



Clarification about the PVG Scheme and Regulated Work with Adults.

Background

By far the most frequent enquiry the Safeguarding Service receives is about Protected Adults and, who does Regulated Work with Protected Adults in the Church. We anticipated this confusion because contained within the **Protection of Vulnerable Groups (Scotland) Act 2007** http://www.legislation.gov.uk/asp/2007/14/pdfs/asp_20070014_en.pdf under **Schedule 3** both the definitions of 'Protected Adult' and 'Regulated Work' are complicated and open to interpretation.

In England the equivalent legislation is the **Safeguarding Vulnerable Groups Act 2006** <http://www.legislation.gov.uk/ukpga/2006/47/contents> which is administered by the Disclosure and Barring Service (DBS). These checks are called DBS Checks and the two pieces of legislation do vary so we will produce further clarification about the English system soon too.

Safeguarding **Handbook 2** contains a table on page 11 which helps us work out whether a post is Regulated Work with Protected Adults. The purpose of this clarification document is to recap and to share with you some of our learning and experience over the last 4 years, as well as some tips and suggestions that we have found helpful when trying to identify who needs to join the PVG Scheme to work with Protected Adults. Near the end of this document there are a few 'helpful explanations' which you can refer to as you go along.

It is important to remember though, that our approach should always continue to be proportionate and sensible. **Under Section 67 of the PVG (Scot) Act 2007, it is unlawful for an organisation to request a PVG Scheme Record unless the applicant is doing, or is being asked to do regulated work.** This means that the Safeguarding Service has a responsibility to ensure all those who need to join the PVG Scheme do so but also that we are not asking individuals to join who do not qualify for the Scheme. Scottish Ministers have signaled that the catch-all or blanket approach common within the previous Disclosure system was disproportionate. We must remember that the information we access through a PVG Scheme membership is personal and sensitive. We do not have the right to that confidential information unless we are asking an individual to undertake regulated work.

Tip 1 - Deciding whether a PVG Scheme membership is required is a bit like an equation –
 $PROTECTED ADULT (PA) + REGULATED WORK (RW) = PVG SCHEME MEMBERSHIP (PVG)$
BOTH elements are required before we can ask for a PVG Scheme Membership.

Let's recap

Who is a Protected Adult?

When writing the Act the Scottish Government sensitively stayed away from identifying Protected Adults by their specific condition or disability instead identifying them by their *particular needs* and by the service they receive. **So, a Protected Adult is an adult with particular needs who is in receipt of a specific service.** More specifically a protected adult is defined as an individual aged 16 or over with *particular needs* who is provided with a type of care, support or welfare service. This is actually a much slimmer definition than you may expect and doesn't include all 'vulnerable' adults. It does include all those with a physical or mental illness or disability including drug and alcohol problems but it doesn't automatically include adults that we feel might be vulnerable because of their age or social position. So:-

What do we mean by *particular needs*?

"A *particular need* is a specific requirement an individual may have arising from either physical or mental illness, or physical or mental disability which may disadvantage that person when compared to the rest of society." Drug and Alcohol addiction and bereavement are now also deemed to be *particular needs*. Some examples can be found on page 12 of Safeguarding Handbook 2. Then:-

What specific (care, support or welfare) service does an adult with *particular needs* need to be in receipt of to make them a Protected Adult? These are defined as:-

1. **A Registered Care Service** – such as a care home service, adult placement service or housing support service, all registered with the Care Inspectorate.
2. **Health Services** – a service provided by or secured by a public health body (usually the NHS) concerning the treatment, care and support of, and provision of advice and assistance to individuals in relation to health and well-being.
3. **Community Care Services** – Social work and mental health services or self-directed support all paid for by a Council.
4. **Welfare Service** – A Welfare Service includes any service which provides support, assistance, advice or counselling to individuals with *particular needs* meeting the following conditions. The service must be a service that:
(a) is provided in the course of work (see some helpful explanations) to one or more persons aged 16 or over, (This is why job descriptions are important!)

- (b) is delivered on behalf of an organisation, (The Church of Scotland)
- (c) requires training to be undertaken by the person delivering the service,
- (d) has a frequency and formality attached to the service, **and**
- (e) **either**
 - (i) requires a contract to be agreed between the service provider and the recipient of the service prior to the service being carried out, **or**
 - (ii) is personalised to an individual adult's needs.

A Welfare Service is the only service that might be delivered by congregations.

Incidentally it has been agreed with the Scottish Government and Disclosure Scotland that the provision of spiritual care comes within the definition of a Welfare Service, relating to the task of providing advice and guidance. In order to qualify as a welfare service, the service must include all the mandatory elements (a) to (d) above and, in addition one **or** other of the elements in (e).

So an adult with *particular needs* in receipt of any of the above services is a 'Protected Adult'.

Is being a Protected Adult a permanent status?

All of us are likely to be a Protected Adult at some time in our lives. For example whilst receiving treatment in hospital (we will have a particular need and be receiving a health service) but we are only a Protected Adult at the time we receive the service. Hospital patients are Protected Adults at all times when they are in hospital but, other adults will only be Protected Adults for limited periods, for example, while receiving dental treatment.

Tip 2 – You may be confused by the terms 'Welfare Service' and 'Regulated work'. It might help to remember - the worker does regulated work and what the adult receives is a welfare service. (Work is done by the worker – service is received by the adult.)

What is Regulated Work?

Regulated Work is also quite specific:-

Regulated Work is work that is regular and planned **and** provided by an organisation **and** requires training or instruction. It is where the post holders 'normal duties' (appear in job description and occur regularly) include:-

- Caring for (doctors, nurses, carers etc.)

- Teaching, instructing, training and supervising (social workers, occupational therapists, dementia group volunteers)
- Being in sole charge of (personal carer, community bus driver)
- Providing assistance, advice or guidance (pastoral care group Elder or minister)
- Providing, or working for an organisation which provides a care home service (CrossReach)

Tip 3 – A general service to the general public is NOT regulated work. A specific service to specific people (with specific needs) IS regulated work.

Who does Regulated work Protected Adults in the Church?

Pastoral care workers deliver a welfare service on behalf of the Church of Scotland. There is a job description, individuals are recruited and selected, undertake training and will be supervised by the person in charge of the pastoral care visiting group or the service. The service is specifically targeted at those with *particular needs*. The main duties will be determined by whether the pastoral care worker/visitor is a member of a pastoral care visiting group or is helping to provide a service to people with *particular needs* (such as a dementia group) on behalf of the Church.

What is Pastoral Care?

Pastoral care is emotional, practical and spiritual care provided by members of the Church on behalf of that organisation. It must be stressed that only some clearly identified Elders undertaking specific tasks on behalf of the Church will be involved with a Pastoral Care Group.

What is Pastoral Care Group?

There are approximately 40,000 Elders in the Church of Scotland who visit members of the congregation and others in a designated geographical area. This visiting involves contact with a broad cross-section of the community including those with *particular needs* (please see ‘What is the Incidental test?’ below). However it is only those Elders who are specifically recruited to provide pastoral care to adults with *particular needs* who are undertaking Regulated Work with adults.

Tip 4 – A clue is in the job title but the answer is in the job description.

A job title will not always tell you if someone is doing Regulated Work but their job description will. For example a lunch club volunteer (general service to the general public) is not doing Regulated Work but a volunteer who regularly works with a lunch club for dementia sufferers will be doing Regulated Work.

What is the Incidental Test?

Helpfully, the PVG Act introduces the incidental test and it is another example of the Governments desire for a more proportionate approach. Some activities with Protected Adults are not deemed to be Regulated Work if the activity is occurring incidentally to working with individuals who are not Protected Adults. (Remember tip 3) An example of this would be a lunch club for over 60's (general service to the general public) and some Protected Adults attend. Their attendance is incidental to the main focus of the group which is open to all over 60's. This means that we do not need to worry about PVG Scheme memberships every time a Protected Adult is involved in an activity – it is only when the activity is Regulated Work. (The incidental test applies when working with children as well by the way!)

Do Church representatives who visit Care Homes require a PVG Scheme membership?

Volunteers visiting care homes will rarely need to have PVG Scheme memberships unless they will be doing Regulated Work there. The only exception is when the volunteer, whilst in the care home, has the opportunity to have unsupervised contact with Protected Adults. For example a volunteer visiting with the Church choir to entertain the residents is not Regulated Work (remember Tip 1 – here you have a Protected Adult but not Regulated Work) but a pastoral visit from an Elder who spends time with a resident on their own is regulated work and does require a PVG Scheme membership.

As always common sense and proportionality are encouraged and if there is any confusion you can always ask the manager of the care home for guidance.

Do Safeguarding Co-ordinators need to join the PVG Scheme?

Yes. All those who directly line-manage individuals who are doing Regulated Work are required to join the PVG Scheme. As Safeguarding Co-ordinators line manage volunteers they are required to join the PVG Scheme for both the children and adults workforces.

Who is not required to join the PVG Scheme?

- Safeguarding Panel members are not required to join the Scheme for their role as Panel members.
- Having access to financial or medical records or sensitive information is not Regulated Work.
- Those workers and volunteers whose contact with protected adults occurs incidentally to working with individuals who are not Protected Adults.

Please Remember – that a PVG Scheme membership is only one part of a safe recruitment process. All the other safe recruitment tools that should be used to recruit new (paid and unpaid) workers are explained in Safeguarding Handbook 2 – The Safe Recruitment, Selection and Management of Volunteers and Paid Staff available at http://www.churchofscotland.org.uk/about_us/safeguarding_service

Some helpful explanations;-

Particular needs – are those over and above the general needs that any individual might have. For example, the need for regular meals is a general need (everyone needs this) but the need for assistance in preparing meals is a particular need (only some people with, e.g. a disability).

Work - is defined at section 95 of the Act and has a very broad meaning as work of any kind. Work includes paid or unpaid work but has to be done on behalf of an organisation.

Normal Duties - appear in a job description and occur regularly.

Jennifer Milligan

Assistant Head of Safeguarding

24.8.15