



WRVS response to ‘Protecting vulnerable groups: Scottish vetting and barring scheme’

WRVS exists in Scotland and across the UK to help people maintain independence and dignity in their homes and communities, particularly in later life. In Scotland, with the support of over 12,000 local volunteers, WRVS runs around 250 community-based projects for housebound and older people; over 60 hospital services for patients, visitors and staff, and more than 230 emergency service teams to assist communities affected by crises or disasters. WRVS is one of the largest charities in its field in Scotland.

WRVS supports the move to respond to the Bichard Inquiry in Scotland by setting up a more streamlined approach to disclosure and establishing a scheme in which organisations are given clearer direction on volunteer and employee suitability to work with vulnerable groups. We also support the principle of ensuring the ongoing updating of employment suitability in preference to the current, inefficient snapshot approach to disclosure. WRVS works with vulnerable adults right across Scotland and we are concerned to do whatever we can to ensure their safety and well-being in any way that can be adequately balanced with operational best practice.

However, in the proposals as presented in this consultation document we have a number of concerns regarding the detail of implementation and the potential effects of these changes on our organisation’s ability to function efficiently.

Proposal one

We are concerned that decisions on whether an individual is required to complete a vetting and barring disclosure will be based on a “wide ranging definition” of those working with vulnerable adults. Whilst we appreciate the flaws in listing eligible specified positions, we would urge the Executive to consult on and publish clear guidelines on what constitutes the “relevant workforce” to allow organisations to reach agreement on the need for vetting and barring disclosure and ensure consistency. In some areas for example, WRVS is already facing issues where NHS Trusts and Boards are insisting on enhanced disclosure for every single volunteer or employee working on their premises, when our interpretation of current legislation indicates that, as the employer, we should not put people in certain positions (a tea-bar volunteer for example) through enhanced disclosure checks. We would not wish to see this situation being replicated under any new system. A lack of clarity could result in unnecessary conflict in partnership working and, at worst, expose employers to risk under human rights legislation.

Given the mobile nature of the 21st century workforce, we would also urge the Executive to ensure sound, reciprocal information-sharing agreements with, at a minimum, all members of the EU and any country in which the Executive is clearly promoting employment opportunities in the sector, to best secure the safety of children and vulnerable adults. We also raise the question of whether someone for whom it is impossible to carry out a full background check - someone granted asylum, for example – will be automatically barred or cleared by the CBU.

Finally, we would hope that any new forms designed to accompany the vetting and barring scheme will be as simple as possible for volunteers and employees to complete and available in various formats. This will ensure that as few people as possible are excluded from the workforce simply because of difficulties or fears over the completion of complex forms.

Proposal two, three and 16

WRVS works with many older, vulnerable people who employ the services of others within their own home. We agree that personal employers, such as adult carers, should be able to use the vetting and barring system to ensure security in their employment choices and avoid situations of abuse. However, to ensure the safety and right to privacy of potential employees, it is key that the responsibility for initiating the disclosure process remains with the potential employee and not with the private employer. To ensure protection for potential employees and avoid “fishing trips”, the disclosure application process should be negotiated between the potential employee and a mediating registered body for personal employers. A final decision on suitability for employment and any disclosure on barred status should only be released to personal employers by the mediating body at the final point of confirming employment, without additional detail on reasons for the decision.

Any publicity around the launch of such a scheme would need to make clear to members of the public that, if they are contracting an organisation to provide a service – such as a charity – then decisions on the suitability of volunteers or employees remain with the organisation and not with the individual member of public. It is important that the public understand that disclosure information will not be released to them if they engage an individual through a third party, otherwise, this could easily be the cause of misunderstandings on the ground.

WRVS appreciates the intention behind the proposal to include phone / web / database handlers in the scheme under certain circumstances, but is concerned at how this will be managed in practice given the non-geographic nature of many such services. In the proposals being taken forward in England and Wales, some database operators handling sensitive data that is not deemed “significant” are excluded from the vetting and barring scheme; under this proposal for Scotland it seems that they are not. This is just one area in which we are concerned that there will not be consistency across the border. As a UK-wide organisation with a central administration and customer service function in Wales, and key members of senior management based outside of Scotland with UK-wide or cross-border remits – we would like to see as much consistency as possible between the Bichard-inspired schemes. Ideally, to ensure efficiency within our organisation, we would like to see a reciprocal agreement reached between Westminster and Holyrood in which vetting and barring checks carried out on a volunteer or employee in one UK nation would be accepted by the others, thereby avoiding multiple checks on individuals within a single organisation.

Proposals four-five

With the detail of the proposals as they stand, it is difficult to respond clearly to the issue of fees.

WRVS agrees with the principle of increased fees for an initial check, with free or minimal cost subsequent checks, ONLY if the subsequent checks release full details of ensuing issues of concern / relevant convictions – such as those we would currently receive from a full disclosure check. The proposals, as written, suggest that subsequent checks of “barred status” could be limited to a simple “yes” or “no” answer to whether the applicant has been barred since the full disclosure certificate was issued. We are also concerned that we will be asked to make decisions on the original certificate released to the employee and not the employer when often additional, relevant information can be withheld from the applicant on disclosure certificates. We do not think, taking seriously our duties as responsible employers, we could accept limited information on barred status, in conjunction with the employee’s disclosure certificate, as sufficient to take informed decisions on the suitability of applicants. As such, we may be required to pay a full, increased, fee for subsequent full disclosure every time we employ someone. This would be financially damaging to WRVS and involve unwelcome increased administration for Disclosure Scotland. The Executive must clarify exactly what detail will be released on “subsequent checks” before we can clearly respond to the issue of payment and fully support the principle of subsequent checks.

We would also like to ensure that there are no hidden charges for individuals who enter the workforce first as a volunteer. We would not want to see a system whereby individuals seeking paid work with an in-date, free, volunteer-initiated vetting and barring disclosure are in any way required to repeat full fee-paid disclosure because of perceptions of validity. WRVS would like to ensure that any new vetting and barring disclosure certificates look identical for volunteers and paid employees.

As an organisation that currently works with many thousands of volunteers across Scotland we agree that the current system of encouraging volunteering in Scotland through offering free disclosure checks should continue. However, we would like to see the administration of these checks matching our experience in England where, as a major recruiter of volunteers, we can access CRB direct through our own authorised counter-signatory - and can do so without upfront payment of refundable fees. Whilst we welcome the vetting and barring scheme, the administration will inevitably be more complex and will be ongoing. WRVS would therefore recommend that large volunteer organisations, handling data for a set number of volunteers and above (say 500+), should be able to deal direct with Disclosure Scotland and the Vetting and Barring Unit through an agreed organisational counter-signatory, rather than adding in the complication of a third party mediator, as is currently the case. Given these proposals as they stand, we believe that this would increase efficiency and safety in processing and acting upon disclosure information.

We would also note at this point that our concerns over exactly what information is contained in “subsequent checks”, and our duties as a responsible employer, are the same for volunteers as they are for employees. We question who will pay for subsequent checks on volunteers if the system of subsequent checks is not sufficient for us to make fully informed decisions as employers, and we feel required to initiate a subsequent full disclosure. With 12,000 volunteers in Scotland, our concerns on this issue are high.

Without clarity on these issues, WRVS cannot indicate how much it would be willing to pay for initial or subsequent checks.

Proposal six

WRVS has serious concerns about the plans to retrospectively check the whole relevant workforce within 3-5 years of the implementation of the legislation. Whilst we appreciate the motivation behind the proposal, we feel that this is one area in which the need for proportionality should win out. We would urge the Executive to reconsider these proposals for retrospective disclosure and make proposal 1 the entry route to the new scheme for all members of the current workforce.

Firstly, of the 12,000 WRVS volunteers across Scotland, 11,000 are aged over 50. It is a daily struggle to support older volunteers, in particular, to work their way through the current disclosure application process. We already lose many volunteers at the initial stages of engagement with WRVS because they feel overwhelmed by the current disclosure process and withdraw their interest in volunteering because of perceived bureaucracy¹. If asked to repeat the process with current volunteers, with new disclosure forms, we simply risk losing large numbers of our current volunteer workforce. This would have a disastrous impact on the vital services we provide to older and housebound people in communities right across Scotland. We would ask that the current status of a volunteer stand until he or she changes position or moves to a new organisation.

Secondly, whilst the majority of WRVS people in Scotland are volunteers and therefore eligible for free disclosure, the cost to WRVS of retrospective checking has the potential to be financially damaging. The administration of over 12,000 vetting and barring disclosures en-bloc is an overwhelming prospect. We estimate the cost to us in administration will be at least £250,000², excluding the fees due for paid employees. In effect, the cost to us and to communities across Scotland will be lost or reduced services. We do not think this cost is justified.

Finally, we note that Disclosure Scotland has greatly improved its turnaround times on disclosure applications in recent months. However, given the nature of these proposals, which include ongoing monitoring of the workforce, we are not satisfied that Disclosure Scotland will be able to fully administer the new scheme and, at the same time, manage applications en-masse for retrospective checking within the first few years of change. We feel sure that CRBS, under the current voluntary sector agreement, would be unable to process such a volume of applications. Disclosure Scotland will need to manage and consolidate many changes to ensure the new scheme works effectively. WRVS believes that retrospective checking of the whole workforce will be unsustainable and may be the issue which will cause this scheme to collapse under its own weight. Children and vulnerable adults will be open to increased risk if enhanced processes fail.

Proposals seven-eight

WRVS is still not convinced of the need to hold separate disqualified from working with children and disqualified from working with vulnerable adults lists. We are concerned that the separation of the lists may, in practice, result in gaps in efficiency and security.

For example, we may ask an adult volunteer to go through vetting and barring disclosure because their duties will bring them into regular contact with a vulnerable adult at home. However, we engage volunteers in most areas of our work from the age of 14. It is possible that an adult volunteer may be in a position, on occasion, to come into contact alone with a volunteer under the age of 16. Whilst this contact would not constitute a "childcare position", a single list may help us, as responsible employers, to ensure that we did not, inadvertently expose clients, volunteers, employees or members of the public to risk by ensuring all barred status is disclosed at the outset.

Proposals ten-13

WRVS believes that a panel of experts should take decisions on barred status. The panel should be drawn from a variety of backgrounds, and therefore able to make the best possible informed decision on:

1. the ongoing safety of any child or vulnerable adult
2. the future employability and social status of any individual working with, or applying to work with, children or vulnerable adults

¹ We appreciate that a small minority of these applicants may be unsuitable to the workforce and are self-selecting themselves out in the face of the disclosure process – but this will be a very small minority indeed.

² Based on two hours administration per application @ £8 per hour plus stationery, postage and overheads.

As we assume from the document that a new NDPB is unlikely to get financial approval, we would like to see the CBU created as a new Executive Agency. WRVS believes this would strike the right balance between creating a CBU of experts with the freedom to make informed choice and ensuring ultimate responsibility for such important decisions rests with elected ministers.

We also note that other parts of this consultation document (proposal 18 for example) assume that the CBU will answer directly to Scottish Ministers.

Subject to the qualifications made in our response to proposals 4-5 (above) on information sharing with employers, WRVS welcomes, in principle, the proposal on continuous updating. We note that the consultation refers to information being shared with "relevant organisations". We would assume that this would include employers in the voluntary sector. However, as the Executive notes, details of the mechanics of this scheme have yet to be finalised; as such we cannot respond in any more detail to this proposal.

Proposal 14

We are keen to ensure that the wording of any legislation based on proposal 14 includes the issue of employers' responsibility to mitigate risk – as elaborated upon in the explanatory note. This could include temporary redeployment or suspension (on full pay for paid employees) pending the results of the inquiry. This would give clarity on the responsibilities of employers alongside the rights of volunteers and employees.

Proposal 15

Given the potential for administrative error and delayed communication, the three-month time limit does seem very short for a decision that has effect for a minimum of 10 years. We would argue for an extension to this period.

Whatever appeals system is decided upon, the appeals process must be made as simple and as transparent as possible for the volunteer / employee. Guidance on how to appeal must meet plain English guidelines and be sent out with all letters which notify individuals that they have been added to the DWCL or the DWVAL. Given that barring decisions have an immediate effect on the ability of an individual to gain paid employment, it is particularly important that lack of finances should not be a bar to appealing against inclusion on either disqualified list.

We are unclear why it is proposed that an initial appeal, for those not listed originally by the courts, cannot be made directly to the CBU.

Proposal 17

WRVS agrees with this proposal. We would expect that, under this new system, we would receive at least the same level of information about an applicant who has undergone disclosure as we would currently. This is the only way that we will be able to discharge our duties as a responsible employer. We would like to see the full range of instances in which information is not disclosed to the employer / individual laid out clearly. We would also like to ensure that withheld information is released when appropriate (at the conclusion of an "ongoing police operation" for example) to ensure as much transparency as possible in the decision making process for both employer and applicant. Finally, it is imperative that under the new system, disclosures to employers make absolutely clear what information has been released to the applicant and what information has been withheld. This is not done currently and can cause real difficulties to us, as employers, when in dialogue with applicants about their suitability for the workforce.

Proposal 18, 24 and 25

We note that, whilst all voluntary sector employers will be able to make referrals to the CBU, there is no clear proposal to place a duty on voluntary sector agencies to share information with the CBU that could be relevant to the suitability of an individual to work with vulnerable groups. Good practice and policy within WRVS results in serious concerns about or misconduct by a volunteer or employee being raised appropriately. However, the voluntary sector is responsible for an increasingly large market share of the relevant workforce and more clarity may be needed in this area to ensure consistency across the sector. We would not wish to see a repeat of the current situation with POVA in England and Wales where WRVS – which is not classed as a social or domiciliary care provider – cannot legally refer cases of concern to POVA nor ask POVA to instigate investigations when concerns arise.

Certainly more clarity over the routes for information sharing would be helpful. If, for example, WRVS is contracted by a local authority to deliver a service would we be expected to raise issues of concern with the contracting local authority (with its new duty to share information), any regulatory body involved, Disclosure Scotland or the Central Barring Unit direct? Or all of the above?

In addition, clear guidance will be needed to help organisations negotiate their various duties under the new vetting and barring scheme, the Data Protection Act, and human rights legislation adequately.

We agree that retrospective referrals should not be mandatory, but that responsible employers should be encouraged to refer any past cases of particular concern.

Proposal 22

We agree that a defined list of relevant civil orders should be disclosed to ensure employers can make fully informed decisions on the suitability of applicants. However, we also note that the vetting and barring scheme is being introduced, in part, to help smaller organisations who have little experience of handling raw information about offences and non-conviction information. Clear guidelines on civil orders, and what they might mean for employers, must be made available if an identified difficulty with the current scheme is not to be made worse.

Proposal 26

The issue of the lifetime of certificates cannot be separated from our questions on proposals 4-5 about the exact nature of “subsequent checks”. If subsequent checks are adequate to allow employers to gain a full picture of an individual’s disclosure status (rather than simply their barred status) we question why certificates need to be updated at all, unless requested by an employer for good reason.

If “subsequent” checks are not adequate for employers to make informed decisions about suitability then the issue of timing is almost immaterial as all employers remain responsible for the suitability of non-barred volunteers / employees and are likely therefore to require full disclosure to be undertaken every time a person joins their workforce or moves position.

If this proposal is adopted as stands, we would also ask who is responsible for ensuring the ten year updating takes place and who is responsible for payment? If an employer is responsible for monitoring the timing of new full disclosure processes for individual volunteers or employees then this adds to internal administration procedures and internal management costs. Also, if an individual is involved in more than one organisation in positions that require disclosure – which is often the case in the vulnerable adults and children workforce - which organisation is responsible for countersigning and paying for that application at the ten-year point? The issue of multiple positions within the relevant workforce could easily result in individuals falling between gaps and disclosure not being completed fully. Regular full disclosure at ten-year intervals, with higher fees as proposed, will also result in additional costs for organisations that may be impossible to meet without affecting frontline services.

Conclusion

Whilst we appreciate the need to ensure improved systems are in place to protect vulnerable adults and children as soon as possible, and to ensure there is parliamentary time left for this bill given the Scottish electoral timetable, WRVS believes there is much work still to be done to ensure these proposals do enhance the current disclosure system. We urge the Executive not to rush forward with the proposals as they stand. Given concerns raised by us and by others, such as SCVO, we ask the Executive to set up an advisory group of representatives of those most affected by the vetting and barring scheme to help further shape plans for the CBU. Such a group could assist in developing the current proposals to a point of clarity and ensuring that future legislation does, in practice, best protect those most in need.

Yours sincerely

Rachel Cackett
Media & Public Affairs Manager, Scotland

**Protecting vulnerable groups:
Scottish vetting and barring scheme**

Consultation paper

RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Your details

Name	Rachel Cackett
Address	WRVS, 6 Hill Street, Edinburgh
Postcode	EH2 3JZ
Contact telephone number	0131 243 0932
E-mail	Rachel.Cackett@wrvs.org.uk

1. Are you responding as: (please tick one box)

(a) an individual (go to 2a/b)

(b) on behalf of a group or organisation (go to 2c)

2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on the SE website)?

Yes (go to 2b below)

No, not at all

response as confidential.)

(We will treat your

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

2c. ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondents **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

Yes

No (We will treat your response as confidential.)

BACKGROUND

3. In analysing your response, it would help us to know what your background is. Please indicate using the boxes provided below the area which best describes your involvement with children and vulnerable adults and add any further comments you wish to make about this.

- | | | | |
|-------------------|--------------------------|------------------------|--------------------------|
| Early Years | <input type="checkbox"/> | Education | <input type="checkbox"/> |
| Health | <input type="checkbox"/> | | |
| Justice | <input type="checkbox"/> | Parent/Carer | <input type="checkbox"/> |
| Police | <input type="checkbox"/> | | |
| Social Work | <input type="checkbox"/> | | |
| Sport and Leisure | <input type="checkbox"/> | Voluntary Organisation | |
| | | ✓ | |
| Other | <input type="checkbox"/> | | |

Further comments:

SHARING RESPONSES/FUTURE ENGAGEMENT

4. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

- | | |
|-----|-------------------------------------|
| Yes | <input checked="" type="checkbox"/> |
| No | <input type="checkbox"/> |