

# 34 factsheet

## The Independent Safeguarding Authority

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### 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. In 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 to register their staff and volunteers who work in 'regulated activity' (see below) with the ISA for monitoring purposes. The ISA will have the authority to put those they find unsuitable on a 'barred list' and prevent them from working with vulnerable groups.

While made with the best intentions, 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).

### What is the timetable for the introduction of the ISA's regulations?

In place since October 2009:

- Regulated activity providers, social services and professional regulators have a duty to refer to the ISA any relevant information about individuals who may pose 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.
- Eligibility criteria for Enhanced CRB checks 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.

### Staff members in the drug/alcohol sector may have past offences that would be classed 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 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.

### Will individuals be able to influence/challenge the ISA decision-making process?

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

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.

### What kind of evidence would be accepted as proof that someone has moved on in their lives?

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; and 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.

### 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?

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.

### 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. 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.

### 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'.

**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](mailto:esthers.ldan@drugscope.org.uk)