

TÚSLA

An Ghníomhaireacht um
Leanaí agus an Teaghlach
Child and Family Agency

CHILDREN'S SERVICES REGULATION

Guidance for Providers of Regulated Settings for children: Assessment of Disclosed Information – Garda or Overseas Police Vetting



**Our vision is for all services regulated or assessed by
Children's Services Regulation to be safe and happy
places for children and young people to live, play, learn
and develop.**

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1. Introduction

Currently, regulatory frameworks and national standards for regulated children's services place responsibilities on providers to ensure that staff members who are employed or volunteer in their services are suitable and safe to engage with children.

The National Vetting Bureau Act 2012 (Part 3, Section 12), prohibits persons or organisations from employing, contracting, or permitting a person to undertake relevant work with children unless the person or organisation has firstly received a vetting disclosure from the vetting bureau concerning that person.

It is not sufficient to simply obtain the disclosure, providers are compelled to consider its content as part of an assessment process to determine if the person is of a suitably good character to engage with and provide care to vulnerable children.

Assessment of good character is not confined solely to the content of Garda vetting disclosures. Providers must carry out robust examination from other sources such as up to date references from previous employment, or educational placements etc.

In the majority of cases, Garda and other police vetting disclosures are returned with no confirmation of prior or pending criminal convictions.

However, there are times when a positive disclosure is received. In such instances the provider, as part of their consideration is required to carry out a risk assessment of the information contained and determine if it poses a risk or prohibition to a person's suitability to carry out their role. This guidance has been developed to support managers in regulated children's services to respond effectively to positive disclosures.

The guidance should also be applied in consideration of disclosures received during the renewal of vetting of existing employees. This should occur for all persons engaged in relevant work and for ancillary staff or boards of management who have access to children as part of their role and function every three years.

2. Who should carry out the risk assessment?

- If the disclosure relates to an employee of the person or the organisation, including ancillary staff, volunteers, or others engaged in relevant work, the responsibility lies with the registered provider.
- If the vetting disclosure relates to members of board of management, then it is the responsibility of the chair of the board where the service is provided by a community or corporate entity. (See below)
- Where the disclosure relates to board members who are directors of a dedicated activity company DAC, then it is the responsibility of the registered provider. (See below)

In some children's services the following applies:

1. In some regulated early years and residential care settings if the registered provider and the person in charge / centre manager are the same person then the relevant

Tusla Registration team will carry out the risk assessment pursuant to Part 3, (13) of the National Vetting Bureau Act 2012

2. In an early years or residential care setting where the person in charge / centre manager is different from the registered provider, the provider is responsible to carry out the risk assessment.
3. In regulated settings where the provider is a sole practitioner, such as a child minder etc, the Tusla registration team will carry out the risk assessment, pursuant to Part 3, (13) of the National Vetting Bureau Act 2012.
4. Positive disclosures of registered or named providers of regulated setting (early years, residential child care, Section 14 Education welfare act 2000 approved independent school and centres of education) will be risk assessed by the relevant Tusla registration team pursuant to Part 3, (13) of the National Vetting Bureau Act 2012.

Note (1): Risk assessments should not be carried out by family members, close friends or those who are not familiar with the nature of the work expected of the subject. Where a conflict of interest exists, it should be recorded on file and another suitable party should be assigned responsibility to complete this assessment.

Note (2): In early years and residential care settings any board member, or ancillary staff who as a necessary and regular part of their duties require access to and contact with children requires a vetting disclosure.

3. What is a risk assessment?

A risk assessment is a process of identifying any reasonable potential risks that could negatively impact on the person's ability to provide care or be in charge of a children's service. Any identified risk should be addressed by actions which will either mitigate it or remove any adverse impact posed.

Why is it necessary?

Providers of relevant services for children are required under Section 10, Part 2, of the Children First Act 2015, to ensure that each child availing of the services by the provider is safe from harm. At times of staff shortages or busy periods it may be tempting to fail to give priority to risk assessments, rely on the person's references only or commence the persons employment whilst awaiting receipt of disclosure.

Risk assessments are a routine and necessary safeguard. They should be recorded and maintained for examination on HR and other records of recruitment by inspection officers. Risk assessments also serve to give assurances to parents or other concerned parties should the need arise that relevant matters have been considered and acted upon.

Assessment of vetting documentation is also necessary for persons who are being considered for appointment to a position of authority, managerial or supervision of others. This is especially relevant for owners and providers of early years, and residential child care services and centres. Whilst past behaviours may not be considered to pose a specific risk

of harm to children, they may indicate that the person would not be suitable for a position of responsibility.

Registration application assessment teams will routinely request evidence that a suitable and robust risk assessment has been undertaken a part of the approvals process. Similarly inspectors of regulated children's settings will seek assurances that a risk assessment has taken place for staff members with disclosed information.

Persons are not permitted to commence employment or engage in relevant work with children until such time as the vetting is received and assessed, this includes police vetting from other jurisdictions. Garda Vetting disclosures cannot be transferred between employers or organisations that engage in relevant work with children.

As it is an essential safeguard for children, vetting should be renewed at least every three years by providers. Vetting is not designed to determine if the person is at risk of repeating criminal behaviour but to make a determination if the person is of suitable character to either care for, or be in charge of, a children's settings.

How is harm to children defined?

Harm in relation to a child is

- Assault of a physical or sexual nature.
- Neglect of a child to an extent that is or likely to affect a child's health, wellbeing, development, or welfare.
- Deprivation of a child's core needs, wilfully or otherwise.
- Harm to a child's emotional wellbeing.
- Sexual abuse, including wilful exposure of a child to pornography or sexual activity.

4. What information is provided on a Garda vetting disclosure?

A Garda vetting disclosure will contain information concerning

1. **No disclosures:** A statement that there is no criminal record or specified information in relation to the person vetted.
2. **Positive Disclosures:** Where a person has a criminal record relating to convictions within or outside the State known to An Garda Síochána. The disclosure may also include any orders made concerning the convictions and any prosecutions pending against the person vetted within or outside the State known to An Garda Síochána.
3. **Specified Information:** In relation to a person who is the subject of an application for a vetting disclosure, means information concerning a finding or allegation of harm to another person received by the National Vetting Bureau from An Garda Síochána or a Scheduled Organisation pursuant to Section 19 of the National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016. It is information that is considered to reasonably give rise to a bona fide concern that the vetting subject may pose a risk to children.

5. What is identified on an overseas police check?

Different jurisdictions have differing formats and processes depending on the policy and policing records maintenance and access systems. Most jurisdictions will at least present a statement of existing convictions with some degree of detail.

What are the key concerns with Overseas Police Checks (OPCs) and are they as important as Garda Vetting Disclosures?

OPCs are an essential safeguard and treated with the same importance as a Garda Vetting disclosure irrespective of how long the potential staff member has lived and worked in Ireland. Providers of registered Residential Care Centres and Early Years Services are prohibited from commencing the employment of people who have spent 6 months or more outside of jurisdiction before firstly securing and assessing the content of the OPC. Legislation however, does recognise that securing an OPC may not always be practicable, this clause should be applied conservatively however.

The following points should be considered:

- For the most part it is the responsibility of the prospective employee to obtain their own OPC.
- Unless agreed otherwise any costs related to the OPC should be borne by the employee.
- Whilst every effort should be made by the employee to obtain an OPC there may be occasions where it is not practicable. Special consideration should be given to people who may not be able to obtain an OPC because they have international protection status or because policing or records access within their country of origin is not possible due to political or civil unrest.
- The provider of relevant organisations should make every reasonable effort to verify and document the absence of a preferred candidate's OPC. Grounds of financial cost alone is not sufficient, nor is commencing employment on a promise that it will be provided at a later date.
- Where the employer is satisfied that it is not practicable to obtain an OPC, consideration should be given to the use of sworn affidavits concerning their criminal and social services history. The affidavit will not offer ostensive protection or assurances but will afford an employer a pathway to engage with a person who later was found to have provided false or misleading information during their onboarding or employment application stages.
- In the event that the organisation proceeds to employment of a person without a relevant OPC, the reason for same must be clearly documented and the matter should be included in the organisation's child safeguarding statement risk assessment.
- It is now becoming commonplace for providers of relevant organisations to go overseas to recruit staff for their services. It is not necessary for a person to have lived in Ireland for a Garda Vetting Disclosure to be obtained.

- Providers should be aware that they police vetting documents provided in a language other than English or Irish must be translated through a translation service and the evidence of the source of translation be made available.
- Caution should be exercised to carefully examine any OPC documentation presented, especially as the document presented may not be an actual police clearance but a subject / data access report. Such documents are not a police clearance document.
- Caution should be exercised as in certain jurisdictions police clearances are issued in differing formats depending on whether they have a national, federal or regional policing system. This also presents opportunities for persons to present falsified documentation in an effort to avoid cost or to have their criminal history considered. If in doubt it is recommended that providers should contact the relevant embassy of that jurisdiction.

6. Data / Subject Access Requests

In most jurisdictions some basic degree of information can be provided via subject / data access requests. These do not equate to a Police vetting document for a number of reasons and should not be accepted in lieu of the correct and proper police documentation.

1. The extent of checks carried out to inform their content are limited.
2. They usually provide information pertaining to convictions and not those that are pending or were unsuccessful.
3. They allow for a shorter and limited time frame in their search parameters.
4. In jurisdictions where police records are stored on a federal or regional basis the search carried out could be confined to a single district of that jurisdiction
5. It is unlawful as part of recruitment, contract of services or continued employment to require a person to make an Article 15 subject access request (GDPR) or section 91 (data protection act, concerning LED data) request.

7. Principles of risk assessment of vetting disclosures or overseas police records checks.

There are many misunderstandings that surround the examination of Garda Vetting Disclosures. These usually centre on the idea that only convictions relating to child abuse and or harm or neglect of children should be considered as a prohibition to working with children. Another core misunderstanding is that only recent convictions are of concern, or that driving offences bear no relation to the suitability to care for children or vulnerable persons. Whilst this may be true in some instances, some road traffic offences can demonstrate attitudinal or behavioural issues and should not be immediately dismissed as irrelevant to work in a child care setting.

Vetting checks can provide valuable indicators as to the character, performance, tendencies towards irresponsibility or dereliction of duties, or other underlying indicators of suitability of a person's ability to work with children, and or in a responsible role. Disclosures provide

information that can show an ongoing or previous patterns of behaviour, attitudes to conformity and authority but also positive indications of development of maturity and responsibility over time.

The information on a disclosure should not be taken on face value, the employer should take the time to speak with and discuss the content with the person to whom the disclosure relates. All positive disclosures should be subject to a recorded competent risk assessment, and always in advance of the person being allowed to engage in relevant work with children, or in the case of an ancillary staff or board member, having contact with children.

Providers should be able to demonstrate that they have acted responsibly and sufficiently in the assessment of information provided on Garda and Police vetting disclosures.

It is best practice to ensure as a matter of policy that all staff members are required to inform their employer of any convictions or pending prosecutions taken against them.

8. Risk Assessment Initial considerations of positive disclosures

Phase 1

1. Ensure that the person confirms that the information disclosed refers to them, vetting searches are based on the information provided by the person, whilst mismatching is unusual and rare it is not impossible.
2. Where the employee is of the opinion that the information does not relate to them, they are advised to make contact with the National Garda Vetting Bureau, their appointment should be postponed pending the outcome of that process.
3. In such an instance, it may not be feasible to await a review outcome and consideration may be given to moving to a new appointee. This will be dependent on the assessed risk to children and the risks to the rights of the individual.
4. What are the offences that have occurred or are pending? How do they relate to the duties the person is being considered for?
5. How did minor matters such as traffic offences end up coming before the courts? e.g. non-payment of fines or non-engagement with a summons or directions of a member of An Garda Síochána when lawfully requested to do so.
6. What has been the passage of time since the last offence?
7. Did the person declare the offences or upcoming pending charges at any point during their onboarding. If not, an enquiry should be made as to why not?
8. Afford the person an opportunity to explain the context of the circumstances leading to the incidents and behaviour for which they came to the attention of An Garda Síochána or in the case of specified information the state agency involved.
9. If the information relates to a pending conviction, it may be prudent depending on the information to either delay commencement of employment or revisit the risk assessment once the case has been heard.
10. Record carefully all relevant information and ensure it is securely stored.

If following this initial examination, it is concluded that the matters were minor and clearly do not relate to any aspect of their duties, a dated note should be placed on the persons HR file with appropriate justification.

Phase 2

Where the provider remains unsure or believes that the information relates directly to the role for which the person is required to fulfil, it may be necessary to examine the information further. Whilst those who have offences against children would be an obvious area of concern there are other matters which are also directly related to employment in childcare settings, these include, but are not limited to

1. Disclosures related to breach of trust, fraud, malfeasance, including theft from employer.
2. Disclosures related to irresponsible actions such as driving under the influence, neglect of duties or responsibilities, possession of illegal substances with intent to supply, driving without being properly insured.
3. Disclosures related to deception, or avoidance of responsibility, such as falsification of documentation, providing false statements to state authorities, leaving the scene of an accident.
4. Disclosures which relate to an underlying health or wellbeing issue in the person.
5. Disclosures relating to abuse of role, or power e.g., certain categories of assault, elder abuse, racism, stalking or other targeted intimidation coercive control or domestic violence.
6. Disclosures arising from behaviour demonstrating disproportionate volatility of character when under stress.

Relevant work with children is a position of trust, responsibility and of ultimate accountability and providers must be satisfied to a high degree of probability that the person can both fulfil their duties and meet reasonably expected code of conduct.

This stage of examination should ensure

1. The prospective employer's concerns should be clearly identified, recorded and presented.
2. The prospective staff member should be afforded the opportunity to respond to those concerns and provide a statement of account.
3. Beware of implausible explanations or those underpinned by apportioning blame to others.
4. Where the employer remains concerned or is not satisfied of the account provided by the staff member, they may seek the employees consent to contact, via their relevant vetting organisation, the Garda Vetting Bureau to seek further information concerning the disclosure.

9. Risk Assessment Process

When conducting and recording the risk assessment the provider should proceed as follows:

1. Conduct an assessment of risk based on each offence, charges pending or piece of specified information.
2. Consider and balance any factors which were presented as mitigation against the risk to their current suitability to carry out their role and functions. E.g., age of person at the time of offences, the nature of and how old the offences are, employment record since the incidents occurred, how much unsupervised access to children, will access to money be envisaged?
3. What safeguards or reassurances is the provider willing to put in place? This may include consideration of contact with other organisations where the person worked who were not presented originally as referees to gain more information or commencing employment on a trial basis, or ensuring induction pays special attention to expected codes of conduct. Additional supervision of the person may also be considered.
4. The risk should be rated after the consideration of mitigation and additional safeguards.
5. The record should be signed off and stored securely on the persons recruitment records.
6. In the event that the persons employment or engagement is commenced the risk assessment should be revisited at 6 months and amended accordingly if appropriate.

10. Specialist Advice

Whilst this guidance was developed to assist providers to meet their responsibilities in this area of practice, it does not purport to provide direction on any complexity arising in cases of industrial relations or of a legal nature.

The withdrawal of employment opportunities is a serious matter that requires robust and well considered decision making. Providers should always consult with their legal or human resources advisors or Tusla Social Work services where in doubt.

11. Risk Ratings & Risk Assessment Frameworks

Whilst there has been a steady emergence of risk rating frameworks similar to those used in health and safety risk assessments, they are not considered suitable for social care employment purposes. Risk assessments should be carried out taking the specific details of each disclosure on its merit. Risk rating schedules tend to create a preconceived concepts such as traffic offences are irrelevant and older offences are automatically discounted if there hasn't been a recurrence.

12. Role of regulatory bodies and Inspectorate oversight

The summary role of regulation and inspection officers are as follows:

1. They will assess police and Garda vetting risk assessments as part of the registration application and adherence to ongoing registration requirements. In the execution of their duties they may seek to pause the appointment of a service manager or refuse registration of a provider until satisfied that the persons in question are suitable to do so. The regulatory body is empowered to refuse or revoke registration accordingly.

2. Where they are not satisfied with the risk assessment presented by the employer or if the statement of account appears implausible, they will engage with Garda authorities to assist them in their examination by seeking detailed records of the related incidents.
3. Inspection officers will routinely examine staff vetting files in order to seek assurance that any risk to children has been competently identified and responded too. Should shortcomings be identified the relevant inspectorate may seek the matter to be revisited.

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