

Consultation on Protection of Vulnerable Groups and the Disclosure of Criminal Information Consultation 2018

Response from the Scottish Charity Regulator

1. Background

1.1 The Scottish Charity Regulator

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. OSCR is the registrar and regulator of charities in Scotland. We are the independent regulator and registrar for over 24,000 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers.

Many of the charities that we regulate have beneficiaries who are children or protected adults. Our work as Regulator ultimately supports public confidence in charities and their work as such we have an interest in the proposals by Disclosure Scotland.

In responding to the consultation we would particularly stress the size and income profile of the Scottish charity sector. Of the 24,000 charities in Scotland, 52% have an income of less than £25,000, and the vast majority of charity trustees are volunteers and serve unpaid.

2. Consultation response

OSCR is not a referring body in terms of the Protection of Vulnerable Groups (Scotland) Act 2007 (the 2007 Act). OSCR does not propose at this time that it added to the list of referring bodies given its general functions as provided for at [section 1\(5\) of the 2005 Act](#). However, OSCR does have an interest in safeguarding, and that charities on its Register have a responsibility to make sure that any trustees, employees and volunteers that work with vulnerable beneficiaries are suitable for the role and that they obtain the appropriate checks. Furthermore, OSCR has in place a [Memorandum of Understanding with the Care Inspectorate](#) which is a referring body in terms of the 2007 Act.

Section 66 of the 2005 Act provides charity trustees with general duties in that they must act in the interests of the charity and in particular must comply with the duty to act with care and diligence. Making appropriate referrals to Disclosure Scotland is

one of the ways in which a charity can demonstrate to OSCR that they are compliant. OSCR if appropriate to do so, as part of any inquiry or performance of its general function, may question whether a referral has been made, recommend that a referral is made or indeed share information with the Care Inspectorate if appropriate.

Much of the consultation is not relevant to OSCR's function. We make the following bullet points on the parts where we have a direct interest:

- Question 1 - 3: A simplified and more streamlined disclosure system with fewer products seems a sensible approach (DS currently offer 10 products some of which are very similar or overlap as such can cause confusion in terms of which form to use and type of check required).
- Question 17 and 41: It is not for OSCR to have a view on the proposed feeing structure other than we would endorse the continuation of free checks and scheme membership for charity volunteers. If a reduced fee or fee waiver is introduced for volunteers that is subject to a public interest test this may have the result of introducing an unnecessary complication and subjectivity.
- Question 18: The proposal of a new online digital service would give individuals and employers applying, accessing, interacting and updating the system more ease of use.
- Question 19: We agree that the PVG Scheme ought to be mandatory for people working with children and protected adults. All appropriate checks should be carried out for those working in sensitive roles as part of safe recruitment practices. It seems contrary to what the Scheme is attempting to achieve if it is not mandatory. There however should be clear exceptions outlined so that individuals are not criminalised for example - a neighbour helping out another neighbour in return for a small remuneration, one off child-care arrangements, where care is provided within the family or where contact is not within normal work duties, incidental, indirect, supervised and fleeting.
- Question 20 – 22: We would endorse further clarity on which roles are eligible for PVG scheme membership and publication of a list of “protected roles” however, this should be in addition to a broader activity based definition. There could be difficulties in that there might be roles where the activities carried out would have fallen into the broader definition of “regulated work” that might not be captured in a role specific list. It is our view that it would be almost impossible to list every job role which would be eligible for scheme membership without making reference to activities. Individuals may not apply for scheme membership as their specific job

title is not listed or does not neatly fit into the list of named protected roles.

- Question 26 – 31: We would agree with current approach taken in terms of defining “protected adults” in that it is the receipt of certain services that results in an adult becoming classed as protected. We agree that anyone who is providing these services whether hands on or in a managerial or supervisory role should be a scheme member. The scope of services within the current PVG Scheme should remain.

Charity trustees of charities that work with or provide benefit to children and/or protected adults (at home or abroad) should remain eligible for membership of the PVG Scheme.

- Question 46: The proposal to dispense with the current court referral procedure under section 7 of the 2007 Acts should be approached with caution. Our concern would be that whilst this approach would no doubt reduce the impact on individuals who will not seek work with children and/or protected adults there is the possibility that certain individuals may fall through the net at a later date as it is not possible to predict what someone may or may not do in the future.
- Question 47: We agree that automatic listing procedure should remain however; OSCR has no comment on whether the provision should be extended to include additional offences.
- Question 59 – 64: OSCR would welcome plans to extend the PVG Scheme to further protect children and adults who come into contact with scheme members working overseas.
- Question 88: OSCR would welcome a change in the law to sort out the anomaly that for a charity trustee to be able to join the PVG Scheme the charity must have one main purpose only to work with children or to work with protected adults. It is absurd that should a charity’s purposes mean that it works with both protected groups then charity trustees cannot apply to join the PVG Scheme.

3. Conclusion

In broader terms our recent engagement with other UK Regulators, charities and other stakeholders has emphasised the high regard with which the Scottish PVG scheme system is viewed in other parts of the UK.

Consultation Response



OSCR has welcomed the opportunity to respond to this consultation. We are content for the information provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

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