Safeguarding Vulnerable Groups Act 2006
Safeguarding Vulnerable Groups (Northern Ireland) Order 2007

Duty for Keepers of Registers to Refer information to the Independent Safeguarding Authority

The Decision Assistance Tool
For Keepers of Registers

September 2010

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Introduction and purpose of the Decision Assistance Tool

This Decision Assistance Tool has been designed to assist Keepers of Registers (KORs) in deciding whether the second limb of the second referral condition has been met (the may bar test). The second condition is set out within section 41(4) of the Safeguarding Vulnerable Groups Act 2006 and article 43(4) of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. The may bar test [at section 41(4)(b) and article 43(4)(b)] requires the KOR to think the Independent Safeguarding Authority (ISA) may consider it appropriate to bar the person from working or volunteering with children or vulnerable adults.

The Decision Assistance Tool has been designed to assist in decision making relating to referrals to the ISA. It is not designed to entitle or enable the KORs to override the assessment process carried out by the ISA. Nor does a KOR decision that the second referral condition is met mean that the keeper has concluded that the ISA will bar the person.

In deciding whether the case meets the second limb of the second condition of the duty to refer, the KOR will find it beneficial to review the information/evidence and the issues from a similar perspective as the ISA decision making process.

The aim of this Tool is to provide KORs with a broad understanding of the ISA assessment process, and therefore to assist KORs in making an informed decision about whether the duty to refer has arisen. The sections of the Tool reflect the areas the ISA considers as well as specific professional areas. The Tool is designed to give KORS a better understanding of the safeguarding factors the ISA consider in respect of the future risk of harm that an individual may pose in relation to children or vulnerable adults.

The Tool is not designed for use by employers, or co-ordinators of volunteering organisations.

For ease of reference the term 'registrant' used throughout this document refers to self-employed practitioners, employed staff and those engaged in unpaid volunteer work.

The development of the Tool

This Tool has been developed using a collaborative approach between the KORs, the ISA and the Department of Health, with expert involvement provided by other interested parties. A workshop hosted by the Department of Health in January 2010 examined scenarios of professional conduct cases, and a number of themes were drawn out from decisions reached by participants, in respect of whether each hypothetical case would be referred to the ISA. These themes were later developed alongside other evidence from literature and expert opinion in formulating the Tool.

The process followed by the ISA in deciding whether or not to bar an individual (please note that this term is being used to also cover volunteers) is detailed in the ISA guidance on its Decision Making Process, which is available on the ISA website. The guidance considers a host of factors and behaviours which may pose a risk of harm, as well as any actual or potential harm that might have occurred. Furthermore, ISA assessments are undertaken by experienced case workers who are skilled in assessing information in order to make these decisions. Keepers cannot be expected to have this level of expertise or have access to all the information the ISA is able to collect as part of its assessment process. The Tool has been developed with this understanding at the centre of its design. Furthermore, the Tool does not try to set out a definition for harm, because what constitutes harm is a subjective matter for each KOR to determine, and it is something that is often, personal to the child or vulnerable adult. What constitutes harm also depends on the context of the action or
behaviour, which may vary on a case-by-case basis. Accordingly, once a KOR has made a subjective decision about whether harm has taken place, or a child or vulnerable person has been exposed to risk of harm, the KOR must decide whether the ISA may consider it appropriate for the registrant to be included on a barred list. In doing this, the KOR will find it beneficial to have an overview of the issues that the ISA considers in its decision making process.

Explanatory notes

The Decision Assistance Tool can be found at the end of the explanatory notes.

The KOR’s duty to refer information to ISA

Section 41 of the Safeguarding Vulnerable Groups Act 2006 (SVG Act) and article 43 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 place KORs under a duty to refer information to ISA when two conditions are met. These conditions, as well as referral trigger points, are explained further below.

Later parts of the explanatory notes give more specific explanation of the two stages of the Decision Assistance Tool.

The first condition

Autobar offences

In relation to Autobar offences, a referral should be made to the Independent Safeguarding Authority (ISA) when a registrant of the KOR has committed an automatic barring offence, received a formal police caution in relation to such an offence, or has either been convicted of or cautioned in relation to an offence that is connected to an autobar offence.

Relevant Conduct

1. The Relevant Conduct component of the first condition can only generally be met when there is harm or risk of harm directly in relation to children and/or vulnerable adults. The condition will not be met when the registrant’s actions indicate generally risky behaviour (i.e. driving over the proscribed limit of alcohol, bullying of colleagues).

The Harm Test

As for Relevant Conduct, the Harm Test can only generally be met when there is a risk of harm directly in relation to children and/or vulnerable adults.

In general, the Harm Test will only apply where a registrant has not done anything in the past to cause harm or risk of harm to a child or vulnerable adult (i.e. there has been no conduct or omission), but where the KOR thinks that the registrant poses a future risk of harm in relation to vulnerable group(s).

The Harm Test can be applied to conduct-based cases in exceptional circumstances, irrespective of whether the case originated in England, Wales or Northern Ireland:
• where the case is delayed in the KOR’s process for a long period of time; or

• where the case involves past conduct but cannot be referred under the Relevant Conduct provisions on the basis of a ‘technicality’. In these cases, the trigger point for considering referrals is the same as for the ‘general application’ of the Harm Test, and these have been outlined above (note the different trigger points in Northern Ireland).

The point at which the referral should be made by the KOR

The first condition

For auto-bar cases, the legal duty to refer information to the ISA arises at the point at which the KOR receives formal notice of a conviction or caution in relation to an autobar (or connected) offence. From time to time, KORs receive determinations from regulators in other jurisdictions which indicate a serious offence has been committed in an overseas jurisdiction. In these cases, the overseas determination can be used as evidence of the offence and the KOR may rely on the determination to consider whether the autobar criteria are met. Where the autobar criteria are not met, a KOR may consider whether the Relevant Conduct or Harm Test criteria are met in terms of a referral to the ISA.

For relevant conduct cases, the ISA wish to receive KOR referrals after the KOR has finalised its fitness to practise case, with the result being an adverse finding against the registrant and where the KOR considers that the relevant conduct criteria within section 41 and article 43 are met.

If a referral is made before the KOR has finalised its process, unless the ISA holds other relevant safeguarding information, the ISA may not be able to progress the case until the KOR can provide further information following one of the above actions being taken.

The endangerment component of relevant conduct (or risk of endangerment) must relate specifically to children and/or vulnerable adults as defined by the Act. For clarity, the relevant conduct criteria will not be met where there is only general endangerment (or risk of endangerment) to persons other than children and/or vulnerable adults as defined by the Act.

In relation to the Harm Test, healthcare regulators must consider making referrals at different stages depending on whether the conduct occurred in England and Wales or in Northern Ireland. In England and Wales cases, the referral duty arises when the KOR has sufficient compelling evidence to suggest that the registrant poses a risk of harm to children and/or vulnerable adults such that ISA may bar the person from working with children or vulnerable adults or one or both those groups. Sufficient, compelling evidence may include (but is not limited to) the following information:

• Evidence from a foreign court or police service of a criminal conviction, or caution in relation to a criminal offence;

• A determination received from an overseas regulator; or

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• An outcome of an investigation completed by a reputable employer (such as the NHS) or any other similarly authoritative substantiated evidence from a reputable source.

Concerning England and Wales cases, the ISA would prefer not to receive referrals under section 41 or article 43 of the Act at the Interim Order (IO) stage of a KOR’s process. A decision to refer a case for IO consideration, or a decision by an IO Panel to place an IO (suspension or conditions) on a registrant is not a finding of fact and the ISA may not be able to progress these cases in the absence of, for example, relevant information from other referring bodies.

However, should a KOR make a referral at the IO stage, the ISA must accept the referral even though the ISA may, in the absence of other information, need to wait until the KOR has completed its fitness to practice process for the person and provided further information to the ISA to enable the case to be considered.

For Northern Ireland cases, KORs are required to refer Harm Test cases to the ISA according to ‘shortcut’ provisions. These provisions require referrals to be made when the KOR holds information to suggest that an investigation is likely to occur in the future because of the risk of harm posed by the registrant, or where the KOR takes action (including interim action) against the registrant because of the future risk of harm.

**How to use the Decision Assistance Tool (DAT)**

The Tool has 2 stages. Both stages relate to the first and second conditions of the duty for KORs to make referrals to ISA:

- If Stage 1A is met, the KOR has a duty to automatically refer a registrant to the ISA.
- If Stage 1B or stage 1C are met (the second and third parts of the first condition) the KOR must go on to consider both parts of stage 2 of the Tool before a decision to refer is made.
- If stage 2D (first part of the second condition) is not met there is no duty to refer.
- If stage 2 E-K is met (second part of the second condition), the KOR must make a referral to ISA under the legal duty to refer.

Some sections of stage 2 E-K will have varying degrees of relevance depending on the nature of the case/evidence. However, all of the categories in stage 2E-K of the DAT should be considered individually, as should the overall impact of the information when the KOR is considering its duty to refer.

It has not been possible to use a ‘one size fits all’ scoring system as part of the DAT. This is because KORs will consider vastly different qualities and quantities of evidence and make subjective judgements about whether the referral duty exists. Because of this it was considered that a rigid scoring system would not be useful to the KOR decision making process.

**Stage one of the DAT**

Stage 1 involves considering whether the registrant has committed an autobar offence, engaged in Relevant Conduct, or whether the Harm Test is met.

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2 Safeguarding Vulnerable Groups (Regulated Activity, Devolution Alignment and Miscellaneous Provisions) Order (Northern Ireland) 2010
The trigger points for considering making referrals to ISA under the autobar, Relevant Conduct and Harm Test parts of the DAT (Parts 1A, 1B and 1C) are explained at part 1.2 of the explanatory notes. The notes below provide more comprehensive guidance on the 3 parts of stage 1 of the DAT.

**Stage 1A – convictions or cautions in relation to autobar offences**

The Act lists the offences which are considered to be ‘autobar’ offences. Broadly, these include (though are not restricted to) those offences which indicate that the offender may pose a risk of harm to children or vulnerable adults. In particular, which;

- are directed towards children and/or vulnerable adults;
- involve sexual behaviour;
- involve violence or potential for violence against people and property, especially where such conduct is intentional or a weapon is used, and
- involve acquisitive behaviour and fraud;
- indicate that the person holds/held a position of authority
- breached a trust;
- relate to additive behaviour or persistent offending.

**Stage 1B – has the registrant engaged in Relevant Conduct with a child and/or vulnerable adult?**

Relevant conduct is any conduct that:

- Endangers a child and/or vulnerable adult or is likely to endanger a child and/or vulnerable adult
- If repeated against, or in relation to, a child and/or vulnerable adult, would endanger them or would be likely to endanger them
- Involves sexual material relating to a child (including possession of such material)
- Involves sexually explicit images depicting violence against human beings (including possession of such images), if it appears to the ISA that the conduct is inappropriate; or
- Is of a sexual nature involving a child and/or vulnerable adult, if it appears to the ISA that the conduct is inappropriate.

A person’s conduct endangers a child or vulnerable adult if the person:

- harms a child and/or vulnerable adult;
- causes a child and/or vulnerable adult to be harmed;
- puts a child and/or vulnerable adult at risk of harm;
- attempts to harm a child and/or vulnerable adult;
- incites another to harm a child and/or vulnerable adult.
Examples of Relevant Conduct in relation to children and vulnerable adults

Relevant Conduct can include Emotional/Psychological, Financial, Physical, Sexual, and Neglect conduct.

What may be considered by some to be “low level harm” must be recognised as harm. Equally the action, or inaction, may endanger the child and/or vulnerable adult and/or child but not actually have caused harm. An example of this may be a “waking duty” nurse who deliberately makes herself a bed in the lounge, turns off the lights and falsifies the records for the nightshift. The following are only examples of the type of behaviour which may be considered as Relevant Conduct and are dependent on the individual context and circumstances. This is not a definitive or exhaustive list.

<table>
<thead>
<tr>
<th>Type of Harm to a Vulnerable Adult</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emotional/Psychological Verbal or written</td>
<td>Inflexible regimes and lack of choice, mocking, coercing, denying privacy, threatening behaviour, bullying, intimidation, harassment, deliberate isolation, deprivation, discrimination; misuse of power or position, infantilisation. Demeaning, disrespectful, humiliating, racist, sexist or sarcastic comments. Excessive or unwanted familiarity, shouting, swearing, name calling</td>
</tr>
<tr>
<td>Financial /material</td>
<td>Unauthorised access to accounts, theft (of any amount), fraud, exploitation, pressure or inappropriate involvement in connection with lasting powers of attorney, wills or inheritance.</td>
</tr>
<tr>
<td>Physical</td>
<td>Hitting, slapping, pushing, shaking, bruising, failing to treat sores or wounds, under or overuse of medication, un-prescribed or inappropriate medication, inappropriate restraint, inappropriate sanctions, banishment, unauthorised deprivation of liberty.</td>
</tr>
<tr>
<td>Sexual</td>
<td>Causing bruising or injury to the anal, genital or abdominal area. Inappropriate crossing of boundaries, Misuse of professional position, coercion and encouragement to enter into a relationship. Any acts, words or behaviour (carried out by a person in a position of trust) designed or intended to arouse or gratify sexual impulses or desires</td>
</tr>
<tr>
<td>Neglect</td>
<td>Uninvestigated, untreated or unexplained weight loss, failing to administer reasonable care resulting in pressure damage or uncharacteristic problems with continence. Recurrent infections (not directly related to the person’s medical condition) Poor hygiene, soiled clothes not changed, insufficient food or drink, ignoring the vulnerable adult’s requests, unmet health or social care needs. Failure to meet needs fundamental to life, failure to protect vulnerable adults by reckless practice.</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Type of Harm to a Child</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emotional/Psychological</td>
<td>Emotional ill-treatment of a child such as to cause severe and persistent adverse effects on the child’s emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may feature</td>
</tr>
</tbody>
</table>
age or developmentally inappropriate expectations being imposed. It may involve causing children to frequently feel frightened or in danger, or the exploitation or corruption of children. It may involve children witnessing aggressive, violent or harmful behaviour such as domestic violence. Some level of emotional harm is involved in all types of ill-treatment of a child, though it may occur alone.

Grooming. Harassment. Inappropriate emotional involvement.

Physical harm may involve assaults including hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer feigns the symptoms of, or deliberately causes ill health to a child whom they are looking after. This situation is commonly described using terms such as factitious illness by proxy or Munchausen syndrome by proxy. Inappropriate or unauthorised supply of drugs to children. Inappropriate/unauthorised methods of restraint

Sexual harm involves forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative (e.g. rape or buggery) or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities, or encouraging children to behave in sexually inappropriate ways. Taking indecent photographs of children. Sexualised texting. Downloading child pornography

Neglect is the failure to meet a child’s basic physical and/or psychological needs, likely to result in the serious impairment of the child’s health or development. It may involve a parent or carer failing to provide adequate food, shelter and clothing, failing to protect a child from physical harm or danger, or the failure to ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child’s basic emotional needs.

(Independent Safeguarding Authority 2009)

**Stage 1C – The Harm Test**

Broadly the Harm Test applies where there has been no specific conduct but something in the registrant’s attitudes or beliefs indicates a serious risk that they could harm a child or vulnerable adult in the future. The risk of harm must apply specifically to one of the vulnerable groups and it is anticipated that this will be applied infrequently.

Normally, the Harm Test is likely to be applied where a registrant has communicated something in his/her thoughts, beliefs or attitudes which indicates a future risk of harm directly in relation to children and/or vulnerable adults. For example, a person who tells a colleague that he/she is sexually attracted to children but there is nothing in the person’s conduct that meets the relevant conduct referral criteria and they have not been cautioned or convicted for a relevant offence.

There are two exceptional cases which involve conduct where the case should be referred to the ISA under the Harm Test rather than the relevant conduct criteria. These are:

- In relevant conduct cases, where there is an undue delay in the KOR’s fitness to practise process and the KOR believes the person poses a future risk to children or vulnerable adults such that the ISA may bar the person; or
• A case where there has been an allegation of relevant conduct but for some technical or other reason the relevant conduct criteria are not met and the KOR believes the person poses a future risk to children or vulnerable adults such that the ISA may bar the person.

In England and Wales, the Harm Test will only be satisfied where there is sufficient compelling evidence to suggest a person poses a direct risk of harm to children or vulnerable adults. Trigger points in Northern Ireland cases were explored in earlier parts of this document. The Harm Test will not be met in cases where there is only a general risk of harm – for instance a case of football violence where one adult harms another, indicating risk of harm to people in general rather than a direct risk of harm to vulnerable groups.

Stage 2 of the DAT

Part 2D – the first part of the second condition

If this condition is not met, there is no duty to refer information to ISA. If this condition is met, Part 2 E-K of the Decision Assistance Tool should be considered.

This part of the Decision Assistance Tool requires KORs to consider factors in respect of the registrant’s past, current and possible future engagement in Regulated or Controlled Activity. This should not be based purely on speculation, and the KOR must have some evidence to support its assessment against this part of the Tool.

Part 2 E-K – the second part of the second condition

In deciding whether the second part of the second condition is met, KORs should consider each element of part 2 E-K. Consideration of each individual factor, as well as an overall analysis of the evidence will help the KOR to determine whether the harm or risk of harm is of the seriousness to consider that ISA may bar the registrant.

Section 2 E - Impact on the victim

A victim impact statement may assist in understanding the effect of the harm on the child and/or vulnerable adult. This may add additional information in order to develop a rounded appraisal of the impact and possible future risk of harm and may be of particular assistance in respect of identifying any psychological consequences for the victim that may not be evidenced simply from examining the act in question.

Section 2 F – Harm-Related Interests/Intrinsic Drives

Consider whether there are any concerns that the registrant’s behaviour may have been influenced by any fantasies, personal gratification, desire to harm others or misuse of power or discrimination.

Section 2 G – Thinking, Attitudes and Beliefs

Consider whether there are any concerns that the registrant’s behaviour may have been underpinned by attitudes or belief systems that are linked to harmful activity.

This could be demonstrated by the registrant’s belief that it was their right to take advantage of the victim; or that the victim would not understand, know or remember their actions so their behaviour would not matter; or that they believe they have a ‘right’ (perhaps due to
experience, qualifications, position or seniority) to ignore or over-ride rules, policies and procedures; or that they could be considered as an action based on “hate” of a type of person or because of a specific problem or need.

Section 2 H – Relationships

Consider whether there are any concerns that the registrant’s behaviour may have been underpinned by matters concerning with relationships. This could include extremes of relationships, such as profound loneliness, through to breaching professional boundaries and inappropriate familiarisation or use of interpersonal relationships.

Section 2 I – Self Management and Lifestyle

Consider whether there are any concerns that the registrant’s behaviour may have been attributed to poor coping skills, inability to control emotions, impulses or urges. Consider any lifestyle issues that affect the registrant’s abilities, including substance and alcohol misuse.

Section 2 J – Professional factors

Consider whether the registrant was accountable or responsible (in line with their role in the service provided) for the action or inaction in question. For example, a Physiotherapist is accountable for his/her actions and has a responsibility to oversee the work of others, but a care assistant does not necessarily have that level of accountability and responsibility. This may be a factor in certain circumstances and it is important that the reasonableness of what was expected of the registrant is considered.

Consider whether the harm or risk of harm could be repeated outside of the professional role of the registrant. It may be that the action in itself could not be repeated, but the behaviours or attitudes that caused the harm could be repeated.

Consider whether the activity in which the harm occurred has traditionally been in the domain of the professional but can now be carried out by other registrants, either exactly or in a similar manner. An example would be the measurement and administration of medication by a registered nurse, which can also be carried out by a senior care assistant in a care home or home care service.

Consider whether the harm, although carried out as part of a professional activity, demonstrated unacceptable behaviours or attitudes that could apply in other situations if the registrant crossed professional boundaries.

Section 2 K – Possible Mitigation or Aggravating factors

Consider whether there are is any possible mitigation or aggravating factors; these could include examples such as:

<table>
<thead>
<tr>
<th>Mitigation for the person</th>
<th>Mitigation of misconduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admission of guilt</td>
<td>Victimisation</td>
</tr>
<tr>
<td>Remorse</td>
<td>Immediate stressors</td>
</tr>
<tr>
<td>Reaction</td>
<td>Discrimination against staff member</td>
</tr>
<tr>
<td>Previous good record</td>
<td>Staff shortages</td>
</tr>
<tr>
<td>Ongoing stress/mental health</td>
<td>Poor working conditions</td>
</tr>
<tr>
<td>Intentions misunderstood or no harm intended</td>
<td>Relationships between staff</td>
</tr>
<tr>
<td>Isolated incident</td>
<td>Lack of relevant training</td>
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<td>------------------</td>
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<tr>
<td></td>
<td>Poor organisational culture</td>
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<tr>
<td></td>
<td>Organisational systems that were outside the registrant’s control</td>
</tr>
</tbody>
</table>

**Possible Aggravating factors**

<table>
<thead>
<tr>
<th>Lying</th>
<th>Behaviour conducted over a long period of time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recklessness</td>
<td>Deviousness or attempts to conceal activity</td>
</tr>
<tr>
<td>Deliberate or intentional action</td>
<td>Bullying and intimidation of other staff to prevent disclosure of misconduct</td>
</tr>
<tr>
<td>Aggressive response to allegations</td>
<td>Premeditated action</td>
</tr>
<tr>
<td>Determined attempts to undermine profession or others</td>
<td>Behaviour motivated by power, greed or prejudice</td>
</tr>
<tr>
<td>Clear knowledge that behaviour was inappropriate</td>
<td>History of similar behaviour</td>
</tr>
</tbody>
</table>

(source: Stevens, Manthorpe, 2007)

**Further considerations**

The KOR should also consider the following criteria in determining the ‘appropriateness’ of making a referral to the ISA:

1. What specifically is the person deemed to be at risk of doing (i.e. what behaviour?) and how does this link to harm or risk of harm to a child and/or vulnerable adult?

2. What impact does the sanction imposed by the Keeper have on the risk of harm outside the regulated setting? Does the action taken by the KOR remove the risk of harm to children and/or vulnerable adults, or is there an ongoing risk?

3. What are the chances of the behaviour being repeated against vulnerable person or group and/or is the behaviour likely to escalate?

4. What is the likely level of harm if it does?

**Recording the outcome**

The decision making process and the final decision regarding whether the KOR has a duty to refer the registrant to the ISA should be recorded in the format relevant to the specific KOR record keeping process.

**Conclusion**

The decision of the Keeper to refer a professional to the ISA should be made based on professional judgement, having considered all available information following a clear process, with evidenced and informed deliberations.

Consider the aspects set out in stage 2 E-K of the DAT, collectively including the root causes of the behaviour, attitudes and actions.
The Decision Assistance Tool

Stage 1 (First condition)

The KOR must assess the information and evidence it holds against stage 1 of the DAT. If part A of the first condition is met, KORs need not consider the second condition: if either part B or C of the first condition is met, KORs should consider whether the two parts of the second condition apply.

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Has the registrant received a caution or conviction for a relevant offence</td>
<td>Refer to ISA</td>
</tr>
<tr>
<td>Or</td>
<td>Move to stage 2</td>
<td>Consider whether C applies</td>
</tr>
</tbody>
</table>

Stage 2 (Second condition)

If the KOR is satisfied that either part B or part C of the first condition is met, the KOR must go on to determine whether both parts of the second condition are met. The two parts of the second condition are:

1. That the registrant was engaged in Regulated or Controlled Activity at the time the incident took place, is currently engaged in such activity, or may engage in Regulated or Controlled Activity in the future; and

2. That ISA may consider it appropriate for the registrant to be included in a barred list.

2D: First part of the second condition

If the KOR should consider the first part of the second condition

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>D</td>
<td>Was the registrant engaged in Regulated or Controlled Activity at the time the incident happened; is the registrant currently engaged; or may the registrant engage in, Regulated or Controlled Activity in the future?</td>
<td>Consider the second part of the second condition</td>
</tr>
</tbody>
</table>

If the KOR is satisfied that the first part of the second condition is met, the KOR must go on to consider whether the second part of the second condition is met.
### Decision Assistance Tool for Keepers of Registers 23.9.10

#### 2 E–K: Second part of the second condition

The second part of the second condition is the final step in determining whether the legal duty to refer information to ISA applies. KORs need only consider the second part of the second condition if both the first condition and the first part of the second condition are met.

KORs should consider the information and evidence from their investigation against the following categories when making a judgement about whether the second part of the second condition applies.

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
<th>Yes or No</th>
<th>Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>E</td>
<td>What is the impact of the relevant conduct/risk of harm from the victim’s and/or family’s perspective?. The KOR should consider; The physical, emotional, and psychological impact. The more serious the impact on the victim and/or his/her family, the greater the likelihood of the second condition being met.</td>
<td>Impact of harm?</td>
<td>No impact. Small/ Serious impact./ Moderate impact. Serious impact. Severe impact.</td>
</tr>
<tr>
<td>F</td>
<td>Harm-Related Interests/Intrinsic Drives</td>
<td>Examples to consider – the list is not exhaustive</td>
<td>Does category F raise concerns? Yes or No</td>
</tr>
<tr>
<td>G</td>
<td>Thinking, Attitudes and Beliefs</td>
<td>Examples to consider – the list below is not exhaustive</td>
<td>Does category G raise concerns? Yes or No</td>
</tr>
</tbody>
</table>

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<tbody>
<tr>
<td>F</td>
<td>The registrant was not personally responsible for the action/inaction</td>
<td>Consider issues along a continuum</td>
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<td></td>
<td>Trust was broken but the child or vulnerable adult was in agreement with this action and action was minor or could be considered a normal friendship based action</td>
<td>Consider issues along a continuum</td>
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<tr>
<td>G</td>
<td>One small misdemeanour or error resulting in minor harm</td>
<td>Consider issues along a continuum</td>
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<td></td>
<td>Action or inaction – was it a simple mistake or misjudgement? Is the matter easily rectified and the lesson learned?</td>
<td>Consider issues along a continuum</td>
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<td>Was the incident accidental or an adequately explained breach policy or procedure and the consequences of the breach are minor</td>
<td>Consider issues along a continuum</td>
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<td>Action was context bound – that is, it was (e.g. carried out in accordance with institutional norms or policy)</td>
<td>Consider issues along a continuum</td>
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<tr>
<td></td>
<td>Registrant understood that the behaviour was wrong and immediately reported situation/harm and completed correct report forms etc. The registrant reflected and changed practice</td>
<td>Consider issues along a continuum</td>
</tr>
<tr>
<td></td>
<td>Not reasonable to expect the registrant to have known, or seen the outcome of his/her actions or the harm</td>
<td>Consider issues along a continuum</td>
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<td>No discrimination by registrant; evident, or innocent discriminatory act was rectified</td>
<td>Consider issues along a continuum</td>
</tr>
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### Relationships

**Examples to consider – the list below is not exhaustive**

<table>
<thead>
<tr>
<th>Registrants alerted managers to concerns and tried to prevent harm</th>
<th>Consider issues along a continuum</th>
<th>Registrant ignored responsibilities to alert managers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registrant had a positive relationship with colleagues</td>
<td>Consider issues along a continuum</td>
<td>Registrant bullied or coerced colleagues to hide, lie or collude</td>
</tr>
<tr>
<td>There is evidence that the registrant was attempting to work in partnership with the child or vulnerable adult, but their actions were misinterpreted</td>
<td>Consider issues along a continuum</td>
<td>The registrant used their position of power and authority to ensure compliance</td>
</tr>
</tbody>
</table>

**Does category H raise concerns? Yes or No**

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### Self Management and Lifestyle

**Examples to consider – the list below is not exhaustive**

| Personal health issues are confined to the registrant’s personal life and are unlikely to negatively affect professional work or cause harm to others (this includes mental and physical health, alcohol or substance misuse problems) | Consider issues along a continuum | Personal health issues affect judgement or demonstrate poor insight in the work context and cause, or are likely to cause some kind of harmful behaviour |

**Does category I raise concerns? Yes or No**

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### Professional factors

**Examples to consider – the list is not exhaustive**

| Action was context . That is action/ procedure could only be carried out by a regulated professional and cannot be transferred into another work or activity setting | Consider issues along a continuum | Action was context free . That is although carried out in a professional capacity the activity can be transferred into another work, or activity setting and was not dependent on professional registration to be able to carry it out. |
| The registrant acted within professional boundaries | Consider issues along a continuum | The registrant went outside their professional boundaries |
| The level of risk posed is minimal /theoretical only. | Consider issues along a continuum | Very probable , well evidenced risks known to profession/ work environment |
| Lack of attention to professional code of practice - easily rectified and amounts to poor performance | Consider issues along a continuum | Breach of code or practice, repeated or multiple actions or examples or dangerous practice, callous disregard for procedure. |
| Not reasonable to expect the registrant to have known or foreseen the outcome of his/her actions or the harm foreseen | Consider issues along a continuum | Reasonable to have expected the registrant to have foreseen the consequences his/her action and altered behaviour accordingly. Consider the registrant’s knowledge base relevant and professional status. Expectation |

**Does category J raise concerns? Yes or No**

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### Other possible Mitigating or Aggravating factors

**Examples to consider – the list is not exhaustive**

| The mitigation for the person explains how the harm occurred and that it is reasonable, may include circumstances or issues outside of registrant’s control and explains how the harm occurred and that it is reasonable in relation to B+C above | The explanation from the registrant is not reasonable; there were other factors including Number of victims involved was deliberate act, reckless, negligent or dishonest. Repeated failures to learn ,deceit, or cumulative behaviour |

**Does category K raise concerns? Yes or No**
References


Bibliography


Decision Assistance Tool for Keepers of Registers 23.9.10


NPSA Guide to Root Cause Analysis Glossary of Terms http://www.nrls.npsa.nhs.uk/resources/?entryid45=59847 (last accessed 2.9.10)


