



Arthur Duignan, Assistant Director and Authorised Signatory - April 2012

Background

In 1992, Ireland ratified the UN Convention on the Rights of the Child. Article 19 requires *all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.*

In delivering arts activities, artists and *organisations*¹ must give careful consideration to their duty to protect children and vulnerable adults with whom they have contact. In line with the *Children First* guidelines², organisations where employees or volunteers have access to children should implement safe recruitment practices, including Garda vetting. Under the draft National Vetting Bureau Bill³, vetting will become a legal requirement for employment that involves *regular unsupervised contact* with children and vulnerable adults.

All organisations have an obligation to provide the highest standard of care and a potential civil liability for any failure to do so. In terms of protection the child/vulnerable adult is the central concern. Employers must take all reasonable steps to ensure that proper policies and procedures are in place and are fully and properly implemented, in line with *Children First* guidelines:

- ensuring best practice in the recruitment of staff and volunteers;
- ensuring staff and volunteers are aware the signs of abuse or neglect;
- having guidance and procedures in place for reporting concerns; and,
- having procedures and a designated person for reporting concerns.

*Our Duty to Care (2002)*⁴ outlines good practice procedures, practices and policies for organisations that can also be applied to the protection of *vulnerable adults*⁵.

¹ In the draft Vetting Bureau Bill, the term “*organisation*” is defined as ‘*a body corporate or unincorporate or an individual who employs others in the course of a business or activity*’. The term “*employment*” includes paid work (full-time or part-time), work as a volunteer, unpaid work and student placements. The term ‘*regular unsupervised contact*’ is not defined. In the final drafting of the Bill, additional consideration is to be given to these definitions.

² *Children First*, National Guidelines for the Protection and Welfare of Children (first published in 1999 and revised in 2011) - available at www.dcy.ie.

³ National Vetting Bureau Bill (Draft Heads, July 2011) - Minister for Justice, Equality + Defence.

⁴ *Our Duty To Care*: (Department of Health, 2002) Available at www.dohc.ie

⁵ “*Vulnerable Adult*” is defined in the draft Bill as a person of 18 years and older suffering from a physical, intellectual or mental impairment, whether through disability, injury, illness or age, such as to render them a ward of court, to be in residential or sheltered

So, what is Garda vetting?

Garda vetting exists to ensure that any individual convicted of a serious crime is not unwittingly offered a position where they could cause harm. For employers, vetting is an element of best practice recruitment, alongside reference checking, interview procedures, and monitoring of good professional practice. Decisions on suitability for recruitment ultimately rest with the organisation and the results of vetting form only one component of that decision. Individuals undergoing vetting have reassurance that proper systems and procedures are in place to ensure a safe work environment.

Garda Vetting involves an examination of records regarding prospective employees for the purpose of disclosing certain information to an employer. In a vetting application, the individual authorises An Garda to disclose *'information regarding convictions, if any, in a court of law, a statement that there are no convictions recorded (against me) in the Republic of Ireland or elsewhere, or a statement of all convictions and/or prosecutions, successful or not, pending or completed, in the State or elsewhere'*.

An individual within the 'registered organisation' is designated as Authorised Signatory to act as the point of contact and to whom results are returned, confidentially. The person must be vetted and undertake training and induction in advance of registration.

Once the search process is completed - the average time to return a result has been reduced recently to 2 to 3 weeks - the implications are assessed by the employer. If a 'match' (conviction) is disclosed, it is up to the employer to determine its relevance and significance. Within a natural justice framework, the employer arrives at a decision following fair procedures including allowing any findings believed to be wrong to be disputed. Where the disclosure is accepted, the employer takes into account the gravity, timing, significance, self-disclosure, and subsequent work and rehabilitation record of the person.

Largely due to the significant implications of Data Protection law – the application requires detailed personal information - vetting is not portable between employers. Each employer must undergo the process separately. Vetting is time sensitive, in that it is valid only at the time that it is completed, and a fresh application may be required at another time, even by the same employer.

It is important to note that vetting operates independently of an individual's right of access to personal information held by An Garda under Freedom of Information law. Neither is it the same as a Certificate of Character from An Garda, which can be required to work or start a business abroad. Neither of these are substitutes for vetting and an employer that requests these checks as a substitute for vetting is in breach of Data Protection law⁶.

In 2002, a dedicated vetting service was established - the *Garda Central Vetting Unit*⁷. The unit provides the only official vetting service in the Republic and acts on behalf of organisations employing people to work in a full-time, part-time, voluntary or student

accommodation, to require assistance in the conduct of his/her own affairs or unable to guard against neglect, abuse or exploitation.

⁶ This is covered under Section 4(13) of the Data Protection Act 2003 which has not yet commenced in law, so at present there is nothing to prevent such a request being made.

⁷ The Vetting Unit is located in Thurles. See www.garda.ie for information.

placement capacity for work with children and/or vulnerable adults. Since 2006, the unit has expanded access to new areas including education, justice, youth work, sport, and the arts. It provides vetting for each sector through a 'central point of contact' which processes vetting applications for that sector. To date, it has registered over 900 organisations in the voluntary and statutory sectors.

The situations in the UK, Northern Ireland and the Republic of Ireland are different. Here, vetting is only available to an employer and not to individuals. It is already an offence to apply for a job or offer a service here which involves access to children or '*mentally impaired people*'⁸ - the terminology used - without first disclosing any conviction for a sexual offence⁹. In Northern Ireland, there are systematic checks of convictions and other relevant matters and, as in the UK, there is strict supervision of the movement of offenders known to represent a danger. The UK system also uses 'hard' information (on convictions) as well as 'soft' information (on suspicion of posing a risk).

The main changes proposed in the National Vetting Bureau Bill (draft heads) 2011 include:

- Legal requirement for vetting for any *employment* involving "*regular or ongoing unsupervised contact*", excluding "*ad-hoc*" events and activities
- Bureau to replace the GCVU with systems and procedures to continue as is
- Possible introduction of charges for vetting and/or for registration
- A register of '*registered organisations*' and possible compliance inspections
- Development of electronic data transfer process for managing applications
- Reporting of '*relevant information*', including from other jurisdictions, possibly excluding minor offences and on-the-spot fines
- Revised disputes + appeals system (replaces existing Code of Practice)
- Offences – tampering with or falsifying applications, non-registration or employment without vetting where it is required, employment where 'reasonable concern' exists – penalties of up to €10,000 or 5 years prison.

Garda Vetting + the Arts

Most organisations involved in the arts are well aware of their responsibilities for the protection and welfare of those in their care. It has been Arts Council policy since 2007 that any organisation supported by it that provides services for children or young people must have in place adequate protection policies and procedures. The Arts Council encourages organisations to adapt and use its *Guidelines on Protection* for working with children and young people¹⁰. In response to consultation with the sector, it has produced guidelines for the arts, for recording and using images, and for producing information about the policies and procedures in place. The Arts Council also arranges training and workshops on protection issues and is active in national policy development.

A number of arts organisations have registered with the Vetting Unit including Create, the Ark, the National Association for Youth Drama and Poetry Ireland. Create offers access to

⁸ '*Mentally impaired*' is defined in the Criminal Law (Sexual Offences) Act 1993.

⁹ Section 26, Sex Offenders Act 2001

¹⁰ Arts Council publications are available at: www.artscouncil.ie/Publications

vetting for work in the arts, including for individual artists registered with it as associates¹¹. So far, Create has assisted over 150 employers (arts projects, production companies, venues, local arts offices, schools, academies) and processed 2,000 applications for work in the arts.

Despite a positive policy backdrop and a general enthusiasm for vetting in the arts there are issues of concern:

- In the arts, it is not always clear where responsibility for vetting should lie - with the funder, commissioning body, host group, venue, creative producer or the artist. Even where this can be clarified, vetting is not always available and it is not transferrable between stakeholders
- Some arts activities by their nature require more 'significant' contact than others (e.g. dance may require touch; music tuition is generally one-to-one) and the proposed legislation does not clarify this issue or define '*substantial or ongoing unsupervised*' contact
- The impact of vetting on recruitment, which has particular implications for the arts, as funding support generally results in short decision-making cycles. Tight recruitment timeframes can render vetting impractical, especially if employers face delays in the process
- The situation of freelance arts practitioners is particularly unsatisfactory - vetting is not available to individuals and is not portable between employers. Some artists are asked to undergo vetting repeatedly, others report losing work due to a lack of access to vetting
- Best practice is not always applied - many positions are not advertised, some vacancies are filled with limited checks, some organisations vet all employees and volunteers, including boards of management, regardless of contact levels. Artists report a lack of appreciation of what vetting entails for them, poor induction and supervision and other environmental risks. It is not unusual for an artist to have difficulty clarifying the protection policies in place.
- Professional artists are increasingly mobile and many have worked or studied outside Ireland; it is not clear how these periods abroad should or can be verified for - or by - an employer based in Ireland
- Employers do not have an entitlement to access vetting through the 'central point' in their sector and rely on organisations agreeing to manage their vetting. These arrangements vary across sectors; some are very restricted.
- Legislative compliance has resource implications for registered organisations and capacity is reducing as public funding diminishes. Finding funds for information, training, and IT systems is difficult and a lack of financial resources could result in restrictions on access to vetting.

Addressing these concerns would contribute to higher standards of protection and welfare in the arts. Some of these issues are addressed in the draft Bill; others were the subject of submissions made by Create and others to the Joint Committee on Justice, Defence and Equality. In its report, the Joint Committee has recommended that the Minister give careful consideration to the issues raised in his final drafting.

At the time of writing, we are hopeful that the Bill will pass into law in 2012. Whether or not this is the case, and what it will ultimately contain, we will have to wait and see.

¹¹ For details of Create's vetting service, visit www.create-ireland.ie