

DUNDEE CITY COUNCIL

REPORT TO: POLICY & RESOURCES COMMITTEE - 17 APRIL 2006

REPORT ON: THE RESPONSE FROM DUNDEE CITY COUNCIL TO THE SCOTTISH EXECUTIVE'S PROPOSALS FOR A SCOTTISH VETTING AND BARRING SCHEME TO PROTECT VULNERABLE GROUPS

REPORT BY: CHIEF EXECUTIVE

REPORT NO: 245-2006

1.0 PURPOSE OF THE REPORT

1.1 To seek the member approval for the response to proposals from the Scottish Executive.

2.0 RECOMMENDATIONS

It is recommended that the Committee:-

2.1 Note and approve the contents of the response.

3.0 FINANCIAL IMPLICATIONS

3.1 The proposal is that there will continue to be a fee for initial disclosure checks on persons who will work with vulnerable groups, and may be a fee for subsequent checks. The proposals state that detailed costs are still to be worked out and will be dependent on the details of the finally agreed scheme.

4.0 LOCAL AGENDA 21 IMPLICATIONS

4.1 None.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 This report takes account of the rights and needs of vulnerable children and young people, including those from minority ethnic communities and those with disabilities. The report promotes the principle that the needs of vulnerable children and adults should guide consideration of the most appropriate vetting and barring scheme.

6.0 MAIN TEXT

6.1 Following Ian Huntley's conviction, in December 2003, for the murders of Jessica Chapman and Holly Wells in Soham, the Home Secretary appointed Sir Michael Bichard to lead an independent inquiry into child protection measures, record keeping, vetting and information sharing in the areas in which Huntley had lived and worked.

6.2 Whilst Sir Michael's report were primarily targeted at England and Wales, Scottish Ministers welcomed its publication. One of Sir Michael's recommendations was for a

national vetting and barring scheme administered by a central unit. Since the publication of the report, the Scottish Executive has worked in partnership with stakeholders to develop proposals that will implement that recommendation in Scotland.

- 6.3 The proposals have been presented in the Executive's consultation paper, 'Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme', a copy of which is available in the Members Lounge. The proposals build upon the system of Disclosure Checking already in place in Scotland and upon the provisions of the Protection of Children (Scotland) Act 2003 which introduced the Disqualified from Working with Children List (DWCL).
- 6.4 The attached appendix, prepared on the Scottish Executive's proforma, is Dundee City Council's response to the consultation paper.
- 6.5 The response welcomes the proposals for a vetting and barring scheme administered by a Central Barring Unit. It suggests that the operation and management of the scheme be based on the principle that the welfare of vulnerable children and adults is the overarching concern.

7.0 CONSULTATION

- 7.1 All Chief Officers have been consulted.

8.0 BACKGROUND PAPERS

None.

Alex Stephen
Chief Executive

Date: 11/04/2006

Protecting Vulnerable Groups: Scottish Vetting and Barring Scheme

Consultation Paper

Response Booklet

1

Accessing this and other consultations

This consultation, and all other Scottish Executive (SE) consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is. The Scottish Executive now also has an email alert system for [SE consultations](#). You can register to receive a weekly email containing details of all new SE consultations at <http://www.scotland.gov.uk/consultations/seconsult.aspx>.

Access to consultation responses

We will make all responses available to the public in the SE Library by 1 June 2006 unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library.

All respondents should be aware that the Scottish Executive is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

2

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	Donald MacKenzie
Address	Dundee City Council
	City Square
	Dundee DD1 3BY
Postcode	
Contact Telephone Number	07985 873780
E-mail	donald.mackenzie@dundecity.gov.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 (We will treat your response as confidential.)

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 respondees 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 & Leisure	<input type="checkbox"/>	Voluntary Organisation	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>				

Further Comments:
Local Authority

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

No

YOUR VIEWS

Part I. General

This part asks more general questions. Part II asks about the specific proposals contained in the consultation paper.

Current system. Please identify what you consider to be the three greatest issues with the current system for checking those who work with children and vulnerable adults.

1. Completeness of information
2. Delays in the process
3. Necessity for repeated checking

Bichard recommendations. Do you have any comments you would like to make on the recommendations, especially recommendation 19 in respect of vetting and barring?

We endorse the Bichard recommendations and welcome proposals for a vetting and barring scheme.

Interests of vulnerable groups. Do you have any concerns about the way the proposed system might adversely affect the opportunities for children and vulnerable adults to participate in education, employment, sport and leisure activities? What could be done to mitigate this?

So long as the scheme will be capable of dealing quickly with initial disclosure requests, then we do not foresee any problem. There will be a detrimental effect on children and vulnerable adults engaging with small organisations, sports clubs etc, if the turnaround time is lengthy.

Interests of employers. Do you have any concerns on the impact of the proposals on the recruitment and selection of individuals to work with children and vulnerable adults? What could be done to mitigate this?

We note that the proposals will lead to a new raft of employers needing to be made aware of and trained in, the procedures and processes of checking. Consideration needs to be given to how this will be achieved.

Interests of applicants. Do you have any concerns on the impact of the proposals on those who might apply for disclosure to work with children and vulnerable adults? What could be done to mitigate this?

Again, we would hope that the turnaround time on initial disclosure applications could be such that prospective employees are not penalised by having to wait an inappropriately long time before an appointment can be confirmed.

Our biggest concern is that volunteering to work with children and young people is not sufficiently encouraged and enhanced within the media in a positive manner. We suggest that a media campaign should include information about not all convictions being relevant, or of interest, to potential employers. Particularly, we see a need for a positive media campaign to attract young males to volunteer.

Other matters. Please make any other comments which are relevant to the Scottish Bichard Vetting and Barring Scheme.

Part II. Consultation Paper Proposals

This part asks about the specific proposals contained in the consultation paper. Part I asks more general questions.

Proposals 1-3 Scope of new Vetting and Barring Disclosure. Do you have any comments on the type of position for which the new scheme will apply?

We broadly welcome the aims and objectives of these proposals and endorse the reasoning that leads to them.

In relation to the Proposal 2 and the explanation given in paragraph 3.4.3, we note arrangements are to be put in place for registered bodies to, effectively, carry out work on behalf of parents and personal employers.

Whilst Dundee City Council wishes to ensure that parents and personal employers should find it easy to access relevant information on those they intend to employ, the Council also notes the cost and time implications, on registered bodies, of providing such a service. It is suggested that it be made clear that those from outwith a registered body that ask it to carry out a task on their behalf, should expect to pay for the service.

In relation to the type of positions being thought about, as listed at 3.4.4, the Council notes a difference between the groups described under the three bullet points in paragraph 3.4.4. Those covered by the first two bullet points will have a direct interaction with vulnerable people. Those covered by the third will not have a direct interaction. Noting the Executive's comments on costs, benefits and proportionality, in paragraphs 3.2.9 – 3.2.11, the Council would invite consideration of whether Scotland has sufficient resources to allow the scheme to cover those who will not, via their employment, have direct access to vulnerable groups.

The Council is concerned with the administrative and financial implications of including this group of staff. Within a local authority there are very large numbers of administrative staff who have access to a range of databases, each potentially containing information about vulnerable people; e.g. social work, education, housing, leisure services, etc. When the rollout of the scheme includes this group of people, the burden on both the employer and the Central Barring Unit is likely to be significant.

And, given the introduction of the scheme allows for the 'tidying up' of anomalies, we note Section 2 (4) (c) of PoC(S)A 2003 does not describe the circumstances where the individual had not been dismissed or been transferred but does refer to "resigned, retired or been made redundant". Perhaps the legislation required to introduce this scheme could address that.

Proposal 4 Costs of Vetting and Barring Disclosure. How much more would you be willing to pay upfront for the new Vetting and Barring Disclosure? Please be as specific as you can, e.g. £10.

The Council notes that higher costs for an initial disclosure are likely to be offset, to some degree, by savings accrued as a result of a nil, or reduced, fee for subsequent barring checks.

The Executive might also find that there are efficiency savings for Disclosure Scotland/The Central Barring Unit as a result of the more streamlined proposals for the collation and ongoing management of information relating to those for whom an initial disclosure has been carried out.

It would be helpful to know how many of the 500,000 checks (referred to in paragraph 3.4.8) were for initial disclosures and how many were for repeat disclosures. This would help everyone quantify the likely costs of the scheme and provide grounds for considering what a reasonable charge might be.

Proposals 4-5 Funding the Vetting and Barring Scheme. Do you agree with the broad proposals for: a more expensive initial disclosure, low-cost or free subsequent checks and free disclosure for volunteers?

The Council agrees that initial disclosure is likely to be more costly than subsequent checks. It is essential that the voluntary sector remain able to access a free service at all levels.

Proposal 6 Retrospective Vetting and Barring Disclosure. Do you agree with the proposals for phasing the vetting and barring of the existing workforce?

Yes. However, the Council would wish to see the timescale being set sooner rather than later and suggest that five years is too long a period to wait. The aims of the scheme, as set out in paragraph 3.2.5, are to be welcomed. In order to see these aims fulfilled and to meaningfully contribute to the protection of vulnerable children and adults, the phasing process should be completed within a three-year timescale.

There will need to be clear direction provided by the CBU to assist in the management of retrospective checks in order to avoid log jamming towards the end of the phasing process.

Proposals 78 Disqualified from Working with Vulnerable Adults List. We are not looking for comments on the DWVAL, since this has been covered by previous consultation. However, *we would like to know if this new context raises any new issues.*

The Council understands that there are arguments as to why there should be a DWCL and a DWVAL. However, it questions why inclusion on one list should not automatically mean inclusion on the other, on the basis that if an individual poses an unacceptable risk to one group of vulnerable people, he may well pose a risk to another group.

There is another reason to be concerned about having two lists. The proposals relating to the DWVAL refer to persons over the age of 16. As we are aware, the definition of a 'child' varies in Scots Law. In the Protection of Children (Scotland) Act 2003, children are considered to be those under 18. This creates an anomaly and needs to be addressed.

Proposal 9 Changes to the Disqualified from Working with Children List. Are there any changes, other than those outlined, which you would like to see made to the DWCL?

In terms of the criteria that apply for making referrals to the list, the Council suggests that the term 'dismissed' should be better defined. It seems there may be some confusion in legal terms. It would be helpful to state that a person is dismissed even if he is in the process of appeal against the decision to dismiss him.

Proposal 10 Decisions on barred lists by new Central Barring Unit. Do you think decisions on barring should be made by a special panel, a case conference or administrators?

The most important consideration is that sound decision-making follows processes that maximise efficiency, effectiveness and provide best value.

Given the number of applications that are likely to require consideration by the Central Barring Unit, it is important that those charged with decision-making are able to exercise that duty quickly and easily; i.e. on a daily basis. This might indicate that a 'special panel', drawn

from around Scotland, is impractical. It might also suggest that the notion of assembling a 'case conference' to consider every case, is impractical.

Proposals 11- 13 Central Barring Unit. Do you have any comments on the status and governance arrangements for the Central Barring Unit? What degree of separation is needed from the Scottish Ministers?

In line with the response to Proposal 10, the status and governance arrangements must be such that efficiency and effectiveness are maximised.

Given that the flow of information will be from Disclosure Scotland to the CBU and noting hurdles that have still to be overcome in ensuring the effective flow of information between agencies in the field of child and adult care, the Council suggests that the CBU and Disclosure Scotland be as closely linked as possible.

It is therefore suggested that the CBU become part of the proposed Scottish Police Services Authority (SPSA), along with Disclosure Scotland. This arrangement should lend itself to the most effective information management systems being put in place.

Proposal 14 Provisional listing. What should the criteria be for provisional listing? Do you agree that the individual should be able to continue to work during the determination process?

The Council is unclear as to precisely what is being proposed.

In the case of a prospective new employee, the person should not start in post until the determination is made. In the case of an existing employee, the criteria for referral under the Protection of Children (Scotland) Act 2003 require that a person is no longer working in the post.

Therefore, why are we being asked to respond to a question about whether a person should be able to continue to work during the determination process? Unless it is proposed to change the criteria, then the question does not arise.

The criteria for provisionally listing should remain as that defined in the PoC(S)A 2003 Determination Regulations 2004.

On the basis that 'continue to work' relates to work other than the former child care post then it would seem prudent to require that the person discontinue any other such work pending the decision to put on the List.

It remains the case that if an organisation has made a referral then it obviously believes that a person presents a risk.

Proposal 15 Appeals against listing. Do you agree that the right of appeal should be to the sheriff court with a three-month time-limit?

Yes

Proposal 16 Access to barred status. Who has a legitimate interest in the barred status of an individual and how should "fishing trips" be prevented?

In relation to fishing trips, these could be managed by:

- a. The CBU database being able to record the source of 'hits'; i.e. if each registered body is given a unique identifier, this could be revealed whenever that body logs in.
- b. The registered body being required to have a written consent from the applicant to access information about him. This would provide an audit trail that could then be matched to the 'hits' made by that registered body.
- c. It is appropriate that in the case of small-scale and personal employers access should be mediated through a larger body. However, the question of vicarious liability is then raised and the scheme will have to ensure that such a threat is removed from the registered body.

Point c. above, also requires consideration of the resource implications for the registered body assisting smaller organisations and individuals in this way. Is it intended that a registered body should be able to charge a fee for such work?

Proposal 17 Information released to applicant. How much information passed on to the Central Barring Unit should be released to the applicant and employer? What criteria should there be for not releasing information?

It is imperative that the employer should receive information that, whilst not leading to a decision to bar, may nevertheless allow the employer to make decisions about whether to employ, or continue to employ a person. Such information will be an important element in the application of robust recruitment and selection procedures.

Criteria for not releasing information to an applicant must include consideration of whether the information may place others at risk.

We are also aware that failure to adequately explain to an applicant the reason for them being barred may also raise Human Rights Act issues.

Proposals 18-20 Information sharing between the Central Barring Unit, public authorities, employers, police and regulatory bodies etc. Do you have any comments on who should be required to pass what information on to whom?

The guiding principle for decisions about information sharing should be the promotion of the interests of vulnerable people. All other considerations should be secondary to this.

The Council notes that, in paragraph 3.4.39, the Executive intends to consult further regarding a duty being placed upon local authorities to share information. We welcome this. Whilst the Council would wish to contribute to greater public safety in this way, it is also aware of the potentially significant resource implications of this. There needs to be a dialogue so that all parties can explore and agree what information local authorities must share.

The Council questions why only local authorities will be the subject of compulsory information sharing. The voluntary sector, including regulated charities, is a major player in the provision of services to vulnerable groups. As such, it employs a significant proportion of those who work with vulnerable groups. Depending on the nature of the information being referred to in paragraph 3.4.39, we are concerned that there will be a significant gap in the body of information provided to the CBU if this sector is excluded.

Proposal 21 Role of regulatory bodies. Which regulatory bodies should receive information through disclosure? What information should they receive?

The scheme should encompass all regulatory bodies that regulate those meeting the criteria set out in paragraph 3.4.4. We also suggest that consideration is given to including the Office of the Scottish Charity Regulator as an agency that should receive information that a person is on a barred list.

Whilst Human Rights matters are important in relation to the information that regulatory bodies need to know, it is equally important to confirm that the welfare of vulnerable groups must be the paramount consideration. It is in this context that decisions about what information to share must be made.

Proposal 22 Disclosure of civil orders. Which civil orders should be disclosed?

The Council believes that the following civil orders should be disclosed as part of the checking process:-

Sexual Offences Prevention Order (SOPO)

Risk of Sexual Harm Order (ROSHO)

Antisocial Behaviour Order (ASBO)

Proposal 23 Cross-referencing with offender registers and other lists. How do you think the DWCL and DWVAL should relate to other registers and lists, e.g. the Sex Offenders Register or Protection of Children Act List in England and Wales?

The Council notes that, at paragraph 3.4.46 of the consultation document, the Executive states that, "The presence of an individual on the Sex Offenders Register or other list will not automatically lead to that individual being barred."

We accept the argument that barring should be the result of a determination process and not be automatic following some other action or decision. However, it might be appropriate that those involved in the determination process be directed towards an assumption of barring unless circumstances indicate that it is not necessary.

Proposals 24-25 Referrals. Do you agree with the proposals for who can make a referral? Should parents and personal employers be able to make a referral?

If parents and personal employers are able to receive information, then they may have an expectation that they should also be able to provide information; i.e. make a referral.

If parents and personal employers are able to make a referral, it will be important to provide information that enables them to understand the criteria for making a referral.

We agree with Proposal 25 that retrospective referrals should be possible.

Proposal 26 Lifetime of certificates and checks. Do you agree that the vetting and barring disclosure certificate should have a finite lifetime, after which a new application for full disclosure needs to be made?

The Council is unclear as to why this proposal is necessary. Provided all the proposed arrangements are put in place the scheme is a continuous process. Our understanding of the proposals is that any new, relevant information will be passed to those who need to have

it. If this happens, then we are unclear as to the need for a new certificate after an agreed number of years.