



Regulating Trust: Who will be on the Vetting Database?

**Campaign Against Vetting
Briefing Document - 31 July 2009**

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Executive summary

1. Government regulations on who should be vetted haven't yet been written. This briefing document reports on private Guidance for the law, which will determine how the database works in practice.

Two weeks ago, Philip Pullman and other children's writers announced that they would no longer visit schools, in protest against the UK government's vetting database. However, there was some confusion about whether these writers would have to be on the new vetting database. One Home Office official said that the law had been 'misunderstood', and that it wouldn't cover people making 'occasional' visits to schools. Yet the truth is that officials have not yet clearly specified who will, and who will not have to be on the database. This will be spelt out in government guidance, to be published soon, which follows up on the Public Consultation, and Government Consultation Response, last year.¹

This briefing document reports on a draft of this government *Guidance for the Vetting and Barring Scheme*,² which was obtained by the Manifesto Club's Campaign Against Vetting. This 149-page document (described throughout this document as 'Guidance') will spell out what the Act means in practice. The Guidance document - which was sent out for draft review to stakeholders in May 2009 - may change, but it represents a good idea of government plans, and is consistent with previous policy statements such as the Government Response to the Consultation.³ The Manifesto Club's Campaign Against Vetting believes that it is in the public interest to report this material, given the high level of intrusiveness of this legislation, and its potentially damaging impact on personal and social life.

2. The rules on who will, and who will not, be on the vetting database are convoluted and irrational.

Many of the legal distinctions are incomprehensible or arbitrary, and would make little sense to the general public; indeed, these rules seem to be aimed at trained lawyers rather than football coaches and scout volunteers across the UK. Examples cited in this report include:

- If an individual has a new job starting in September 2010, they will *not* have to be on the database; if their job starts in November 2010,

¹ The Public Consultation, which launched in November 2007, is available here: <http://www.dcsf.gov.uk/consultations/downloadableDocs/SVG%20Act%20ISA%20consultation%20final.pdf>

The response to the consultation, published in May 2008, is downloadable here: <http://www.fairplayforchildren.org/pdf/1218024387.pdf>

² The guidance on the details of the vetting database, has been mentioned frequently in ISA notes. For example: <http://www.isa.gov.org.uk/pdf/VBSStakeholdernewsletter-Nov08.pdf>

³ This Consultation Response is available here: <http://www.fairplayforchildren.org/pdf/1218024387.pdf>

they *will* have to register on the database and if they do not they will be committing a crime, punishable by up to £5000 fine.

- For a period of 5 years (up until 2015), it will be a criminal offence for someone to not be on the database if they are starting a *new job* or changing position; but it will *not* be obligatory for someone staying in their existing position.

- If you volunteered once a month for January, February and March, you *will* have to be registered on the vetting database; but if you volunteered for January, February and April, you would *not*.

- 16 year olds have to be registered on the vetting database if they are helping out at a local care home, but not if they are teaching members of their own peer group. The Guidance advises that they may have to register when they are 15: 'Under 16s wanting to start RA [regulated activity]⁴ after go-live may register in time for their 16th birthday to avoid committing an offence'.

- If an aerobics class advertises for all ages, the trainers *would* have to be on the vetting database; but if the class is 'targeted' at adults and other children come along, the trainers would *not* have to be on the database.

- A teacher in an FE college teaching 16 and 17 year olds *would* be on the database, but an adult coach of a mixed-age sports team that included 16/17-year olds would *not*.

- A self-employed tennis coach would *not* have to be checked, but if he took on a volunteer the volunteer *would* have to be checked.

3. The Guidance says there will be little legal defence that somebody 'didn't know' that they should be on the database.

The draft Guidance says that this 'anyone working in [regulated activity] should be aware of the Vetting and Barring Scheme and this guidance'.⁵

4. The database 'monitoring' process is like a state version of Facebook or Twitter.

This database system will also be enormously ineffective for achieving its stated purpose of protecting children from abuse. Employers register to receive 'status updates' on their employees. These 'status updates' (decisions to bar an individual) will be reported by email. In this mass of

⁴ Work/volunteering with children or vulnerable adults

⁵ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p90

regulation, the rare but very serious question of child abuse is actually obscured and trivialised.

1. Introduction: Regulating Trust

In the discussion around children's authors going into schools, there was some confusion about whether or not these authors would have to be checked. One Home Office spokesman said:

'These checks have been misunderstood. Authors will not have to register with the Vetting and Barring Scheme if they work with children once or infrequently. In fact, people working in schools will only be required to register if they work with children on a regular basis.'⁶

However, another official was quoted as saying:

'The new scheme means every individual working in a field that requires more than a tiny amount of contact with children and/or vulnerable adults will have to be vetted. If they are passed, they will be placed on a register that says they are allowed to work in a regulated field.'⁷

It seems that officials themselves are confused about the remit of this vetting database. The truth is that the law has not yet been spelled out - it is not yet certain who will, and who will not have to be on the database. This will be decided in government Guidance, to be published soon.

This briefing document reports on a draft of this government Guidance,⁸ which was obtained by the Manifesto Club's Campaign Against Vetting. This 149-page document will spell out what the Act means in practice.

The rules on who will, and who will not, be on the vetting database are convoluted and irrational. Many of the legal distinctions are incomprehensible or arbitrary, and would make little sense to the general public; indeed, these rules seem to be aimed at trained lawyers rather than football coaches and scout volunteers across the UK.

This irrationality is the inevitable result of the principle behind this vetting database: *regulating trust*. Official statements say that an adult should be on the database (and classified as performing 'regulated activity') if they have an opportunity to form a 'relationship of trust' with a child:

'...an activity should be regulated activity if it provides an opportunity for the person carrying out the activity to develop a

⁶ http://news.bbc.co.uk/2/hi/uk_news/8153251.stm

⁷ <http://www.independent.co.uk/news/education/education-news/authors-boycott-schools-over-sexoffence-register-1748267.html>

⁸ The guidance on the details of the vetting database has been mentioned frequently in ISA notes. For example: <http://www.isa.gov.org.uk/pdf/VBSStakeholdernewsletter-Nov08.pdf>

relationship of trust with members of the relevant vulnerable group'.⁹

Apparently, the more adults meet with children, the more trust between an adult and child, and the more potential for abuse. The Guidance spells this relationship out:

'were the same person to teach children in a class every Saturday, or every fortnight, they would have the opportunity to develop a relationship of trust with their class and, therefore pose a greater risk of harm.'¹⁰

The vetting database is based on the following assumptions: that many adults could abuse a child *if they had the chance*; that it is repeated meeting and the child's resulting 'trust' which gives them the chance; and that it is the role of the state to monitor and supervise the conditions in which trusting relationships occur.

This wrong in principle: as Philip Pullman said, it sends the message 'that the default position of one human being to another is predatory rather than kindness'. It is also wrong in practice, and wrong as a basis for social policy. This briefing document shows the surreal consequences of the state attempting to define and then regulate 'relationships of trust'. It cannot be done: the result is an absurd tangle of bureaucracy, which makes little sense and has all the appearance of a system designed to catch people out.

⁹ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p143

¹⁰ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p148

2. Who Will be on the Vetting Database?

Individuals will have to be on the database if they give 'care, supervision, teaching, training or instruction', to children or to 'vulnerable adults', either

- frequently - defined as once a month or more;
- intensively - defined as three days at a time;
- or overnight - defined as between the hours of 2am and 6am.

In addition, they must be on the database if they work or volunteer in certain specified places - including schools, children's homes, hospitals and nurseries - regardless of whether or not they are giving care, teaching or instruction.

Are you working/volunteering 'frequently'?

First, you must be on the database if you are working 'frequently' with children. The definition of 'frequently' is not laid down in the Safeguarding Vulnerable Groups Act, and so will have to be defined through accompanying guidance. This draft Guidance proposes that 'frequently' will mean 'once a month on an ongoing basis'. An 'ongoing basis' is defined as

'the third time the activity is carried out at least once a month... Note that this test is satisfied as soon as an activity has been carried out three times in any period of up to 3 months. Therefore, it could be satisfied after 2 months, for example.'¹¹

What about if somebody works in an 'irregular pattern', for example, intensively in the winter and then not in the summer? The draft Guidance concludes that 'frequently' should not be averaged out over 12 months - for example, if you volunteered once a month for four months in winter, this would still count as 'frequently', even if it was less than 'once a month' on average over the year:

'The guidance is that once a person embarks upon a third episode in a period of up to 3 months, then the activity is regarded as regulated activity. We do not envisage frequency being calculated by averaging over a longer period such as a year.'¹²

Yet somebody who helped out every six weeks would *not* have to be on the database, as illustrated by this case study in the Guidance document:

'A number of adults help at a Sunday school on a rota basis. Each adult helps out once every 6 weeks. That is not frequent and so the

¹¹ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p144

¹² Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p146

activity is not regulated activity.’¹³

The Guidance seems to assume that people are going to count the number of times in a specified period that they have had ‘contact with children’, and notify the Independent Safeguarding Authority (ISA) at the correct point. For example, this case study involving taxi drivers:

‘A number of taxi drivers work for a taxi firm which is occasionally used to transport children to a special school. A driver who does not usually transport children, but may on occasion be required to, is only in regulated activity if he is asked to do so three times in any three month period.’¹⁴

Then there is the question of whether an adult must meet the *same* group of children ‘frequently’, or whether *different* children count. The Guidance decides that different children are sufficient:

‘The answer is that contact with different children or vulnerable adults is sufficient. The reason for this is that what counts is the opportunity to form relationships with particularly vulnerable people in a setting, and this opportunity exists where there is frequent general access as well as access to individual members of the vulnerable groups.’¹⁵

However, after this tortuous outlining of the meaning of ‘frequently’, it then states: ‘This guidance is not definitive’ and that ‘individuals should be guided by the provider’ [their organisation]. Their organisation should keep a ‘record of the decision’ it made in different cases (about whether a volunteer was working ‘frequently’), and its reasoning for thinking that a particular post passed the frequency test. ‘Such a document will carry some weight with the courts in the event of a prosecution for the offences relating to carrying out regulated activity while not ISA-registered or not checking ISA registration.’¹⁶ This is in effect asking tennis club committees to write and keep legal-type documents, their reasoning on whether their volunteers fit the convoluted definition of ‘frequently’.

Finally, when children’s organisations are deciding whether their workers/volunteers are working ‘frequently’, they should also take into account ‘the nature and substance of the activity taking place’. The draft Guidance says that ‘As a rule of thumb is that it should be a reasonably substantial activity, providing the opportunity to build a relationship of trust, over time, with members of the relevant vulnerable group.’ It helpfully continues: ‘If the activity lasts no longer than a few minutes and takes place with a group, it need not count. If it is a training session of 30

¹³ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p146

¹⁴ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p147

¹⁵ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p149. This is confirmed by previous statements on the question, for example, in the Response to the Consultation: <http://www.fairplayforchildren.org/pdf/1218024387.pdf>

¹⁶ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p144

minutes, it will count.’¹⁷

Are you working/volunteering ‘intensively’?

The other ‘test’ for whether somebody should be on a database, is that they work with children ‘intensively’, defined as three or more days at a time. This is also described as the ‘period condition’.

The document advises that organisations should consider both the ‘frequency test’ and the ‘period condition’. This is necessary if they are not to be caught out if a volunteer, for example, helps out twice in January and then twice in February, but then not again.

‘The frequency test and the period condition are different, and an activity is regulated activity if **either one or the other** is met, or **both** are met. If an activity does not take place as intensively as on 3 days during a 30 day period, the provider should still consider whether, for example, it takes place on 4 days during a 60 day period. If so, it will not meet the period condition but it will satisfy the frequency test and therefore count as regulated activity.’¹⁸

Are you working/volunteering with children ‘overnight’?

Overnight is defined as where

‘the activity gives the opportunity for face-to-face contact between 2am and 6am’.¹⁹

This would cover parents who have foreign exchange students staying with their children. It would also, presumably, cover a taxi driver who has to transport a child or group of children (defined as an under-18 year old) between the hours of 2am and 6am - for example, to catch a plane or for the start of a school trip.

Are you providing ‘Care, supervision, teaching, training or instruction’?

In addition to carrying out an activity ‘frequently’ or ‘intensively’, in most cases people must only be registered on the database if they are providing ‘care, supervision, teaching, training or instruction’ to children or vulnerable adults. People must also be on the database if they:

- provide advice or guidance;
- provide health, social care or therapy;

¹⁷ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p145

¹⁸ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p145

¹⁹ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p115

- drive a vehicle which is being used for the specific purpose of conveying children or vulnerable adults.

Again, this specification is not especially clear. The draft Guidance gives the example of parents regularly helping out at an athletics club meeting, 'One will run a tuck shop and the other will mark out a running track'. It says that these parents will *not* have to be vetted because

'Neither is carrying out regulated activity because they are not providing care, supervision, teaching, training or instruction.'²⁰

The document gives another case of a vulnerable adult visiting their hairdresser, accompanied by their care worker. The hairdresser would *not* have to be vetted, even though they see the vulnerable adult every week and there is a 'possibility of their being in a position of trust', since

'An adult is considered vulnerable only in circumstances, where he or she is being provided with organised care, supervision, teaching, training, instruction, advice or guidance. The scheme does not apply to other activities, such as hairdressing or more universal services.'²¹

Sometimes it is blurry what counts as 'teaching, training or instruction'. The Guidance document gives the example of 'talks or walks' at a local history society or hobby club, which it says do *not* count as training or instruction because

'The group share their skills and knowledge on a generally ad hoc basis with fellow members. They are not teaching, training or instructing anyone here as members are just going along for pleasure and sharing their enthusiasm and knowledge with fellow members.'²²

It is difficult to see the exact point where 'sharing their enthusiasm and knowledge' becomes 'instruction', since in both cases somebody is giving a talk to other people. The attempt to define this leads to the splitting of hairs. The draft Guidance considers case studies, to see if the child is receiving 'instruction' from an adult. One example is a 15-year-old working in a hair salon:

'The girl may well come into contact with other employees at the salon who might give her advice but if that is not part of their job description they would not be engaged in a regulated activity.'²³

The difficulty with defining 'instruction' is because in civil society adults give advice and guidance to children in a variety of ways. Children learn

²⁰ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p145

²¹ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p147

²² Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p68. This is backed up in the Response to the Consultation,

<http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p12

²³ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p66

from adults in ways that are not always formal and direct, and these informal relationships are key to their wellbeing and development. It is difficult, and counterproductive, for the state to attempt to categorise and regulate relationships of informal learning between adults and children.²⁴

Where are you working/volunteering?

Whether somebody has to be on the database also depends on *where* they are working or volunteering. Certain places - including schools, children's homes and hospitals - are defined as 'Places specified for the purposes of regulated activity'. Activities in these places are covered, and those outside are not.

So, for example, the draft Guidance states that a builder working regularly in a school would have to be checked, but the same builder who works in a leisure centre, would not have to be checked, even if his job brought him into contact with children, because

'Leisure centres are not specified places for the purposes of regulated activity, and as the builder is not providing care, supervision, teaching, training, instruction, advice or guidance, he is not in regulated activity.'²⁵

Schools, however, are apparently 'specified places where the builder has the opportunity for contact with children regardless of the nature of his activity'. So a person who worked in schools would have to be on the vetting database, even if they were just fixing the radiators. If the mothers in the example above were running the tuckshop not at an athletics club, but at a school, they *would* have to be checked.

Is the activity aimed at children?

The law only regulates activities that are specifically for children, and not those where children are what it calls 'merely incidental' to the activity. The Guidance gives the example of a 'woodwork society' which 'pitches the material for adults':

'If an adult attendee brings a child along, then the child's attendance is merely incidental to any teaching or instruction of the adults.'²⁶

This would mean that the person running the woodwork class would *not* have to be checked, even if there were children coming to the class. The

²⁴ The Manifesto Club documented informal teaching in Hobby Clubs, and showed how these relationships were being destroyed by vetting and other formal procedures: <http://www.manifestoclub.com/files/HobbyClubs.pdf>

²⁵ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p146

²⁶ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p67; also used in Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p11

explanation of the meaning of ‘merely incidental’, however, is not very clear:

‘the presence of a child or children must either have been unforeseen or have been dependent on the presence of an adult for whom the relevant activity was actually being provided.’²⁷

In an attempt to clarify matters, the Guidance then gives the example of an aerobics class that is aimed at young mothers, but gives mothers the option of bringing their children along to the class. Because the presence of children is dependent on the presence of their mothers, the instructor would *not* have to be checked.

However, as time goes on, and ‘children start to attend on a regular basis independently in their own right and come to take an active role in the society then their attendance is not incidental to that of adults’²⁸. At this point, their presence is no longer ‘merely incidental’, and the instructor or teacher *will* have to be on the vetting database. The children’s attendance of the class is apparently ‘no longer unforeseen’.

If an activity were ‘targeted at both adults and children’ - for example, an aerobics class advertised ‘All ages welcome’ - then the course leader *would* have to be checked, even if a very small number of children (or indeed, no children) came to the group.

These are unworldly distinctions. In a real aerobics class, it is not always obvious when a class includes children ‘in their own right’ and when they are just coming along with somebody else. The Guidance advises that ‘providers should review the status of the activity from time to time’.²⁹ Again, officials are requiring people to always have bureaucracy on their minds: to constantly count the number of children in their class, and consider whether they fit with the ‘merely incidental’ rule.

The government’s Consultation Response raised the situation of 16-17-year olds in classes ‘targeted at adults’. Although these classes are targeted at adults, the document decides that the course leader *should* still be checked:

‘In a further education college, any 16-17 year olds in classes targeted at adults can not be regarded as merely incidental because there is no reason why they should not in the normal course of events enrol in such classes.’³⁰

²⁷ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p67; also used in Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p11

²⁸ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p67; also in Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p11

²⁹ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p68

³⁰ Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p14

The Guidance further complicates the situation by giving exemptions, saying that 16- and 17-year olds in universities and open-age sports teams are specifically exempted - and therefore, that their tutors/coaches would *not* have to register on the database. However, the government Consultation Response suggested that if one of these 16/17 year olds stayed behind after practice for extra coaching, the coach *would* have to be registered:

‘If individuals are teaching, training, instructing 16/17 year olds separately from adults, for example if children in open age teams are staying behind for targeted one-to-one coaching, the coach carrying out regulated activity would need to register with the scheme.’³¹

16- and 17-year olds in the workforce - for example, who have temporary Saturday jobs - are another specific exemption. Their supervisors will *not* have to be on the database. Yet there is an exception to this exemption: chaperones in the entertainment industry *will* have to be on the database.³²

There is a final exemption, called ‘peer exemption’,³³ which means that people will not have to be checked to work/volunteer with members of their own (vulnerable) peer group. This means that a 16-year old would *not* have to be checked to help other children learn to read, or to teach other 16-year-olds sport. But they presumably *would* have to be checked if they worked in a care home for elderly people. Similarly, an old person in a care home would not have to be checked for ‘helping out with the tea trolley’ in the care home; but they would if they volunteered in a school.

Unsurprisingly, 45% of respondents to the government’s consultation were unclear about the meaning of ‘merely incidental’: ‘some respondents criticised a lack of clarity in the text’.³⁴

Was the work/volunteering arranged by an organisation?

Another factor is whether an individual arranged the work themselves, or whether it was arranged by an organisation. So, for example, if parents arrange a language exchange between themselves, they will not have to be vetted. But if an organisation - a language centre or the local school - arranges the exchange, they ‘will require the carer to be ISA registered’. Indeed, the draft Guidance suggests that the school also has the right to also request checks on ‘other adult members of the household’.³⁵

Officials have entered into fraught deliberations on the question of transporting children and vulnerable adults. In the Consultation Response, they gave a long list of the kinds of journeys that would count a ‘regulated’,

³¹ Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p15

³² Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p65-66

³³ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p70

³⁴ Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p11

³⁵ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, 59-60

and then said ‘We are still considering one or two others, e.g. whether “dial-a-ride” services should be regulated activity.’³⁶

Again, it partly depends on who arranges the transport, or who ‘dials a ride’. If parents arrange to take each others’ children to football practice, for example, then the driver parent does *not* have to be checked. However, ‘if the club or school arrange the transport’, then the driver *would* have to be checked.³⁷

The matter is further complicated if a coach is self-employed, and therefore does not work for an organisation. In this instance, he himself would *not* have to be checked. However, if that coach asked volunteers to help out, then he would have to check *them*. This is indicated by a case study in the government’s consultation document:

‘A 15 year old girl works for Mr G for two weeks over the course of her summer holiday. Mr G is a sole trader and has no other staff therefore his job will always involve supervision and training of the 15 year old. There is no requirement for Mr G to become ISA-registered as he is a sole-trader and has no regulated activity provider i.e. employer to check that he is ISA-registered.’³⁸

Who is a ‘vulnerable adult’ and who is a child?

Still murkier is the question of vetting of people who work or volunteer with ‘vulnerable adults’. This group includes, at one time or another, virtually the whole of the adult population, including anyone who is:³⁹

- receiving ‘any form of healthcare’;
- receiving a service or participating in an activity which is specifically targeted at people with age-related needs, disabilities or prescribed physical or mental health conditions or expectant or nursing mothers living in residential care;
- requires assistance in the conduct of his or her own affairs.⁴⁰

In the consultation response, officials admit that ‘the width of the [vulnerable adults] definition did cause concern’.⁴¹ They decided to remove adults receiving dyslexia-related services from the list of those counting as ‘vulnerable’.

³⁶ Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p17

³⁷ Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p17

³⁸ See the Consultation:

<http://www.dcsf.gov.uk/consultations/downloadableDocs/SVG%20Act%20ISA%20consultation%20final.pdf>

³⁹ Consultation,

<http://www.dcsf.gov.uk/consultations/downloadableDocs/SVG%20Act%20ISA%20consultation%20final.pdf> p51

⁴⁰ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p73

⁴¹ Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf>, p7

The question of whether you are a vulnerable adult (and those who meet you have to be vetted) depends on context, as illustrated by this case study in the Consultation Response:

‘On Tuesdays Mrs B attends a day care centre which provides social activities for frail older people. During her time at the day care centre she is receiving a service which is provided specifically for people with age-related needs and so is a vulnerable adult. On Wednesdays Mrs B visits the library. During her time at the library she is using a service which is targeted at the general public and so is not a vulnerable adult.’⁴²

That is, the staff at the daycare centre *would* have to be vetted, because they had ‘access to’ Mrs B in a situation where she was classified as a vulnerable adult. But the staff at the library would *not*, because she would not be defined as a vulnerable adult in the library. It seems absurd that somebody could be vulnerable on Tuesday but not on Wednesday.

The definition of a child is also blurry. A child counts as anybody who is ‘under-18’. But then 16-17 year olds, who are considered children, are also considered adults and *themselves* have to be vetted if they work/volunteer with members of certain vulnerable groups. Indeed, the Guidance considers the possibility of *15-year olds* registering with the database, so that they would be covered on the stroke of their 16th birthday:

‘Under 16s wanting to start [regulated activity] after go-live may register in time for their 16th birthday to avoid committing an offence.’⁴³

‘[Regulated activity providers] should check ages of young people they engage to work with the vulnerable groups as necessary to avoid both them and the young people inadvertently committing offences’⁴⁴

The prospect of a child being vetted before they have had their first drink, or driven a car, or even finished their GCSEs, shows the poisonous thinking behind these regulations.

At what point do you have to register on the database?

When do you have to register on the database? Is it when you start a job, or when you have done it for three months?

‘[they will have to register] when the person begins to carry out the activity, if the person knows that the activity will be regulated

⁴² Consultation Response, <http://www.fairplayforchildren.org/pdf/1218024387.pdf> ,p9

⁴³ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p92

⁴⁴ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p100

activity; or, if the person starts to carry out the activity not knowing that it will be regulated activity, at the point when either the 'frequency' test or the period condition is satisfied.'⁴⁵

That is, if a person *knows* that they are going to work with children once a month, they must register before their first visit, and after that first visit will be committing a crime. If they *don't know*, they must register before their third visit.

Further discrepancies appear on the question of when people will have to register on the database over the next five years (the 'phase-in period'). The Guidance proposes the following timescale:

- **1 November 2010** - people starting a new job must register on the database. After this time, it will be a criminal offence for them to work with children if they are not registered.
- **2010-2015** - The rest of the workforce will be phased in, and asked to sign up to the database.
- **25 July 2015** - everybody who works/volunteers with children must be on the database, and will be committing a criminal offence if they are not.

This means that *for a period of five years* there will be a criminal offence which will apply only to 'new employees and to job movers'.⁴⁶ People who change their job, including to a new position within the same organisation, will have to be registered on the database or commit a criminal offence. Those who do not change their job will not have to be registered until July 2015.

How will you be monitored?

Official documents call the vetting database 'The Scheme'; an individual is a 'member of the scheme'. The draft Guidance spells out what this registration and monitoring will mean in practice. Once you are 'registered' with 'the scheme' - which means checking police files, and reviewing any other 'relevant information' - you will be given a 'unique VBS [vetting and barring scheme] ID number' and 'disclosure certificate'.

Your registration on 'the scheme' means that the ISA has certified that you are *not unsuitable* to be working with children or vulnerable adults. Being part of the scheme means that

⁴⁵ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p144

⁴⁶ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p55

‘you are agreeing to have your ISA-registration status continually monitored to ensure that you continue to be suitable to work within these workforces’.⁴⁷

The monitoring process sounds like a state-run Facebook or Twitter. Employers can ‘subscribe’ to somebody’s ‘monitoring status’.⁴⁸ If the individual’s ‘registration status changes’ (eg, if the Independent Barring Board has decided that the individual is a risk to children), all ‘subscribers’ will be notified ‘by email’.⁴⁹

When the question of child abuse becomes a matter for constant mass regulation, the procedure also becomes worryingly anodyne. The Guidance discusses the ways for employers to ‘Manage your subscriptions’ to individuals, including options to ‘add subscription’, ‘delete subscription’ or ‘sort subscriptions’.

Official publications present *being monitored as in itself a sign of an adult’s decency*. Equally, *not being monitored is a sign of their suspicion*. When I challenged the Home Office official in charge of the vetting database about a potential rebellion against vetting, he said that if somebody didn’t want to be vetted ‘there must be suspicious reasons for that’. He described the vetting database as like a ‘club’, which all decent adults should want to be part of. This assumption - that not being monitored makes you de facto suspicious - is hardwired into the logistics of the vetting database.

When an employer does an online check, by entering an individual’s name, date of birth, and VBS ID number into ‘ISA online’, they will receive an answer saying that the individual is ‘monitored’, or ‘not monitored’. ‘Not monitored’ could mean any of the following:⁵⁰

- The individual has a record of child abuse and has been barred
- The individual has not applied to the database
- The individual has chosen to leave the database

Somebody’s reluctance to be on the database is taken as an indication of guilt, and is indistinguishable from somebody who is a known and serious child abuser. The libertarian objector, the person who didn’t know about the database, and the child abuser will all come back with the same answer: ‘not monitored.’

The monitoring procedure is also a minefield for civil liberties and privacy rights. There appear to be few current restrictions on who can use the online database to check your ‘monitoring status’. All that will be required for a one-off check is your name, date of birth and VBS ID number. The person accessing the files will have to tick boxes saying that they have a

⁴⁷ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p32

⁴⁸ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p38

⁴⁹ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p45

⁵⁰ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p44

'legitimate interest' and that they have 'consent' of the person, but that is all.

3. Conclusion: The Consequences of Regulating Trust

The draft Guidance for the vetting database would be complex for a lawyer to understand, yet it will apply to tennis coaches, nursery workers, and many others with far better things to do than plough through 150-pages of hair-splitting.

It is therefore very worrying that the Guidance gives so little room for people to make mistakes, or to misunderstand its convoluted reasoning. The draft Guidance comments that somebody convicted of not being on the database *could* argue that they didn't know or couldn't be expected to know they were supposed to register, however

‘This may be a difficult defence to sustain, as anyone working in RA [regulated activity] should be aware of the Vetting and Barring Scheme and this guidance’.⁵¹

The person's defence could be helped if they showed that they had consulted the Guidance, and had simply misunderstood it:

‘in cases where the conviction turned on whether the activity was RA [regulated activity] by virtue of being carried out frequently, the level of the fine may take account of the extent to which the person took account of the statutory guidance...’⁵²

The truth is that this database simply cannot work, and the more officials continue with its implementation, the more absurd it will become - and the more damage will be done to the informal relationships that are so vital to children's welfare.

The principle of ‘regulating trust’ is responsible for the most absurd elements of the policy. It is not possible to regulate and manage ‘relationships of trust’ in this way, for two reasons.

First, is not possible to lay down precisely in which circumstances there is an ‘opportunity’ to ‘develop a relationship of trust’. Trust is not the result of X days of repeated interaction, in Y position of authority. Especially with children, who are more erratic than most in deciding who they ‘trust’, and at what point they trust them.

Second, child abuse is not the natural consequence of close and trusting relationships between adults and children. Child abuse is, in fact, a criminal act or form of mental illness; as a result, it requires targeted detection, prosecution and offender management systems, as with any other rare but extremely serious criminal act. The Guidance admits as much, when it says that ‘it is true that abuse can be opportunistic and occur in one-off

⁵¹ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p90

⁵² Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, p90

encounters', and that the tests on who will be checked are 'necessarily crude'.⁵³

They are not just crude: they are useless, and damaging. Rather than targeting abnormal behaviour, child protection policy targets normal and decent relationships, and holds all these up for suspicion. This actually makes it *harder* to detect child abuse, because everybody is suspected, all the time. This targeting of every 'relationship of trust' could also mean that abused children have fewer adults they can turn to as confidants. When the state makes itself the sole guardian of decency, children are inevitably left more isolated.

In implementing this vetting database, officials are drawing up ever-more complex and incomprehensible rules, which are increasingly detached from social reality. Many of the words used - 'frequently', 'regulated activity provider', 'vulnerable groups', 'regulated activity', 'merely incidental', 'the scheme' - have little everyday meaning, and officials are essentially implementing their own estranged set of categories on football clubs and nurseries across the country. Officials' response to problems with the vetting database is to promise more and clearer guidance. In addition to this draft Guidance, there will also be sector-specific guidance, and other organisations are also producing their own guidance.

It is not more guidance we need - instead, this law needs to be urgently reviewed and reconsidered. This database has cost enough in money and time, and done enough damage to informal life and voluntary groups. We don't need this or other guidance documents - but the reversal of a policy that reaches surreal levels of irrationality, in its effort to hyperregulate every interaction between adults and children.

⁵³ Guidance for the Vetting and Barring Scheme, Draft, 12/5/2009, 143

Appendix: Manifesto Club Campaign Against Vetting

The Manifesto Club has been campaigning against the Safeguarding Vulnerable Groups Act since October 2006, when we launched a petition signed by individuals including Fay Weldon, Johnny Ball and Alan Silitoe, and hundreds of volunteers, parents and concerned adults.⁵⁴ We have reopened this petition in the run-up to the next phase of the database, in October 2009.

Reports: We have also published a series of reports, documenting the expansion of vetting and its damaging effect on social life, including:

- [The Case Against Vetting](#) (October 2006) provides an overview of the dramatic expansion of vetting, and shows how this feeds a child protection bureaucracy, while undermining everyday relationships between adults and children.
- [How the Child Protection Industry Stole Christmas](#) (December 2006) shows how overregulation is affecting seasonal celebrations
- [Hobby Clubs](#) (April 2007) documents how some mixed-age clubs are banning children.
- [Briefing Document](#) (April 2008) shows how the government's new vetting laws will be late, over-budget and over-stretched.

Petition Against the Vetting Database:

We believe that the Safeguarding Vulnerable Groups Act is a misguided response to a small number of tragic, but fortunately rare, incidents involving the abuse of children. The bill will mean that up to a third of the adult working population - those who come into contact with children through their work or volunteering - will be subject to continuous criminal records vetting. This could include babysitters and private tutors, as well as those who merely have access to information about children. The massive expansion of vetting is driven by suspicion and paranoia. The Criminal Records Bureau has already carried out millions of checks since 2002, and it is now common practice to vet anybody from 16-year-olds teaching younger kids to read, to parents helping out in school, to the visitors to foster carers' homes.

Such child protection procedures do little to protect children from the small number of individuals who would do them harm. Instead, they damage adult-child relations and undermine the capacity of adults to contribute to children's welfare. Vetting calls into question the informal ways adults in a community collaborate in rearing children: from the local enthusiast running a football team, to the volunteer who helps out at school. Adults become more concerned

⁵⁴ See a record of our campaigning, here: <http://www.manifestoclub.com/hubs/vetting>

with covering their backs than passing on their insights to the next generation. Children become a 'no-go' area: local sports teams and youth groups are struggling to find volunteers; some teachers are scared to put a plaster on a child's knee; and there are worrying cases of adults passing by injured or endangered children. We call for a more rational approach to adult-child interactions, and for vetting database to be urgently reconsidered.