notify Ministers of any change in name, gender or address (Bill 32 and 47). However, despite the fact that the Bill '*allows for employers and regulatory bodies to be informed*' when an individual is removed from the Scheme (Explanatory Notes 110) there is no equivalent requirement for an employer to notify Ministers whether or not they have employed an individual subsequent to requesting a Disclosure Record, or when an individual leaves their employ. This will inevitably result in information about an individual's barred status being passed to people and organisations for whom it is no longer relevant.

### **Q3. Are there any other issues that are raised by the Bill's provisions?**

#### **a) Language and drafting**

Some of the language used in PoC(S)A has caused considerable confusion (for example the use of 'childcare' to include activities not commonly referred to as such) and we are anxious that this situation should not be repeated in the new legislation. In some cases form of words even changes what we presume to be the intention of the Bill. For example:

- i) a 'statement of barred status' is likely to be generally understood by the public as a statement that the holder is barred from undertaking regulated work, but is actually the reverse.
- ii) there is potential for misunderstanding and ambiguity due to the use of 'person' to refer to several different people and organisations in adjacent clauses (and on occasion even within a single clause); and the use of 'person', 'individual' and 'scheme member' interchangeably, sometimes within a single clause.
- iii) we presume it is intended that provision should be made for his/her own barred status to be disclosed to each scheme member - not, as is actually written, for his/her barred status to be disclosed to all scheme members (clause 43).

### **Q4. How helpful do you find the policy memorandum and financial memorandum accompanying the Bill?**

The policy memorandum, financial memorandum and explanatory notes are generally helpful in clarifying the Bill's intention.

### **Q5. Do you have any comments on the consultation the Scottish Executive carried out prior to the introduction of the Bill?**

As a Registered Body and Intermediate Organisation registered with the CRBS we welcomed the opportunity to attend consultation events and to comment prior to the Bill being drafted.

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**Note:** The Scottish Council of Jewish Communities is the representative body of all the Jewish communities in Scotland comprising Glasgow, Edinburgh, Aberdeen and Dundee as well as the more loosely linked groups of the Jewish Network of Argyll and the Highlands, and of students studying in Scottish Universities and Colleges.

In preparing this response we have consulted widely among members of the Scottish Jewish community.