

# Ortu Specialised Home Limited

POLICY NO 13



## **INDEPENDENT SAFEGUARDING AUTHORITY POLICY (ADT & CHD)**

On the 12<sup>th</sup> October 2009, improved safeguarding arrangements came into place, and have now replaced existing arrangements that determine who is unsuitable to work with vulnerable adults and children in England, Wales and Northern Ireland. The new body is now known as the Independent Safeguarding Authority (ISA) which replaces POVA (Protection of Vulnerable Adults.)

## **Referrals**

The Independent Safeguarding Authority (ISA) has been created to help prevent unsuitable people from working with children and vulnerable adults. Since 31 March 2008, the ISA has been providing advice on barring decisions for List 99, the Protection of Children act (POCA) and the Protection of Vulnerable Adults (POVA) list to the Secretaries of State.

From 12<sup>th</sup> October 2009, a new duty to share information has been introduced under the Vetting and Barring Scheme. From that date employers, social services and professional regulators will have to notify ISA of relevant information so that individuals who pose a threat to vulnerable groups can be identified and barred from working with these people.

These new increased safeguards are listed below and are in line with the Vetting and Barring Scheme:

- It is now a criminal offence for individuals barred by the ISA to work or apply to work with children or vulnerable adults in a wide range of posts, employers also face criminal sanctions for knowingly employing a barred individual across a wider range of work;
- The three former barred lists (POVA, POCA and List 99) are being replaced by two new ISA-barred lists;
- Employers, local authorities, professional regulators and other bodies have a duty to refer to the ISA, information about individuals working with children or vulnerable adults where they consider them to have caused harm or pose a risk of harm. Referral forms and referral guidance are available.

VBS Guidance, is also available covering the increased safeguards and the duties to refer introduced from 12 October 2009.

The guidance sets out:

- The key elements of the new referral process.
- The circumstances under which a referral should be made,
- The legal responsibilities of employers, including the paid and voluntary sector and employees,
- The main parts of the law in relation to referrals.

Ortu is required to implement the ISA Register in one of two ways. Firstly, when a person applies for employment a search will be made to see if he/she has been placed on the ISA Register. This will be done by the Disclosure and Barring Service (DBS), which has access to the Register, as part of its checking procedures.

Application for a check will be made by Ortu's management to the Disclosure and Barring Service, which will make the actual check as the ISA list is held by the Department of Health. Ortu will link up with any agencies supplying care staff as to the most effective means by which ISA checks can be undertaken on bank staff.

Secondly, it is Ortu's responsibility to apply to have a name placed on the ISA list if there is evidence that the person in question has harmed or placed at risk of being harmed one of Ortu's resident or residents. By "harmed" is meant demonstrably ill treating a resident or subjecting a resident to one or more forms of abuse as defined in our Protection and Abuse policy. Such behavior will make them liable to charges of misconduct, which if proven as misconduct will make the person unsuitable for further or future employment with vulnerable adults and by implication in many cases vulnerable children.

### **Scope of Policy**

The Vetting and Barring Scheme (BS) list applies to anyone employed within Ortu that has regular contact with a resident or residents, not only as care staff but in other positions too.

Ortu encourages everyone to be in contact with residents, though obviously some more than others. We have decided therefore that our policy will be an inclusive one and we will ensure every newly appointed staff member, in any position and at any level, is subject to a CRB/VBS check unless it is clear that the person will not or does not have regular contact with residents.

Ortu have adopted this approach because it will be easier to decide who might be excluded than who should be included with reference to the idea of "regular contact".

The policy includes any agency or bank staff and any volunteers who work within Ortu from time to time and who have direct contact with residents. The checks will also apply to anyone else we employ on an occasional basis to provide a service, which brings them into regular contact with the residents. Potentially this could refer to several people including our hairdresser, chiropodist, the home's shop assistants and manager and the local clergy who come to take regular services. Such people will be included where they are contracted in some way to provide a service to Ortu.

It will not apply to individuals who are invited in by residents and relatives as visitors or under some private arrangement where they have no contract of employment with Ortu as such.

## **Features of the Policy**

There is a legal requirement on Ortu's management to refer someone to be placed on the ISA list, where there is evidence that the person has been guilty of misconduct by harming a resident or putting a resident at risk of being harmed during the course of their work and as a result has left the employment of the home.

The purpose of the ISA list is to ensure that anyone who has been found guilty of misconduct by harming residents should not be able to obtain employment elsewhere working with vulnerable adults or children. Being on the list will indicate their unsuitability for such employment.

Examples of how a person may be referred to the list.

1. Where the home dismisses someone due to misconduct, which harmed, or placed at risk of harm, a resident or residents.
2. Where someone employed by Ortu has resigned, retired or been made redundant but would otherwise have been dismissed because of misconduct under the ISA Regulations.

It is also a requirement that Ortu should refer people who have left our employment, where we have evidence afterwards that they could and would have been charged with misconduct as a result of mistreating a resident or residents.

Any employee facing police charges as a result of their misconduct will also be referred for inclusion on the list.

It should be noted that suspension from duty as a result of an allegation of mistreatment of residents can potentially result in the person being referred for inclusion on the list, albeit as a temporary or provisional measure. Under these circumstances Ortu will act in this way if it has good grounds for believing that vulnerable adults, either in Ortu or elsewhere, will be put at risk without the referral being made.

## **What it Means to be on the ISA Barred List**

Staff should not become unduly alarmed by the idea of the ISA Barred list. It will only be used where serious misconduct has occurred and where residents are put at risk by action not being taken.

If you are included on the ISA Barred list either as a confirmed or provisional listing you may not be offered work in a care position, would be unable to continue to work at Ortu homes having regular contact with residents.

In the unlikely event of you being confirmed on the list you will be committing a criminal offence if you seek or accept employment as a care worker that brings you into regular contact with vulnerable adults. You will not be committing a criminal offence if you make an application for a care post but

are on the list provisionally — meaning awaiting the outcome of whether you will be confirmed on the list or taken off it. However, you still will not be able to take up employment as a care worker while on the list — confirmed or provisional.

If Ortu discovers any of its care workers is on the ISA Barred List they will not be able to continue their employment and will face dismissal. This will be written into all Contracts of Employment.

If you are referred to be placed on the ISA Barred List, it does not automatically mean that you will be placed on it even provisionally. It is up to the Secretary of State to decide on the basis of the information supplied whether you should be provisionally placed on it and he may seek more information pending a decision to place you provisionally on it. The Secretary of State will also decide if you should be placed on the ISA Barred List working with children.

If placed provisionally on the list you then have 28 days to put in your reasons as to why you think you should not be confirmed on the list. You will have to put this information in writing. Before your name may be confirmed on the ISA Barred List the Secretary of State will then need to be assured that whoever referred you, eg Ortu, reasonably considers you to be guilty of misconduct, which harmed or placed at risk of harm a vulnerable adult. If the Secretary of State determines that your name should not be confirmed on the ISA Barred List, he will immediately remove the provisional entry from it.

You and the referring organization, eg Ortu will be notified by "Special Delivery" of the decision to remove or confirm as soon as it is made.

### **Right of Appeal**

You will be able to appeal against your inclusion on the list as a confirmed name by making application to an Appeals Tribunal. You will also be able to appeal against provisional inclusion after nine months if you still have not been confirmed. However, if you are subject of any civil or criminal proceedings in connection with the allegations of misconduct you cannot apply to the Tribunal until six months after those proceedings have been completed.

### **How Might You Get Your Name Removed from the ISA Barred List**

When applying for the removal of your name from the ISA Barred List, you must refer to the Independent Safeguarding Authority's Guidance notes.

Listed below are instances in which you may get your name removed from the ISA Barred List:

- You may have your name removed if you can show that there has been some mistake, or a miscarriage of justice has taken place resulting in your being placed on the list.

- You can lodge an Appeal with the Care Standards Tribunal. Beyond that you would have to appeal to the High Court.
- You may lodge an application with the Care Standards Tribunal to have your name removed from the list on the grounds that you are no longer unsuitable to work with vulnerable adults (this is not the same as making an appeal). You will then need to show that you are once more suitable, and you would not be placing vulnerable adults at risk if you were re-employed. There are some conditions to be followed here.
- If you were under the age of 18 at the time you were included on the ISA Barred List (otherwise than provisionally) you must wait five years before applying for leave of the Tribunal. You can make only one application for leave in any five-year period.
- If you were over the age of 18 at the time of inclusion on the ISA Barred List you must have been included (otherwise than provisionally) in the Barred List for a continuous period of 10 years, before applying for leave of the Tribunal. You can make only one application to be removed in each 10-year period.

### **Information to be Supplied with a Referral**

Ortu will make referrals to the Independent Safeguarding Authority in line with the ISA Referral Guidance.

The following provides a list of information that for example the home will have to provide if it is necessary to make an application for someone to be included (provisionally in the first instance) on the ISA Barred List:

- (a) Full name
- (b) Date of birth
- (c) National Insurance number, where known
- (d) Last known address
- (e) Confirmation that the individual occupied a care position
- (f) Full details of the alleged misconduct
- (g) Detailed explanation about how — by their misconduct — the individual harmed or placed at risk of harm a vulnerable adult
- (h) Details of any investigations carried out to date — and their conclusions, including copies of relevant papers (including statements, notes of interviews, minutes of meetings and minutes/notes of disciplinary hearings) and details of the provider's disciplinary procedures
- (i) Details of the action taken against the individual — have they been suspended, dismissed or transferred from a care position or other action taken
- (j) Information on any police involvement (or the involvement of any other agency)
- (k) Details of proposed further action — that is, dates for disciplinary hearings, timetable on further investigations etc; and any other information considered relevant to the circumstances of the alleged misconduct.