



**Rt Hon Ed Balls MP**  
Secretary of State

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14<sup>th</sup>

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Dear

Sir Roger

Thank you very much for your report, "*Drawing the Line*", on the new Vetting and Barring Scheme (VBS), which I am publishing alongside this Government response.

Parliament legislated for the new scheme in the 2006 Safeguarding Vulnerable Groups Act and it received overwhelming support. We recognised then, as we do now, that it is essential to ensure that children and vulnerable adults are properly safeguarded and that we do everything we reasonably can to protect them from those who seek to do them harm.

Our aim throughout has been to develop an approach which is proportionate, balanced and effective, with the scheme operating in a way which is neither burdensome nor bureaucratic, or off-putting to potential volunteers in children's settings, while still meeting the concerns of parents.

We have found much support for the scheme as we have taken this work forward through a process of extensive consultation with those who run services and activities for children. It has always been our intention that arrangements made between parents and friends should be excluded from the Vetting and Barring Scheme. That principle is central to the 2006 Act.

However, some significant concerns have been expressed about the interpretation of one particular aspect of the scheme; the degree of contact with children which should trigger the requirement to register with the Independent Safeguarding Authority (ISA). Striking the right balance on where to draw the line that separates those situations that should be covered from those that should be excluded has undoubtedly been a difficult judgement.



department for  
**children, schools and families**

In my letter of 14 September to Barry Sheerman MP, chair of the Children, Schools and Families Select Committee, I said that Delyth Morgan and I had asked you to check that the Government has drawn the line in the right place on this issue. I welcome the progress you have made over the past three months, and the wide range of organisations and individuals that you have involved in your deliberations.

I am therefore pleased to confirm that the Government accepts all of your recommendations, which provide us with a strong basis on which to take forward the next phase of the scheme's implementation.

We will make the necessary adjustments to the rules of the Scheme. Taken together, we believe your recommendations strike the right balance between the need to protect the vulnerable on the one hand, and the importance of having a scheme which is proportionate and which is based on some fundamental guiding principles, consistently applied, on the other.

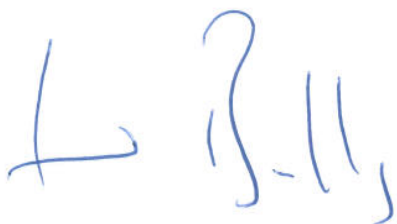
The Government's detailed response to each of your recommendations is set out as an appendix to this letter.

We will state our revised policy, reflecting your recommendations, in the full guidance on the scheme that we are intending to publish in the New Year and in the communications activity that will help to explain the scheme. I strongly agree with you that we need to intensify our communications efforts in order to dispel myths and ensure that there is a wide understanding of how the scheme will apply

We are extremely grateful to you for this very thorough and important piece of work.

I am placing a copy of this letter, together with a copy of your report, in the Libraries of both Houses.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ed Balls'.

ED BALLS MP



## Appendix

### **Recommendation 1: Mutually agreed and responsible arrangements made between parents and friends for the care of their children should not be affected by the Vetting and Barring Scheme (VBS).**

1.1 It has always been our intention that mutually agreed and responsible arrangements made between parents and friends for the care of their children should be excluded from the Vetting and Barring Scheme. That principle is central to the 2006 Act. The way you formulate your fundamental guiding principle is extremely helpful here: that where parents exercise their own judgement about who should care for their children that is entirely a private matter in which the state should not interfere.

1.2 Section 58 of the Safeguarding Vulnerable Groups (SVG) Act excludes completely from the Act all family arrangements and all personal arrangements where there is no commercial consideration. As you note in your report, where parents employ someone in a private capacity, such as a private piano teacher, there is no requirement to register because the parents are making a private choice. But the scheme does allow the piano teacher to register, and for the parents to check the piano teacher's registration if they wish.

1.3 We intend to reinforce these points in our guidance about the scheme, with some illustrative case studies. One particular example is cited in your report, where a club or organisation invites parents to make reciprocal arrangements to transport each others' children. Where parents agree to do so, these arrangements are mutually agreed between the parents and the club plays no role in managing them, so there would be no requirement for registration with the scheme. There is a clear distinction between these circumstances and arrangements where the club is laying on the transport and either managing it directly or engaging a contractor to manage it; arrangements of this nature take us into the territory of your second recommendation.

### **Recommendation 2: Where organisations such as schools, clubs or groups make the decisions as to which adults should work with their children then the requirement to register will apply, subject to the frequent and intensive contact provisions.**

2.1 This is the second element of your fundamental guiding principle: that where parents give the choice to an organisation and cease to be able to make a personal decision about which carer, teacher, driver etc works with their children, then registration becomes relevant, subject to the frequency of contact between the adults and children. The Government accepts this recommendation and we very much welcome the way in which you have formulated the principle.



2.2 In accepting this recommendation, we have noted the findings of the survey conducted by the National Confederation of Parent Teacher Associations (NCPTA) in order to inform their input to your report. It is striking that three out of four parents agreed that ISA registration should apply where parents are not themselves selecting the individuals who are working with their children.

**Recommendation 3: The frequent contact test should be met if the work with children takes place once a week or more. The intensive contact test should be met if the work takes place on 4 days in one month or more, or overnight.**

3.1 This recommendation goes to the heart of the issue of where to set the boundaries for the registration requirement. The Government accepts this recommendation and is very grateful to you for the work you have done with stakeholders and other interested parties to arrive at this sensible and proportionate position. I believe that the concept of activities that take place on a weekly basis is one that will find strong resonance with parents and the public. Activities where volunteers are involved in work with children are typically on a weekly basis, for example, scouts and girl guides, church choirs, and sporting clubs.

3.2 We accept that, in general, activities that take place on a less frequent basis should not require registration with the scheme as a consequence of the Safeguarding Vulnerable Groups Act. However, there are some activities where contact is less frequent than once a week where staff or volunteers should continue to be registered with the scheme, for example those who provide health or social care to vulnerable groups. As you suggest, we shall address this in the guidance on the scheme.

3.3 The intensive condition is designed to capture those instances where there is no regular repetition of the activity but there are a number of days of contact over a short space of time – for example a one week summer play scheme – or the activity takes place overnight. Your proposal to amend the intensive test is a sensible adjustment so that it fits with the new frequency test, and we are happy to accept it.

**Recommendation 4: Individuals who go into different schools or similar settings to work with different groups of children should not be required to register unless their contact with the same children is frequent or intensive.**

4.1 We have noted your observation that, in this instance, the opportunity to develop a relationship of trust which turns abusive is very slight and consequently the Government accepts your recommendation. The recommendation is with reference to schools, where any work that is frequent or intensive, and gives an opportunity for contact with children, triggers the requirement to register with the ISA. It makes sense for this exemption to



cover visiting lecturers and maintenance contractors etc who might go to work in many different schools, but only infrequently – if at all – return to the same school.

4.2 We agree that the same exemption should apply in the other “specified settings” where any work that gives an opportunity for contact with the vulnerable groups could trigger the requirement to register if it meets the frequency test. These settings are nurseries, children’s hospitals, children’s detention centres, children’s homes, relevant childcare premises, children’s centres and adult care homes. The risks posed by people who might help in some way on a one-off or infrequent basis in any one such setting are small, as there will be few opportunities for sustained contact with the vulnerable groups, and regular staff who are ISA-registered will be on hand.

4.3 It is important that we maintain the requirement for registration where a worker in a single setting will come into contact with a fluid and varying client base. This includes, for example, all medical care and treatment situations, such as a GP’s surgery, where the children or vulnerable adults attending will typically vary from day to day and the same individual will not in general be seen frequently. The same applies to situations such as a creche in a shopping mall where one would not, in general, expect to see the same children on a day by day basis. For all these settings we shall keep the requirement for registration in place, even though the client basis may vary from day to day.

**Recommendation 5: The minimum age of registration for young people who engage in regulated activity as part of their continuing education should be reviewed.**

5.1 The SVG Act sets the age at which registration with the scheme is required at 16. As you observe, the main rationale for that in 2006 was that at age 16 an individual could be working full time. However, since Parliament passed the Education and Skills Act 2008, that position will of course change as we progressively raise the minimum participation age in education and training.

5.2 The Government agrees with you that it is excessive to require registration under the SVG Act where a 16 or 17 year old is engaging in regulated activity as a consequence of a programme of work being organised by the school or college that he or she is attending. This will apply, for example, to work experience and community service programmes where the student, as part of those programmes, is doing work in regulated activity settings.

5.3 We shall also need to apply the exemption to some 18 year olds, because otherwise there would be an odd effect, difficult for the school or college to manage, as the student passes their 18<sup>th</sup> birthday during the course. So we shall apply the exemption not just to 16 and 17 year olds but also to students for the duration of the academic year in which their 18<sup>th</sup>

birthday falls.

5.4 However, we shall maintain the ability for individual settings to make checks of ISA registration where they require that as part of their own conditions. An example would be the one you cite, of a student following a BTEC early years course, as part of which the student will be in close contact with very young children. Those settings will expect the students on the course to be ISA registered, and the student will want to gain their ISA registration in any case so that they can pursue their chosen vocational path.

5.5 We agree with you that we should maintain the registration requirements where the 16/17 year old is engaged directly in regulated activity as an employee or volunteer and we will of course maintain the position that registration for under 16 year olds is not required.

**Recommendation 6: Overseas visitors bringing their own groups of children to the UK e.g. to international camps or the Olympics, should have a three months exemption from the requirement to register.**

6.1 There are a number of circumstances where children from outside the jurisdiction of the scheme may be present in England, Wales or Northern Ireland together with their accompanying workers, and you set out a number of these examples in your report.

6.2 As you say in your report, Ministers had already agreed that a time limited exemption from registration was needed, and we are grateful for your advice on this. Consequently we are content to accept the recommendation to lift the registration requirements in these circumstances, for a three month period.

6.3 We are working with the Scouts Association on ways of ensuring that overseas scout leaders will be able to participate effectively in jamborees in this country.

**Recommendation 7: Exchange visits lasting less than 28 days, where overseas parents accept the responsibility for the selection of the host family, should be regarded as private arrangements and would not require registration.**

7.1 In these circumstances, where a school arranges a "host family" for a child, the adults who volunteer will be acting as private foster carers and if the placement were for longer than 28 days, the school and the carers would have a statutory duty to notify the local authority, which would inspect the fostering arrangements. But whatever the length of the placement, the SVG Act, as it currently stands, classifies this as regulated activity and registration with the scheme is required.

7.2 However we recognise that there are special circumstances where the



school organises exchanges with another school (often abroad) and puts the families in direct contact with each other. The families then get to know each other in advance of the exchange programme taking place, and this takes us back into the territory of your first recommendation and your guiding principle.

7.3 We believe therefore that we should lift the requirement for registration where schools are organising exchange programmes with other schools, the parents accept responsibility for selection of the host families who will look after their children, the host parents are unpaid volunteers, and the visit lasts for less than 28 days. However, the parents' hosting activity will remain regulated activity so that a barred person would commit an offence if they carried it out.

**Recommendation 8: The Government should consider the position of some self-employed health care practitioners and whether a duty should be placed on them to register with the scheme.**

8.1 Self-employed health professionals who provide NHS services must comply with Performers List Regulations. We intend to amend the regulations to require these professionals to register with the ISA. However, some of these health care professionals may be operating on an independent basis, rather than through a contract with a Primary Care Trust (PCT).

8.2 The Government accepts your recommendation that this issue should be reviewed to ensure that we do not have a safeguarding gap in relation to the medical treatment of children or vulnerable adults. The Department of Health will lead on this review in collaboration with DCSF and the health care regulators.

**Recommendation 9: The Government should review the continuing need for 'controlled activity'.**

9.1 The central issue here is that barred workers are permitted to work in controlled activity, where employers are able to put sufficient safeguards in place. The Government's intention was to introduce the full requirements for controlled activity after the completion of the roll-out of ISA registration for regulated activity, which we expect to be complete by 2014. Consequently, we have ample time to review the proposed arrangements for controlled activity in advance of that date, and if necessary to make any changes to primary legislation. DCSF and the Department of Health will take this review forward together, in collaboration with the Department for Business, Innovation and Skills. The Government will launch this review in the New Year.

9.2 In the meantime we believe we need to introduce some interim requirements in controlled activity because as regulated activity is rolled out, there will be individuals who will become barred from regulated activity and there is a risk that some of them may seek to gain access to children or

vulnerable adults by taking up a position in controlled activity. Therefore, it is very important that employers of workers in controlled activity should be able to determine whether the applicants for those posts are barred and if so take a considered judgement on their suitability.

9.3 Our interim arrangements for controlled activity will manage this risk by ensuring that where an employer is making a new appointment to a post in controlled activity, the employer will determine if the individual is barred and if so will obtain an enhanced disclosure on the individual. This will allow a considered employment decision to be made and close off the risk of an employer appointing a barred person without knowing that he or she is barred.

9.4 Consequently we will continue as planned with the interim arrangements. We believe their implementation is necessary for the reasons I have explained. I should make clear though that this will not prejudice the outcomes of the review about the need for controlled activity that will get underway in the New Year.

**Recommendation 10: The Government should review both the statutory requirements and its advice in relation to the continuing need for CRB Disclosures for safeguarding purposes once VBS is in place.**

10.1 We had already announced in 2008 that we would review the requirements for CRB checks on new entrants to paid posts once the VBS had been fully rolled out. However we are content to bring that review forward specifically for paid staff in regulated activity with children, who start a new post after they have already ISA-registered.

10.2 In relation to our advice to schools on unpaid volunteers, and consistent with the position in paragraphs 9.4 and 9.5 above, we will consult on amending our advice as part of the consultation on the revision to the guidance, "*Safeguarding Children and Safer Recruitment in Education*". The consultation will be on volunteers in regulated activity with children, who start a new volunteering assignment after they have already ISA-registered.

10.3 We shall not review:

- existing requirements for a CRB check when a new entrant is *not* already ISA-registered;
- the *entitlement* for an employer to CRB-check a person in regulated activity who is already ISA-registered.

In particular, it is important to retain the entitlement so that employers will continue to be able to conduct a CRB disclosure on an existing member of staff if that member of staff is giving cause for concern.

10.4 The advent of ISA registration may tend to reduce the number of discretionary applications for CRB checks. Organisations will know:



- not only that the ISA has decided, after considering any historical information on an ISA-registered individual, that there is no known reason why that person should not work in regulated activity with the relevant vulnerable group;
- but also that the ISA will be continuously updated with any new police information on that individual;
- and that the ISA would, if new information led it to become minded to bar that individual, immediately alert each organisation which had registered for updates on that individual's ISA registration status.

10.5 We shall reflect these points in the review of the requirements for CRB disclosures which we will launch in the New Year.

DEPARTMENT FOR CHILDREN, SCHOOLS AND FAMILIES  
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