

Compliance with Garda Vetting for Boards of Management and certain ancillary Staff Members

Memo May 29th 2019

Context

Tusla Children's Services Regulation Department are aware that the National Vetting Bureau have advised providers of Children's Services that they are unable to provide vetting declaration statements to persons who are members of boards of management. This position is based on the limitations of Schedule 1 of the National Vetting Bureau Act 2012 which states that only those who are engaged in relevant work with children or those who have regular access to children in the course of their duties are eligible to be vetted. The implementation of these clauses has led to an increasing number of services receiving notifications advising that members of boards of management will not be vetted.

This position is apparently contrary to the requirements of both the Child Care Act 1991 (Early Years Regulations) 2016 and the Child Care Act 1991 (School Age Services Registration) Regulations 2018, and the Alternative Care Inspection and Registration protocols. Providers have found themselves unable to meet the requirements of these regulations. The inspectorate has received a number of enquiries from providers about the challenges posed by the apparently contradictory requirements in the legislation and are seeking exemption from this requirement.

Tusla Children's Service Regulation Division has been engaged with the National Vetting Bureau and the Department of Children and Youth Affairs in efforts to find a suitable solution to this issue. The protection of children is of paramount consideration and it is essential that all unsuitable persons should not have the ability to gain access or influence over children by inappropriate use of their role on a board of management or other ancillary role as a measure of credibility.

Position of the National Vetting Bureau (NVB)

Notwithstanding the criteria as set out in the National Vetting Bureau Act 2012, the NGVB have been extensively clear in respect of the following...

1. Vetting will be granted for any individual irrespective of their role and or job title whose duties involve necessary and a regular part of which consists of having access to or contact with children whilst performing their role.

2. Applications for vetting should not simply use generic terms to describe the role of the persons wishing to be vetted but a clear description of their functions with and access to children should be provided. This is imperative.
3. Applications must state that the individual has duties that a necessary and regular part of which consists of having access to or contact with children whilst in the performance of their role.

Where vetting has been refused in instances where access to and contact with children exists service providers should immediately reapply for vetting ensuring that this matter has been clarified expressly on the application. Regular access and contact with children is defined simply as where the individual is carrying out their role and function in the same premises as where the care of children occurs, and when children are present on the premises. It is crucial that all persons who have access and regular contact with children are subjected to vetting.

Compliance with Tusla Inspection & Registration Requirements (Early Years Inspectorate, Alternative Care Inspection & Registration Service, Alternative Education Assessment and Registration Service, School Age Child Care Registration Service)

In the interim period pending a solution or realignment of the legislation the following outlines the approach Tusla will take in assessment of compliance with requirements for vetting of Boards of Management and certain ancillary staff members.

- Where a member of Board of Management or ancillary staff member have been not processed for vetting by the NVB but have regular access to and contact with children, a new application should be made expressly clarifying same as outlined above.
- Evidence of unsuccessful applications for vetting must be kept on file for examination by the inspectorate.
- The service Child Safeguarding Statement as required under Part 11 of the Children First Act 2015 should identify the inability to access vetting as a risk with appropriate mitigation and risk management measures identified.
- If the members of the board of management or ancillary staff have access and contact with children and are refused vetting, they should not be allowed to carry out their duties when children are present.
- Persons without vetting should provide references of suitability of character and provide a sworn declaration that they are not known to Gardai or Child Protection Services in Ireland or any other jurisdiction for behaviours that would deem them unsuitable to be involved in the running of or engagement with a children's service.

- Members of Boards of Management and ancillary staff must where they have spent 6 months or more in other jurisdictions provide a police clearance from that jurisdiction.
- Services who can demonstrate and evidence that they have followed the steps above will not be found on their inspection reports as either compliant or non-compliant when they apply for registration or in a context of on-going inspection. The following statement will be made on their inspection report. ***“The registered provider has evidenced that they made reasonable efforts to meet vetting requirements within existing state legislation for their boards of directors and certain ancillary staff. Appropriate risk management measures are found to have been implemented.”***

This position applies until further notice and will take effect from the date of this notice. It is essential to note that the compromise position outlined above only applies to vetting of boards of management and certain ancillary staff. Staff who care for children must have a vetting disclosure prior to the commencement of their role with children without exception.

Yours Sincerely,



**Mike Corcoran,
Head of Registration & Enforcement,
Children’s Services Regulation,
Child & Family Agency.**