

## **The new legal duty to refer information to the Independent Safeguarding Authority (ISA)**

### **The new duty**

From 12 October 2009, a large number of organisations, including PCCs and other bodies in the Church, such as Dioceses and Cathedrals, will have a new statutory duty to refer information to ISA where:

- an employee of or a volunteer appointed by the PCC or other body is removed from regulated activity, or that person resigns, retires, is made redundant or transfers to other activity **and**
- the relevant body thinks (having gathered sufficient evidence to suggest on the balance of probabilities that it is the case) that the individual has:
  - engaged in *relevant conduct*;
  - satisfied the *Harm Test*; or
  - received a caution or conviction for a *relevant offence*.

This duty is unlikely to arise very often but it is important when it does occur, because failure to comply is a criminal offence. When this happens there is also a duty to involve the Local Authority Designated Officer (LADO). Your Diocesan Child Protection Adviser (DCPA) will advise and assist you if this duty appears to be arising.

### **Definitions**

*Relevant conduct* is conduct that falls into any of these categories:

- it endangers, or is likely to endanger, a child or vulnerable adult;
- it is conduct that, if repeated against a child or vulnerable adult, would endanger them or be likely to endanger them;
- it involves sexual material relating to children (including possession of such material);
- it involves sexually explicit images depicting violence against human beings (including possession of such images);
- inappropriate conduct of a sexual nature involving a child or vulnerable adult.

The *Harm Test* is satisfied if, in the view of the relevant person, (e.g. the PCC) the individual

- may harm a child or vulnerable adult;
- may cause a child or vulnerable adult to be harmed;
- puts a child or vulnerable adult at risk of harm;
- attempts to harm a child or vulnerable adult; or
- incites another to harm a child or vulnerable adult.

A *relevant offence* is an offence which qualifies a person for automatic inclusion in the lists maintained by ISA of those barred from working with children and vulnerable adults respectively. These are, in the main, serious criminal offences

involving sexual misconduct and/or violence. More information can be obtained from your DCPA or diocesan registrar.

### **Making Referrals**

1. PCCs and other bodies will need to put arrangements in place now so that they can be confident that any instances that may warrant a referral will be properly handled. The most sensible way for the PCC etc to discharge its responsibilities will normally be to delegate specific authority to a small group (including the parish child protection representative and normally the vicar or another member of the clergy) to deal with any instances which might trigger a referral. The small group should be empowered to act without reference back to the PCC but should be required to report to the PCC from time to time on the exercise of its delegated powers (without, of course, disclosing personal information that should remain private to those who need to have it).
2. In other bodies a designated 'responsible person' or similar small group must initiate the referral on behalf of the diocese/ organisation.
3. The group or responsible person should always liaise with the DCPA, who will confer with the Local Authority Designated Officer (LADO) and should also be able to assist in completing the online referral form where necessary.
4. For further information consult your DCPA or the Independent Safeguarding Authority.

### **Notes:**

- a) The House of Bishops' policy '*Promoting a Safe Church*' Procedure 4 (page 33) recommends that parishes should adopt best practice in disciplinary procedures for both employees (there are legal requirements) and also volunteers. The ISA referral system will also need to be set within a due process framework, but is not wholly dependent upon 'proving a case' but rather on the risk of harm, which may be ongoing. It must also be based on reports of observed evidence or patterns of behaviour, rather than opinion. A person should also be referred if they have resigned pending a disciplinary hearing for relevant conduct.
- b) The 'structured judgement' procedures of the ISA involves assessing and evaluating the information received and, except in very serious cases, a person cannot be barred without first being given the opportunity to make representations. Seek advice from your DCPA if you have any questions about these issues.

ISA website: <http://www.isa-gov.org.uk/> phone 0300 123 1111. There are forms and guidance on referrals on this web site.

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