



Schools Independent Safeguarding Authority (ISA) Referral Policy & Procedure

This applies to: All DCC Staff inc. Teachers and School Support Staff

Policy Date: 12th October 2009
Reviewed: September 2011

Policy & Strategy Team
Corporate Resources Directorate

If you require further help in the interpretation of this policy you can contact the HR Helpdesk at hrsshelp@devon.gov.uk or Schools Personnel Helpdesk at hrealaid@devon.gov.uk.

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POLICY

ISA Referral Policy & Procedure

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1.0 Introduction

A new Vetting and Barring Scheme was introduced on the 12th October 2009. The scheme has been established under the Safeguarding Vulnerable Groups Act (SVGA) 2006. The Independent Safeguarding Authority (ISA) has been established to manage the Scheme and make barring decisions. The new scheme will reform current vetting and barring practices, creating a single list of those barred from working with children and a single list of those barred from working with vulnerable adults. The scheme applies to all individuals undertaking either regulated or controlled activity.

The key principles of the scheme are that from the 12th October 2009:

- The eligibility criteria for an enhanced Criminal Records Bureau (CRB) check is extended to anyone working in regulated activity;
- The current barring regimes, e.g. POCA/POVA/List 99, will cease to exist and be replaced by these two new barred lists.
- Employers, Social Services and professional regulators have a duty to refer to the ISA any information about individuals who pose a risk; See Para's 5 & 11.
- There will be criminal penalties for barred individuals who seek or undertake work with vulnerable groups.

From 26th July 2010 employers and regulated activity providers (**see definition below*) will be expected to start registering individuals with the ISA, with it becoming a legal requirement from 1st November 2010. There will be a 5 year phased approach to the roll-out of the scheme for all existing staff, determined by the Criminal Records Bureau.

** A regulated activity provider is an organisation or individual that is responsible for the management or control of regulated activity, paid or unpaid, and makes arrangements for people to work in that activity.*

2.0 Who is the Independent Safeguarding Authority (ISA)?

- 2.1 The ISA is a non-departmental public body based in Darlington. It was created to fulfil the role of a single agency vetting all people who want to work or volunteer with vulnerable people under the SVGA.
- 2.2 The purpose of the ISA is to reduce the risk of harm to children and vulnerable adults by helping to prevent unsuitable people from working or volunteering with children and vulnerable adults.
- 2.3 The ISA will do this by assessing the risk of harm posed by an individual working or applying to work in regulated activity, based on known information held about that individual.
- 2.4 A team of case workers, who will undergo extensive training in assessing risk of harm, will decide on a case by case basis whether, on the information available to them, a person is unsuitable to work with children or vulnerable adults.
- 2.5 The ISA has four statutory duties:

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- To maintain a list of individuals barred from engaging in regulated activity with children;
- To maintain a list of individuals barred from engaging in regulated activity with vulnerable adults;
- To make well-informed and considered decisions about whether an individual should be included on one or both barred lists; and
- To reach decisions as to whether to remove an individual from a barred list.

3.0 What is ‘regulated activity’?

An individual is involved in regulated activity if they:

3.1 Undertake an activity of a specified nature, (i.e. teaching, training, instruction, care, supervision, treatment, therapy or transport) that involves contact with children or vulnerable adults on a frequent, intensive or overnight basis.

- Frequent – once a week or more (on an on-going basis)
- Intensive – four or more days in one month or
- Overnight – (between 2am and 6am)

An example would be a sports coach who provides swimming lessons to children under sixteen once a week.

These activities would be carried out with the same group of children or vulnerable adults unless there is a fluid client base in a single setting such as a GP surgery.

Or

3.2 Undertake any activity in a specified place, (i.e. schools, childcare premises including nurseries, residential homes for children, children’s hospitals, children’s detention centres and adult care homes) that provides the opportunity for contact with children or vulnerable adults on a frequent, intensive or overnight basis.

- Frequent – once a week or more (on an on-going basis)
- Intensive – four or more days in one month or
- Overnight – (between 2am and 6am)

An example would be a school receptionist who is not employed to teach, train, supervise or care for the children in the school but because s/he works in a specified place where s/he has the opportunity for contact with children.

Or

3.3 Undertake fostering and/or childcare.

Or

3.4 Occupy a defined position of responsibility as set out in the Safeguarding Vulnerable Groups Act (SVGA) 2006.

This would include:

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- Member of the governing body of an educational establishment;
- Director of Children’s Services of a local authority in England;
- Director of Adult Social Services of a local authority in England;
- Member of the Youth Justice Board for England and Wales;
- Member of a Local Safeguarding Children Board.

4.0 What is ‘controlled activity’?

4.1 Controlled activity will include:

- Frequent or intensive activity that is ancillary to healthcare in hospitals or primary care;
- Frequent or intensive ancillary activity in adult social care settings and further education settings, and
- People working for specified organisations with access to health or social services records.

4.2 The definition of frequent and intensive is as it is for regulated activity, that is:

- Frequent – once a week or more (on an on-going basis).
- Intensive – four or more days in one month.

5.0 What is our ‘duty to refer’?

5.1 The SVGA sets a legal duty on Devon County Council (DCC), as a regulated activity provider to refer individuals to the ISA for consideration for barring in certain circumstances and to provide information to the ISA upon request. See Para.6 for details of what must be referred and Para.9 for when to refer.

5.2 In our role as a Local Authority we also have a responsibility to parents and private employers who may wish to make a referral to the ISA. For child safeguarding issues a referral would be via the Local Authority Designated Officer (LADO) or the Responsible Manager identified by the Safeguarding Adults Procedures.

6.0 What information must be referred?

There are three circumstances in which information must be provided to the ISA if we have withdrawn an individual from regulated or controlled activity or would have done so:

6.1 Firstly, information must be provided if we think that the individual concerned has committed an offence that would lead them to being automatically included on either the Children’s or Adult’s Barred Lists under the automatic barring provisions in the SVGA (see para.19.1);

6.1.1 A relevant offence for the purposes of referrals to the ISA is an automatic inclusion offence as set out in the SVGA 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009. A copy of these regulations can be found at www.opsi.gov.uk. See paragraph 19.1.

6.2 Secondly, information must be provided if we think an individual has engaged in relevant conduct, that is:

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- a) Conduct which endangers a child/vulnerable adult or is likely to endanger a child/vulnerable adult;
- b) Conduct which, if repeated against or in relation to a child/vulnerable adult, would endanger that child/vulnerable adult or would be likely to endanger him;
- c) Conduct involving sexual material relating to children (including possession of such material);
- d) Conduct involving sexually explicit images depicting violence against human beings (including possession of such images), if it appears to the ISA that the conduct is inappropriate;
- e) Conduct of a sexual nature involving a child or vulnerable adult, if it appears to the ISA that the conduct is inappropriate.

See Appendix C and Appendix D – ‘Relevant Conduct and Examples of Harm’.

6.3 Thirdly, information must be provided if the relevant person believes that the harm test is satisfied. That is that the individual may:

- Harm a child or vulnerable adult;
- Cause a child or vulnerable adult to be harmed;
- Put a child or vulnerable adult at risk of harm;
- Attempt to harm a child or vulnerable adult;
- Incite another to harm a child or vulnerable adult.

6.3.1 The ‘relevant person’ will either be the Designated Officer/Headteacher or Chair of Governors within the Conduct Policy or where internal investigations have not yet started this may be a Local Authority Designated Officer (LADO) for child safeguarding issues or the Responsible Manager identified by the Safeguarding Adults Procedures for vulnerable adults

7.0 What information may be referred?

Whilst there is no legal obligation to do so, DCC may also provide information to the ISA where:

7.1 Following an internal investigation there is insufficient evidence to show relevant conduct occurred, but DCC has concerns about the individual; or

7.2 Where DCC has concerns about a person who has left our employment but knows or thinks that the individual works in regulated or controlled activity in another setting.

8.0 Equalities

8.1 Devon County Council is committed to equality in its ISA Referral Policy. No individual will be unlawfully disadvantaged on the grounds of age, race or ethnicity, disability, gender and marital status, gender identity, sexual orientation, religion or belief under the operation of these policies.

PROCEDURE

9.0 When must an ISA referral be made?

- 9.1 A referral should be made to the ISA when an individual is removed from regulated or controlled activity, or would have been if s/he had not resigned, retired, is made redundant or is transferred to a position which is not regulated, **because**
- 9.2 DCC or the Headteacher/Chair of Governors ‘thinks’ (*SGVA2006(c.47)s.35(2)(3)*) that the individual has carried out one or more of the following and has proceeded to gather sufficient evidence to suggest that the individual has:
- Engaged in ‘*relevant conduct*’; See Para.6.2.
 - Satisfied the ‘*Harm Test*’; See Para.6.3 or
 - Received a caution or conviction for a ‘*relevant offence*’. See Para 6.1.
- 9.3 If both of the conditions in paragraphs 9.1 and 9.2 have been met, the information **must** be referred to the ISA.
- 9.4 Suspension is a neutral act and therefore the ‘thinks’ condition would not be met until DCC or the Headteacher/Chair of Governors has gathered sufficient evidence to suggest, on the balance of probabilities, *relevant conduct* did occur or the *Harm Test* is satisfied. For example: An allegation is received against Mr A, who is employed in regulated activity, that he hit a vulnerable person (child or adult) that he was employed to care for. A decision was made to suspend Mr A, pending further investigations. At this early stage the first condition for referring has been made, that is Mr A has been removed from regulated activity (see point 11.1). The second condition that needs to be fulfilled before DCC’s legal duty to refer begins is that DCC or the Headteacher/Chair of Governors must ‘think’ the allegation is founded, or in other words Mr A has engaged in ‘*relevant conduct*’.
- As DCC or the Headteacher/Chair of Governors proceeds through the disciplinary process and gathers information, the suspension of Mr A remains neutral.
- 9.5 As soon as sufficient evidence has been gathered as part of the internal investigation, to support a belief that *relevant conduct* has occurred DCC’s legal duty to refer to the ISA begins.
- 9.6 Removing a person from regulated or controlled activity and thereby satisfying the first condition for referral, as per para.9.1, does not have to be permanent. For example, if through investigation it is found that the allegation against Mr A is true (therefore satisfying the ‘thinks’ condition) however it is determined that a final warning will be given and Mr A returned to regulated or controlled activity with additional training, this **must** still be referred to the ISA.
- 9.7 Where an individual leaves DCC employment in circumstances such as in the example in para.9.4 but before any final disciplinary decision is made, this information **must** also be referred to the ISA.

10.0 At what stage should a referral to the ISA be considered?

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- 10.1 When an initial allegation is made the agreed local safeguarding and conduct procedures must be followed. This will include considering whether the individual should be removed from regulated or controlled activity or not, suspended or offered alternative work.
- 10.2 Consideration should be given to whether to refer information to the ISA either:
- Before the Multi-Agency Strategy Meeting, where the individual has already resigned; or
 - Following a police investigation, when information has been reported to the Multi-Agency Strategy Meeting; or
 - At the end of the internal conduct/capability procedure.
- 10.3 The timing of a referral will be ultimately determined by whether the individual has been removed from regulated or controlled activity or not and whether DCC ‘thinks’ that the individual has carried out one or more of the following and has proceeded to gather sufficient evidence to suggest that the individual has:
- Engaged in *relevant conduct*;
 - Satisfied the *Harm Test*; or
 - Received a caution or conviction for a *relevant offence*.

11.0 How is information referred to the ISA?

- 11.1 Information should be referred to the ISA using the ISA Referral Form. The form must be completed in conjunction with the ISA referral guidance and can be downloaded by visiting www.isa-gov.org.uk under the referrals page.
- 11.2 The Designated Officer/Headteacher (or Chair of Governors in the case of the Headteacher) is responsible for completion of the ISA Referral Form.
- 11.3 A copy of the ISA Referral Form and any attachments must be sent confidentially to the Records Disclosure Service Manager so that all ISA referral information is maintained centrally by the Records Disclosure Service. This information can be sent electronically or securely via the DCC courier.
- 11.4 Under Part 2 of the ISA Referral Form: ‘The Referring Party’, the ‘Primary Contact Officer’ will be the Designated Officer or Headteacher / Chair of Governors and the ‘Alternative Contact Officer’ will be the Records Disclosure Service Manager. Part 6. ‘Declaration’, will be signed by the Designated Officer or Headteacher / Chair of Governors.

12.0 What happens after a referral has been made?

- 12.1 The ISA will acknowledge the referral within three working days of receipt. The ISA will review the information provided and request any additional information if necessary.
- 12.2 The ISA will then commence its 5 stage decision making process as shown in Appendix B.
- 12.3 If the ISA is minded to bar an individual it will write to that individual seeking representations as to why s/he should not be barred providing all the evidence that the ISA has relied on in making its decision. The individual will have eight weeks to make representations in writing to

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the ISA. All parties who have ‘registered an interest’ in the individual with the ISA will be notified at this stage.

12.3.1 A person or organisation has a legitimate interest in another person if they:

- have engaged or are considering engaging them in regulated or controlled activity, and
- the person or organisation has registered any interest and
- the registered interest relates to the activity that the person or organisation has permitted the individual to engage in and
- the person or organisation has notified the CRB of the address to which any notification is to be sent or
- if they are a Keeper of Register or Supervisory body as mentioned in the 2006 Act or 2007 Order and the individual concerned is registered with that body.

12.4 Following representations, if an individual is subsequently barred s/he will be notified in writing. All parties who have ‘registered an interest’ in the individual with the ISA will be notified of this decision.

12.5 If the individual is not barred, s/he and legitimately interested parties will be advised in writing.

13.0 When will the individual be informed of the outcome?

13.1 The ISA will inform the referred individual as soon as a decision has been made. Under the SGVA the ISA does not have the power to inform other individuals or organisations of the decision. However, where DCC has registered a legitimate interest in the individual with the ISA then DCC may ask the ISA whether or not the individual is barred.

14.0 What does being barred mean?

14.1 If a person referred is barred and put on the ISA children’s list, vulnerable adults list or both s/he will **not** be permitted to work in regulated activity with these groups.

15.0 Right of appeal

15.1 Where an individual is included on either, or both, of the barred lists (other than those listed as a result of an automatic inclusion without the right to make representations) s/he will have the right of appeal to the Administrative Appeals Chamber of the Upper Tribunal against a decision made by the ISA to include them on a list or not to remove them from a list. An appeal can only be made with the permission of the Tribunal on the grounds that the ISA has made an error on a point of law or finding of fact in relation to information used to form a decision.

15.2 Where the Tribunal finds the ISA has made a mistake on a point of law or finding of fact it will direct the ISA to either remove the individual from the list or review the case. If the case is reviewed, the Tribunal may direct the ISA to remove the individual from the list until the ISA has made a new decision.

16.0 Other reporting obligations.

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- 16.1 Where the misconduct is not vulnerable adult or child protection related, such as professional misconduct, the ISA cannot consider the information. Contact should be made with the relevant Regulatory Body, e.g. General Teaching Council, General Social Care Council. Consideration must also be given to whether the individual should be placed on the Devon County Council Applicants Referral List.

MANAGEMENT / EMPLOYEE GUIDANCE

17.0 The ISA Decision Making Process

17.1 Automatic Inclusion

There are circumstances where an individual can be automatically included on either or both the Children and Adults Barred List. The criteria include being convicted of, or cautioned for, the most serious sexual and violent offences and fall into two categories:

17.1.1 The first category, commonly called 'auto bar offences without representations' is where in very serious cases the ISA will bar without any further assessment.

17.1.2 The second category relates to those offences that, although serious, will allow the individual concerned to make representations as to why the bar should be removed. In these cases the ISA will be required to place the individual on the relevant list(s) but will request representations from the individual and consider them accordingly.

17.2 Case Assessment

17.2.1 In all other cases, the ISA will have discretion whether to bar or not. In these cases the ISA will consider all available information from a variety of sources, such as police, Local Authorities or employers to aid the decision making process.

17.2.2 There are a number of stages to the ISA decision making process:

- (1) An assessment of whether relevant conduct or a risk of harm 'on the face of it' (ISA official guidance) seems to have occurred;
- (2) An assessment of whether an incident took place or a particular behaviour was displayed;
- (3) An assessment of the risk that the individual poses with regards to vulnerable adults and/or children.

17.3 Minded to bar

17.3.1 Having carried out the risk assessment the ISA, taking into account all the relevant information and circumstances of the case, will decide whether it is appropriate or not to bar the individual on either or both lists.

17.3.2 If the ISA considers that someone should be barred, it will invite the person to make representations and will provide the individual with the information on which it proposes to rely in making its decision.

17.3.3 If no representations are received, or if following representations the ISA still considers the individual should be barred, s/he will be placed on either or both lists as appropriate and informed accordingly.

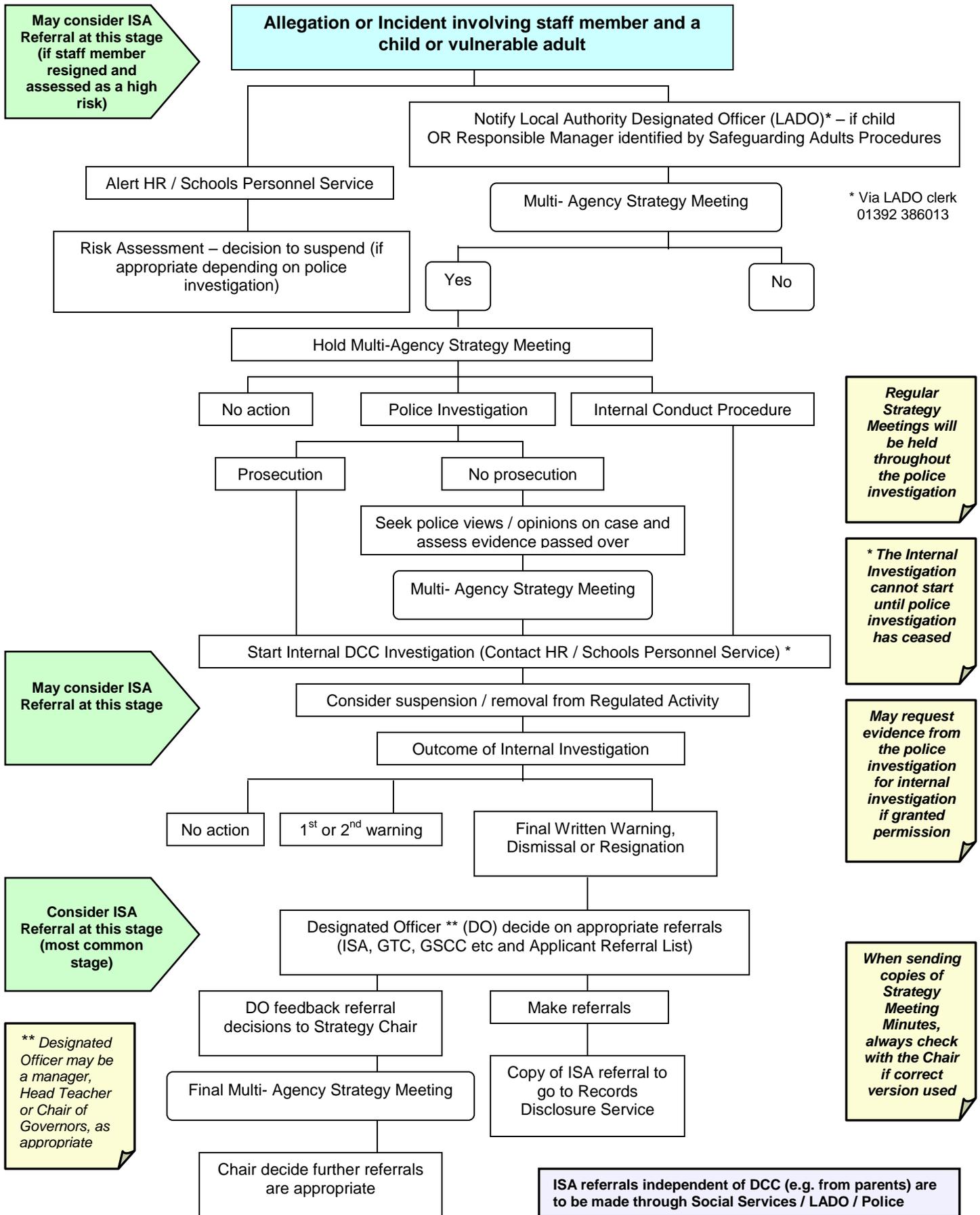
18.0 Employment Implications of Barring Decisions

- 18.1 Where DCC has a registered legitimate interest in an individual, the ISA will notify DCC if such individual is being considered for barring, or has been barred. DCC will then consider removing the individual from Regulated or Controlled Activity. Legal sanctions are in place relating to a barred person not being permitted to work in regulated activity.
- 18.2 In order to remove the employee from regulated or controlled activity, consideration must be given to either:
- (1) Re-deploying the individual to other non-regulated activity; or
 - (2) Temporarily suspending the individual whilst a decision is made, including whether to dismiss.

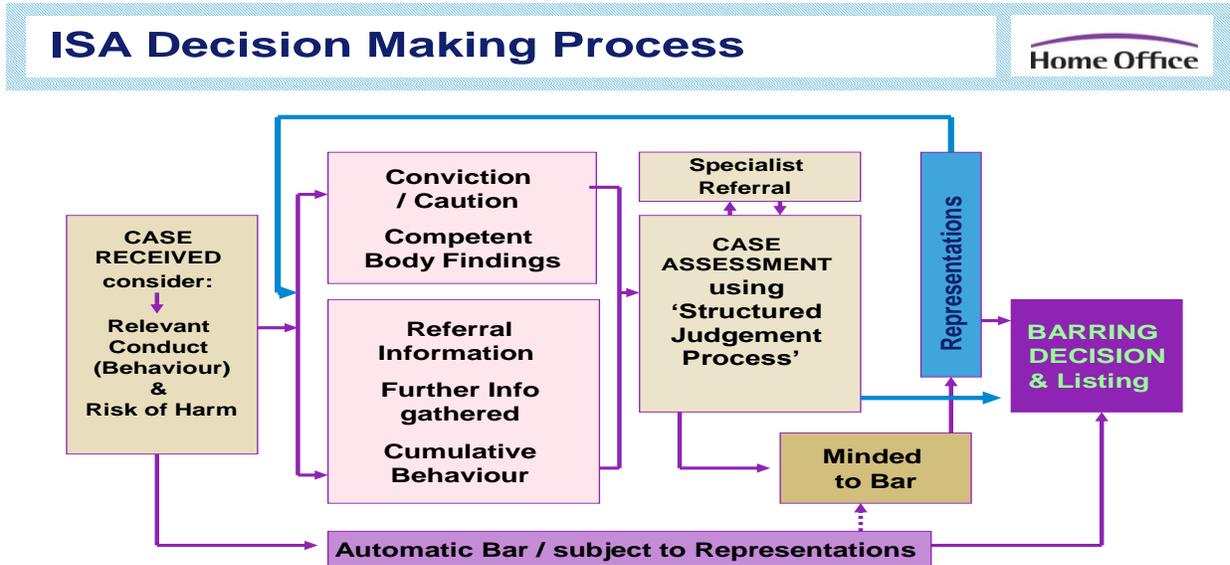
19.0 Dismissal

- 19.1 Whilst the SGVA does not give a blanket authority to dismiss an employee because of an ISA bar, the need to avoid contravening a duty or restriction (i.e. it is illegal to employ a person in regulated activity if s/he is barred) is an acceptable reason for dismissal.
- 19.2 Advice from Human Resources/Schools Personnel Service must be sought in circumstances where notification has been received that an employee has been barred. Alternative employment must be considered before any decision is taken to dismiss and will be managed via the Corporate / Schools Conduct Policies.

APPENDIX A – ISA REFERRAL PROCESS FLOWCHART



APPENDIX B: ISA DECISION MAKING PROCESS



Vetting and Barring Scheme

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APPENDIX C: RELEVANT CONDUCT and EXAMPLES of HARM TO CHILDREN

Type of harm to children	Meaning	Examples
Emotional/Psychological	Action or inaction by others that causes mental anguish	Emotional harm is the emotional ill-treatment of a child such as to cause severe & persistent adverse effects on the child's emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may feature age or developmentally inappropriate expectations being imposed on children. It may involve causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. It may involve children witnessing aggressive, violent or harmful behaviour such as domestic violence. Some level of emotional harm is involved in all types of ill-treatment of a child, though it may occur alone. Grooming. Harassment. Inappropriate emotional involvement.
Physical	Any intentional physical contact that results in discomfort, pain or injury.	Physical harm may involve assaults including hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocation, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer feigns the symptoms or, or deliberately causes ill health to a child whom they are looking after. This situation is commonly described using terms such as factitious illness by proxy Munchausen syndrome by proxy. Supply drugs to children. Inappropriate/unauthorised methods of restraint.
Sexual	Any form of sexual activity with a child under the age of consent	Sexual harm involves forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities, or encouraging children to behave in sexually inappropriate ways. Downloading child pornography. Taking indecent photographs of children. Sexualised texts & communication on social networking sites.
Neglect	Failure to identify and/or meet care needs	Neglect is the failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. It may involve a parent or carer failing to provide adequate food, shelter and clothing, failing to protect a child from physical

		harm or danger, or the failure to ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.
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APPENDIX D: RELEVANT CONDUCT and EXAMPLES of HARM TO VULNERABLE ADULTS

Type of harm to vulnerable adult	Meaning	Examples
Emotional/Psychological	Action or inaction by others that causes mental anguish	Inflexible regimes and lack of choice. Mocking, coercing, denying privacy, threatening behaviour, bullying, intimidation, harassment, deliberate isolation, deprivation.
Financial	Usually associated with the misuse of money, valuable or property	Unauthorised withdrawals from vulnerable adult's account, theft, fraud, exploitation, pressure in connection with wills or inheritance.
Physical	Any physical contact that results in discomfort, pain or injury	Hitting, slapping, pushing, shaking, bruising, failing to treat sores or wounds, under or overuse of medication, un-prescribed or inappropriate medication, use of restraint or inappropriate restraint, inappropriate sanctions.
Sexual	Coercion or force to take part in sexual acts	Inappropriate touching. Causing bruising or injury to the anal, genital or abdominal area. Transmission of STD.
Neglect	Failure to identify and/or meet care needs	Untreated weight loss, failing to administer reasonable care resulting in pressure sores or uncharacteristic problems with continence. Poor hygiene, soiled clothes not changed, insufficient food or drink, ignoring resident's requests, unmet social or care needs.
Verbal	Any remark or comment by others that causes distress	Demeaning, disrespectful, humiliating, racist, sexist or sarcastic comments. Excessive or unwanted familiarity, shouting, swearing, name calling.

APPENDIX E: HELPFUL CONTACTS

1. Independent Safeguarding Authority (ISA)
PO Box 181
Darlington
DL1 9FA
<http://www.isa.gov.org.uk>
2. Criminal Records Bureau
<http://www.crb.gov.uk/>
3. DCC Record Disclosure Service
disclose@devon.gov.uk
01392 383266
4. Central Referral Unit (Child Safeguarding)
01392 386013
5. Central Safeguarding Team (Adult Safeguarding)
01392 382339
6. HR Helpdesk
Email: hrsshelp@devon.gov.uk
01392 385555
7. Schools Personnel Helpline
Email: hrealaid@devon.gov.uk
01392 384567
8. Department for Children, Schools & Families (DCSF)
<http://www.dfes.gov.uk>
9. General Social Care Council (GSCC)
<http://www.gsccl.org.uk>
10. General Teaching Council
<http://www.gtce.gov.uk>

POLICY HISTORY

Policy Date	Summary of change	Contact	Version/ Implementation Date	Review Date
12.10.2009	Following the introduction of the Vetting & Barring Scheme and the duty to refer information to the Independent Safeguarding Authority (ISA) from the 12 th October 2009, a DCC ISA Referral Policy & Procedure was implemented.	P&S	12.10.2009	July 2010
11.01.2010	Following the recommendations from the 'Drawing the Line' report from Sir Roger Singleton, the definitions of 'frequent' and 'intensive' have been amended. Following an announcement from the Home Office that elements of controlled activity will be brought into force in April 2010, it was felt appropriate to include this into this amended policy.	P&S	11.01.2010	April 2010

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