

PRACTICE NOTE

"Barring" Allegations

This Practice Note has been issued by the Council for the guidance of Practice Committee Panels and to assist those appearing before them.

Introduction

Articles 22(1)(a)(vi) and (vii) of the Health Professions Order 2001 (the **Order**) provides that the grounds upon which an allegation may be made is that a registrant's fitness to practise is impaired by reason of:

- "(vi) the Independent Barring Board including the person in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006 or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007), or
- (vii) the Scottish Ministers including the person in the children's list or the adults' list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007)."

Background

The "barring" legislation – the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 and the Protection of Vulnerable Groups (Scotland) Act 2007 – was enacted in order to implement a key recommendation of the Bichard Report¹, that:

"new arrangements should be introduced requiring those who wish to work with children, or vulnerable adults, to be registered. The register would confirm that there is no known reason why an individual should not work with these clients."

The legislation introduces a new framework for the vetting and, if necessary, barring of people who work with children and vulnerable adults². Although the arrangements in Scotland differ in certain respects from those in England and Wales and Northern Ireland, the barring arrangements throughout the UK provide for the maintenance of two separate but aligned lists:³

¹ The Report of the Inquiry conducted by Sir Michael Bichard arising from the murder of Jessica Chapman and Holly Wells ('the Soham Murders'); HC653, 2004

² In Scotland this group is referred to as "protected adults"

³ maintained by the Independent Safeguarding Authority (in England, Wales and Northern Ireland) and Disclosure Scotland.

- a list of people barred from certain types of work with children; and
- a list of people barred from certain types of work with vulnerable (or protected) adults.

Barred individuals can be placed on one or both of these lists. The barring body's decision will be made based upon a range of information, including:

- convictions or cautions for certain offences;
- relevant decisions of regulatory bodies⁴;
- 'soft' intelligence or other evidence of:
 - inappropriate behaviour; and
 - behaviour that is likely to harm a child or vulnerable adult.

In the most serious of cases, where a person is convicted of a sexual or violent offence which indicates that he or she poses a clear risk of harm to children or vulnerable adults and there cannot be any mitigating circumstances that might explain the offence, barring will be automatic. For slightly less serious offences, the person concerned will be given the opportunity to make representations to the barring body.

The effect of barring

A person who is included in a barring list is prohibited from undertaking certain types of work - both paid and unpaid - with children and/or vulnerable or protected adults (as the case may be). Breach of such a prohibition is punishable as a criminal offence.

In England, Wales and Northern Ireland the prohibited work falls into two categories:

"regulated activity" – frequent, intensive or overnight contact with children or vulnerable adults for the purposes of providing health or social care, teaching, training etc. or in certain specified places such as schools and care homes;

"controlled activity" - frequent or intensive support work in health, social care or education settings or where there is access to sensitive personal records (this category of activity extends to cleaners, receptionists, catering staff etc.). A barred individual cannot undertake a regulated activity but may be permitted to undertake a controlled activity subject to safeguards being put in place.

For these purposes "frequent" means once a month or more or "intensive" means three or more days in any 30-day period.

⁴ The HPC has a duty to inform the barring bodies of relevant decisions taken in respect of registrants. That task is undertaken by the Director of Fitness to Practise, normally after a case has concluded.

In Scotland, broadly similar constraints apply but under a single category of "regulated work".

Children and Vulnerable Adults

The legislation defines a child as a person under 18 years of age and "vulnerable adults" (in Scotland "protected adults") form a very broad categories which includes adults:

- in residential accommodation or sheltered housing;
- detained in prison or other lawful custody;
- receiving prescribed welfare services;
- receiving any form of health care (which includes treatment, therapy or palliative care of any description).

The latter category means that there will be only a limited number of registrants whose daily work does not bring them into contact with vulnerable adults.

Procedure

Many matters which may lead to a barring decision being made against a registrant are likely to come to the HPC's attention in the form of allegations relating to misconduct or conviction for a criminal offence rather than as "barring allegations".

Where a barring allegation is made, Panels must be careful not to "go behind" decision of the relevant barring body. The Panel's task is to determine whether the registrant's fitness to practise is impaired, based upon his or her inclusion in a barring list, and if so, whether any sanction needs to be imposed.

Although the full range of sanctions under Part V of the Order is available in barring cases, Panels need to recognise that inclusion in a barring list will prevent many registrants from exercising their profession in any form.

In cases where a registrant is included in one list but not both (for example, prevented from working with children but not adults) and some form of practice restriction is being considered, Panels need to take account of:

- the likelihood of the registrant complying with any such conditions, given that barring list have arisen because of an abuse of trust; and
- public protection in its broadest sense, including whether permitting the registrant to remain in practice would bring the profession into disrepute or undermine public confidence in that profession or the regulatory process.

Inclusion in a barring list is intended to secure public protection from those who pose a significant risk to children and/or vulnerable or protected adults. Generally, Panels should regard it as incompatible with HPC's obligation to protect the public to allow a person to maintain unrestricted registration whilst they are on a barring list.