



GARDA VETTING AND THE ARTS – AN OVERVIEW

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Introduction

The introduction of Garda Vetting to the arts is to be welcomed as a key element in the State's provision for the protection and welfare of children, young people and vulnerable adults and other participants and clients for whom there is a duty of care. For employers, vetting ensures that individuals convicted of serious crimes are not employed or otherwise offered positions of responsibility with *at-risk* groups. For individuals, it offers reassurance about an organisation's approach to protection and welfare and to other practices and procedures to ensure a safe environment for employees, contractors and volunteers.

For any work that may involve *substantial* or *unsupervised* contact with *at risk* groups, vetting is one element of good employment practice. On its own, it does not ensure any applicant's suitability and there is still a responsibility on employers to check other sources of information, such as CVs and references.

Ultimately, it is the employer's responsibility to decide whether or not a position requires vetting, and it should be made a clear requirement from the outset, when required. Vetting should not be used as part of the selection process – it is only appropriate where there is already a firm offer of employment or a contract in place.

Background to Garda Vetting

In September 1992, the UN Convention on the Rights of the Child was ratified by Ireland. Article 19 states that parties shall take *all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.*

Following publication of the *Murphy Report* (1998), which investigated the sexual abuse of young swimmers, the Irish courts determined that organisations could be held liable for failing to protect persons in their charge. The subsequent *National Guidelines for the Protection and Welfare of Children (1999)*¹ make it clear that organisations have both a moral obligation to provide the highest standard of care and, potentially, a civil or legal responsibility for any failure to offer adequate safeguards.

The employer has a dual responsibility - in respect of its employees and also its service users. In terms of any potential civil liability, the vulnerable person is the central concern.

All organisations providing services to children and/or vulnerable adults have a duty and responsibility to safeguard them by taking all reasonable steps to ensure policies and procedures are both in place and are fully and properly implemented. This includes:

- promoting the general welfare, health, development and safety of children and vulnerable adults;
- adopting and consistently applying a safe and clearly defined method of recruiting and selecting staff and volunteers;
- raising awareness within the organisation about potential risks to children's and vulnerable adults' safety and welfare;
- developing effective procedures for responding to accidents and complaints; and
- developing procedures to provide specific guidance to staff and volunteers who may have reasonable grounds for concern about the safety and welfare of children and vulnerable adults involved with the organisation.

¹ Children First, Dept Health + Children, 1999



In 2002, the Department of Health and Children issued *Our Duty to Care*, which promotes good practice procedures for organisations dealing with children and includes advice on safe recruitment practice, safe management practices and policies and raising awareness. Allied to this concern for children, similar considerations apply in relation to the welfare and protection of *vulnerable adults*².

Also in 2002, a dedicated vetting service was established by An Garda - the *Garda Central Vetting Unit* (GCVU)³. The unit provides the only official vetting service in the Republic of Ireland. In 2006, the unit was significantly strengthened to facilitate the expansion of availability to contexts other than 'state services' to include new areas including education, justice, youth work, sport, and the arts.

It is intended to expand the vetting service in time to all organisations that recruit people to positions that may have substantial unsupervised access to children and vulnerable adults. Although this extension constitutes a major step forward for protection, access to vetting is still not guaranteed and there is no legal obligation on employers to insist on, or make a position dependent on, Garda vetting. The *Oireachtas Joint Committee on the Constitutional Amendment on Children* has recently recommended that Garda vetting be put on a statutory basis and it is understood that work on drafting new law to allow this to happen is underway⁴.

² *Vulnerable adults* are those for whom certain mental and physical disabilities render them dependent and lacking the capacities normally enjoyed by adults to safeguard and protect themselves from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

³ The Garda Vetting Unit is located in Thurles, Co. Tipperary and can be contacted at 0504 27300.

⁴ Interim Report on the Twenty-Eighth Amendment of the Constitution Bill 2007.

Unlike the situation in the UK and Northern Ireland, vetting is only available to an employer, and not to individuals. Here, the employer has to process applications through an intermediary agency, and can not apply directly. To date, the GCVU has registered a large number of agencies in both the voluntary and statutory sectors, but many employers still do not have access and some registered organisations do not offer access to third-parties.

In Northern Ireland, under the *Protection of Children and Vulnerable Adults Order 2003*, there are systematic checks of convictions and other relevant matters. In the Republic, it is already an offence to apply for a job or offer a service which involves access to children or *mentally impaired people*⁵ without first informing the employer of any conviction for a sexual offence⁶. There are almost 1,000 individuals on the Offenders Register here, but monitoring is not considered adequate.

An agreement between Ireland and Britain on sharing information on sex offenders is anticipated but the two situations are quite different. The UK + Northern Ireland have strict supervision of the movement of offenders, and others known to represent a danger. The UK uses 'hard' information (on convictions) as well as 'soft' information (on suspicion of posing a risk, cautions, allegations, inquiries, arrests, charges pending etc). There have been calls to extend this model to Ireland and we will hear

⁵ The term *mentally impaired* is defined in the Criminal Law (Sexual Offences) Act 1993 as ... suffering from a disorder of the mind, whether through mental handicap or mental illness, which is of such a nature or degree as to render a person incapable of living an independent life or of guarding against serious exploitation'.

⁶ Under Section 26, Sex Offenders Act 2001, it is an offence to "apply for work or to perform a service (including State work or service) which involves having unsupervised access to, or contact with children or mentally impaired people without telling the prospective employer or contractor that you are a sex offender'.



more on this in the debate on the upcoming constitutional amendment on children's rights.

So, what is Garda vetting?

Vetting is a procedure through which An Garda is asked, with an individual's permission, to confirm whether or not the person has ever been convicted of a crime. Garda Vetting is available in Ireland in respect of persons of 16 years of age and over (16-18 year-olds must have parental or guardian consent).

In making an application, the individual authorises An Garda to disclose information regarding convictions, if any, in a court of law. The Vetting Unit has access to records in the Republic, Northern Ireland and the UK.

The average time to return a result is 5 to 6 weeks, but it can take longer where there are periods of residence outside the state. In the future, the Unit hopes to strengthen overseas clearance practices and to introduce electronic transfer procedures which will reduce the timescale.

The employer must register with the Vetting Unit itself or processes applications through a registered organisation. An individual person is designated as Authorised Signatory, to manage the workflow, having first been approved and then inducted by the Vetting Unit. S/he receives application forms and forwards them to the Vetting Unit. Information is matched against official records and the results are disclosed to the Authorised Signatory.

If the process discloses a conviction, it is up to the employer to determine its relevance and significance in the particular circumstances. Within the natural justice framework that forms part of the vetting agency's Code of Practice, an employer should arrive at a decision by following fair procedures throughout, including allowing the individual to dispute any findings believed to be wrong and, where a disclosure is accepted, taking into account the gravity, timing, significance, self-disclosure, and subsequent work and rehabilitation record of the individual.

Because of the significant implications of *Data Protection* laws and constitutional rights to privacy et al, the vetting certification process is not portable between employers. This means each employer must undergo the process separately. Vetting is time sensitive, in that it is valid only at the time that it is completed. This means a fresh application may be required at another time, by the same employer, depending on the circumstances.

It is important to say that vetting operates independently of an individual's right to access personal information held by a local Garda station under *Freedom of Information* law. Neither is it the same as getting a *Certificate of Character* from An Garda, which can be required to work or start a business abroad. Neither of these are substitutes for vetting and an employer that requests these checks, as a substitute for Vetting, may be in breach of employment law and/or constitutional rights to privacy.

Garda Vetting and the Arts

Most organisations involved in the arts are aware of their responsibilities with regard to the protection of participants and employees / contractors / volunteers. It has been Arts Council policy since 2007 that any organisation supported by it that provides services for children or young people must have in place adequate policies and procedures for their protection.

In 2007, the Arts Council offered revenue funding to over 150 organisations that directly provided education and outreach services⁷. The Council encourages organisations to adapt its *Guidelines on Developing a Child Protection Policy*⁸. The guidelines have universal applicability and are a useful starting point for any organisation working with vulnerable groups.

A key to the Arts Council's ability to take initiatives in this area is the creation of a staff

⁷ Arts + Education Directory, Arts Council, 2007

⁸ Arts Council publications are available at: www.artscouncil.ie/Publications



post focused specifically on protection issues. In response to consultation with the sector, it recently developed a set of ethical guidelines for working with children and young people and on recording and using images of children and young people⁹. The Arts Council also arranges information sharing and training events on protection and welfare issues, as well as on Garda Vetting.

Despite a positive policy backdrop and a general concern and enthusiasm for vetting in the arts, there are issues to be addressed.

- There is no common approach to vetting in the arts and there is a lack of clarity about who is responsible and how to access it;
- It is not clear who is responsible for vetting in situations where the artist is a self-employed contractor or freelance practitioner. Vetting is not available to individuals, and separate organisational status is not provided by being 'self-employed'.
- Artists often engage other artists in their work, including in support roles, and it is not clear if this constitutes being 'an employer' in the sense of having a duty of care;
- Artists working collaboratively regularly engage in workshops with groups or with individuals on a one-to-one basis. It is not clear where responsibility lies – with the funding agency, commissioning body, client group, artist or venue;
- Many artists are internationally mobile and have lived and/or worked beyond Ireland and the UK for extended periods of time. It is not clear how these periods of time can be verified or certified;
- Organisations do not have an automatic entitlement to access vetting and most have to rely on finding a registered organisation

⁹ *Guidelines for taking and using images of children and young people and Solo practitioner code of practice* are available online at www.artscouncil.ie/Publications.

that will agree to meet its vetting requirements.

To date, a number of arts organisations have registered with the GCVU as vetting agents, including Create, the Ark, the National Association for Youth Drama and Poetry Ireland. Poetry Ireland uses vetting in the context of the Writers in Schools scheme, which it manages for the Arts Council, and hopes to extend this service in time. The NAYD processes applications for a number of affiliated youth drama groups.

Create allows organisations and communities that engage artists in collaborative contexts to affiliate to its Vetting Service¹⁰, including applicants to the Artist in the Community Scheme, which it manages for the Arts Council. Create is advocating a common Code of Practice on Garda Vetting for the Arts to allow the arts to make an even greater contribution to the protection and welfare of those in our care.

The Code of Practice provides a model for handling Garda Vetting applications, dealing with disclosures, resolving disputes that may arise, and for the protection of sensitive personal information as they arise in the implementation of Garda vetting in an organisation.

Enquiries in relation to Vetting should be addressed to Arthur Duignan at

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¹⁰ Details of Create's Garda Vetting service are available from vetting@create-ireland.ie