
AID WORKER PASSPORT/REGISTRATION SCHEME

LEGAL REVIEW: FINAL REPORT

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Introduction and purpose

1. I was commissioned to conduct a legal review by the DFID co-ordinated, but multi-agency, Aid Worker Passport Steering Committee ('the steering committee'). I am a member of the committee. The steering committee is directed at developing the concept of an aid worker 'passport' as agreed in principle by the signatories to the commitments made by multiple countries and the EU at or following the 2018 London Safeguarding Summit ('the London Summit', and see further, below). Those of proven experience and qualifying expertise across the aid and development sector populate the steering committee.¹
2. In order to promote the resilience of the conduct of the review, and the quality of its conclusions, I consulted throughout with Associate Professor Patricia Kingori from the University of Oxford.² Further, specialists within White & Case LLP³ ('White & Case') were instructed pro bono to advise me as an individual client as to some of the legal issues that arose, and continue to so advise. I have been greatly assisted by each of them and record my thanks. The responsibility for the content of the final report,

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² <https://www.ndph.ox.ac.uk/team/patricia-kingori>

³ Caroline Miller Smith; Tim Hickman

including the legal analysis, is however mine. I also record my thanks for additional research conducted on my behalf for the benefit of the review by Mia Wick and Harry Crichton-Miller.

3. On 15 March 2020 I distributed to members of the steering group a so-called ‘Outcomes Report’. This reflected my core provisional conclusions and invited feedback before I completed the review. Although additional analysis is reflected arising from that process, the substantive conclusions are the same – if somewhat refined – as between the two documents. All members of the steering committee endorsed the Outcomes Report in principle, and I have attempted to address the commentary received from them in this final report. Several members of the steering group provided detailed assistance as part of the process of review.
4. If the final recommendations are adopted in principle, in whole or in part, by the steering committee the intention, agreed with DFID, is that consideration may be given immediately to the necessary consultation process that will follow with stakeholders in the international aid sector.
5. A number of themes emerge in the subsequent analysis. The starting point is that there is an acute need for more effective regulation of the international aid and development sector in terms of safeguarding generally, and prevention, detection and investigation of sexual exploitation abuse and harassment specifically (‘SEAH’).⁴ Significant harm will be caused to intrinsically vulnerable people if this does not occur. These propositions are hardly revolutionary: acceptance of them was the premise for the London Summit. Secondly, what I have recommended is designed to build on, and operate concurrently with, multiple existing initiatives rather than to replace them. This approach is pragmatic and produces recommendations that are capable of delivery. Thirdly, the recommendations will be most effective if seen and implemented as a coherent package. Fourthly, and most significantly, there will have to be commitment throughout the sector – donors; recipient governments; regional State organisations/Unions; aid and development agencies; private sector contractors; faith and other local delivery groups; and individual aid workers – to making it work. Legal and technical challenges remain: it will be necessary to create and resource an independent international entity to run the registration scheme.
6. Assuming such commitment, I believe the proposed registration scheme would operate as a proportionate and necessary component of the wider evolving ecosystem of safeguarding within the sector. It is by no means the complete answer in isolation. Since it is a registration scheme directed at basic information rather than misconduct data I have reached the clear conclusion that the language of ‘passport’ should be abandoned in favour of ‘registration’: the former may falsely imply some certificate of qualification to work in the sector. The steering committee endorsed this change of language.
7. Operated effectively it would provide benefits to aid workers as well as those at risk – which of course includes other aid workers. Suitably mandated as a condition of engagement with donors – without such a mandatory obligation the purposes of a universal registration scheme would be unacceptably compromised – registration with the scheme should be an uncontroversial new cultural norm for individuals and organisations, and promote with it the setting and enforcement of common international safeguarding norms and standards of investigation.

⁴ There is a wholly legitimate argument that initiatives should not be restricted to SEAH and should include, for example, other categories of gender-based violence: see, for example, Dr Orly Stern *Two nearly identical cases of sex abuse; two very different responses*, The New Humanitarian, 27 June 2018. For reasons set out in the immediate document, I have restricted my terms of reference and recommendations to SEAH

8. As stated, a consultation exercise will follow review of this final report by the steering committee. The terms of that consultation are themselves already under consideration. Possible areas for consultation include (i) the intrinsic merits of the recommendations; (ii) technical delivery of identity verification, biometrically and otherwise, and the control and security of any registration database; (iii) the location, form, constitution, and governance of the corporate entity responsible for controlling the register; (iv) the inter-relationship between this register and law enforcement databases and entities, most specifically INTERPOL; and (v) funding (of the registration scheme, and – separately – any mandated safeguarding inspections).
9. Following the consultation exercise it is anticipated that a pilot scheme may be commissioned further to improve and evaluate the delivery of any final scheme.

Headline conclusions and Recommendations

10. In absolute summary, the outcome of the legal review is as follows. Whilst it necessarily arises in the wider context set out, the central analysis in terms of the law, and what I recommend can and should be contained on a central register of aid workers, is at [103] – [163].

Recommendation 1: no single regulator for the international aid sector ([100] – [102])

Recommendation 2: donors to mandate – to NGOs and private sector contractors – as a condition of funding (1) registration with the inter-agency misconduct disclosure scheme (which should accordingly include private sector entities); and (2) registration of basic details of qualifying employees (applying an all-inclusive definition) on a new central biometric aid worker register, with alternative concurrent secure identity verification where biometric data is not available ([103] – [163])

Recommendation 3: as a condition of funding, donor mandated minimum core safeguarding standards, and independent inspections ([164] – [185])

Recommendation 4: as a condition of funding, mandatory and consistent reporting of safeguarding and misconduct data ([186] – [195])

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Core background analysis

i. Context and purpose of the legal review

11. The legal review was commissioned by the ‘Aid Worker Passport Steering Committee’, co-ordinated by the UK Government’s Department for International Development (‘DFID’). It follows the commitments signed by 22 countries⁵ at the 2018 London Safeguarding Summit (‘the London Summit’). The same commitments have subsequently been adopted by the EU.

⁵ The following countries signed the London Safeguarding Summit SEAH commitments in October 2018: Australia; Austria; Belgium (Ministry of Development Cooperation); Canada; Denmark; Finland; France (Ministry for Europe and Foreign Affairs of France); Germany; Iceland; Ireland; Italy; Japan (Ministry of Foreign Affairs of Japan); Luxembourg (Ministry of Foreign and European Affairs); Mexico (AMEXID); The Netherlands (Ministry for Foreign Trade and Development Cooperation); New Zealand (Ministry of Foreign Affairs and Trade); Norway; Spain; Sweden; Switzerland; United Kingdom (including the Scottish Government); United States of America (U.S Agency for International Development). Subsequent to that the European Union has adopted the Commitments

12. The premise for the London Summit was that sexual exploitation, abuse and sexual harassment ('SEAH') in the international aid sector (including development and humanitarian aid) is prevalent if not endemic, and that co-ordinated strategic measures were required by donors and others to address it. The failures in regulation across the sector were serious and continuing. They are also multi-factorial.
13. The introduction to 'Commitments made by donors to tackle sexual exploitation and abuse and sexual harassment in the international aid sector'⁶ starts with the following uncontroversial propositions:

Sexual exploitation and abuse and sexual harassment often result from power imbalances linked to social and gender-related inequalities. These acts can constitute violations or abuses of human rights. The targets are often the most vulnerable members of society. The risks are heightened in humanitarian or fragile and conflict-affected contexts, where power imbalances can be particularly acute and the displaced have little recourse. Women, children and people with disabilities are likely to be among the most vulnerable in such contexts.

Any sexual exploitation and abuse and sexual harassment is unacceptable. Whether of a beneficiary in a programme we fund, our employees, colleagues, or an aid worker, we take a zero-tolerance approach, which means acting on every allegation in line with agreed procedures of each organisation, and expecting our partners to do the same.

14. Rather than simply restating the problem, the London Summit defined four 'strategic shifts' directed at producing concrete results. The donors declared 'We will focus on prevention and empowering beneficiaries and local communities. We will adopt a survivor-centred response that prioritises support based on the wishes and characteristics of survivors, and we will work with implementing partners to do the same.⁷ We will strengthen the mechanisms by which we hold ourselves and our partners to account, and will seek to increase capacity and capability on these issues'.
15. The necessity of a victim/survivor, rather than perpetrator, led approach reflects contemporary thinking: see for example Freedman *UNaccountable: a new approach to peacekeepers and sexual abuse*.⁸ Earlier analysis of the system of accountability within the UN includes Burke *Troop-discipline and sexual offences by UN military peacekeepers: The UN's response - moving beyond the current status quo*.⁹ More recent UN initiatives are highlighted below.

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749632/donor-commitments1.pdf

⁷ On one analysis, the victim/survivor ('survivor') led approach means an approach that does not differentiate between the interests of the survivor and that of the organisation responsible for the (alleged) offender: stated shortly, the reputational or commercial interests of the organisation will not take precedence over the maintenance of standards and proper investigation of allegations and appropriate outcomes. The organisation must act to protect survivors and, as with mature domestic violence policies, the fact a survivor may not wish to promote an investigation – many will not define themselves as victims or survivors – does not absolve the organisation from the responsibility for doing so. This is a 'standards-centred' approach albeit with the safety of any complainant as paramount in any given context

⁸ Freedman, R, (2018) *UNaccountable: a new approach to peacekeepers and sexual abuse*, European Journal of International Law, 29 (3). Pp 961 – 985 ISSN 1464-3596 doi. <http://centaur.reading.ac.uk/75656/>

⁹ The article concentrates on peacekeepers, and the accountability specifically of the UN and the associated limitations of the use of criminal law. It addresses jurisdictional immunities; the absence of commonly defined standards; and the lack of appetite across contributing countries to the creation of a hybrid court: '... troop contributing countries would never allow their soldiers to be prosecuted by a hybrid tribunal involving the host State

16. In headline terms, these strategic shifts adopted at the London Summit were:

Strategic Shift 1: Ensure support for survivors, victims and whistle-blowers; enhance accountability and transparency; strengthen reporting; and tackle impunity.

Strategic Shift 2: Incentivise cultural change through strong leadership, organisational accountability and better human resource processes.

Strategic Shift 3: Adopt minimum standards, and ensure we and our partners meet them

Strategic Shift 4: Strengthen organisational capacity and capability across the international aid sector, including building the capability of implementing partners to meet the minimum standards

17. Further detail is provided in respect of each strategic shift within the Commitments document. I revert to elements of this later in the report. In aggregate there are some 22 distinct, but obviously inter-related, commitments.

18. The ‘Host’s statement’¹⁰ – i.e. the statement issued by the host UK Government – included the following:

‘Aid must be delivered in a way which does no harm. If not, we will have failed in our duty to protect the most vulnerable. We must deter wrongdoing and hold those who do wrong to account, including prosecutions by law enforcement agencies if justified. Everything we have agreed today is driven by our determination to prevent this from happening in the first place, listen to those who are affected when it does, respond robustly but sensitively and learn from every case.

We commit to deliver four long term fundamental changes – or strategic shifts – to fundamentally rewrite the way the aid sector operates, from root to branch. Together we will:

- Ensure support for survivors, victims and whistle-blowers; enhance accountability and transparency; strengthen reporting; and tackle impunity;
- Incentivise cultural change through strong leadership, organisational accountability and better human resource processes;
- Adopt global standards and ensure they are met or exceeded;
- Strengthen organisational capacity and capability across the international aid sector to meet these standards.

Donors (representing 90% of global aid), the United Nations, International Financial Institutions, CDC (the UK’s Development Finance Institution) and representatives of hundreds

and International Personnel’; ‘Troop contributing countries would feel that to allow a Hybrid court to have jurisdiction would impinge their own command & control.’

http://regnet.anu.edu.au/sites/default/files/publications/attachments/2015-05/Roisine_Burke_1.5_0_0.pdf

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749780/Safeguarding_Summit_2018_-_Host_s_Outcome_Summary.pdf

of major British NGOs, contractors and research organisations each presented commitments stating what they will do to achieve these changes.’

19. The same statement rehearses further narrative under the headings (1) Prevent; (2) Listen; (3) Respond; (4) Learn, concluding with ‘Next Steps’.
20. A Progress Report was issued in October 2019.¹¹ Anyone reading the immediate report should also consider this document in its entirety. What I suggest in respect of recommendations is wholly consistent with the themes rehearsed: the difference is one of degree, and recommending that donors mandate use of the registration scheme; core safeguarding and misconduct standards; independent inspection; and reporting obligations as a condition of funding or contracting.¹² If mandated by all signatories to the commitments arising from the London Summit – and in terms of power they represent 90% of global aid – the ground rules for engaging in the international aid sector could change relatively quickly.
21. Of direct relevance to the immediate report are paragraphs [1] and [2] of the ‘Highlights and Trends’. These provide:
 1. Thirty major donors agreed a single approach to tackling sexual exploitation, abuse and sexual harassment (SEAH), by adopting the DAC Recommendation on Ending SEAH in July 2019. As the first international instrument to address SEAH across the aid sector, this is an important achievement and will be a crucial tool both for holding donors to account and for engaging partners consistently on SEAH.
 2. Cross-sector collaboration to weed out perpetrators of SEAH is showing early signs of success. Donors and their partners have been developing and supporting measures to prevent offenders from entering and moving around the sector, including a scheme run by INTERPOL to strengthen vetting of potential employees; the Misconduct Disclosure Scheme to check for previous misconduct linked to SEAH (which has already prevented 10 people from being re-hired); and an Aid Worker Passport to prove an individual’s identity and vetting status. Meanwhile, the UN launched its ClearCheck system in 2018, which is an electronic screening tool to ensure that UN personnel dismissed due to substantiated allegations of SEAH are not rehired in another part of the UN system. Meanwhile, some organisations – including Gavi, Global Fund, and others – have strengthened their recruitment practices by including explicit questions about previous allegations of SEAH and other abuses of power in reference checks.

[I observe that since the October 2019 Progress Report INTERPOL has launched the assessment phase of its Operation Soteria. This phase is scheduled to last until April 2021. Sponsored by DFID, it is addressing the legal and technical feasibility of

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840063/Cross-sector-Safeguarding-Progress-Report-Oct_19.pdf

¹² I am aware of the (sometimes complex) fact, and broad characteristics, of ‘supply chains’ in the sector as between original donors and those engaged before and including the point of in country delivery. Defining the obligations through the supply chain either to engage with the registration scheme, and/or (if this cannot be mandated) superintending delivery of common international safeguarding standards, represents a real challenge legally and culturally. Equally, overcoming this is a necessary part of the evolution of improved standards and accountability, and will be achieved faster by imposing common and consistent obligations

INTERPOL’s tools and services to enable international law enforcement coordination to limit access by offenders to employment in the aid and development sector]

22. I provide an overview of each of the scheme run by INTERPOL (‘Operation Soteria’); the Aid Worker Misconduct Disclosure Scheme; and the UNs’ ClearCheck later in the report. Stated shortly, each has recognised limitations, but each is also a necessary and evolving part of the emerging safeguarding ecosystem applicable to international aid. Exploring the ‘Aid Worker Passport’ from a legal perspective is the narrow purpose of this report. The wider context is necessarily imported to the determination of this legal perspective.
23. Further detail as to the scale of the sector, and the capacity of the donors to mandate change through their collective power to define the terms on which organisations are funded, is reflected under ‘Progress’. The three areas highlighted in the report merit reproduction:
 1. **Thirty major donors agreed a single approach to tackling SEAH** – The Development Assistance Committee (DAC) of the Organisation for Economic Cooperation and Development (OECD) is made up of 30 major donors who, between them, provide around \$130 billion in aid each year. Twenty-one of the 30 DAC members signed the London commitments, which included supporting the formulation of a DAC instrument to set and implement standards on preventing and managing the risks of sexual exploitation and abuse in development cooperation, and drive donor accountability in meeting them. After eight months of negotiation, including expanding the scope to include sexual harassment, the DAC Recommendation on Ending SEAH was adopted on 12 July 2019. It is the first international instrument to address SEAH across the aid sector and only the eighth DAC Recommendation since 1961. The Recommendation is closely aligned with the summit commitments. Implementation by all 30 donors and their partners will be monitored through the DAC peer review mechanism: reviews of about six countries will be published each year. A summary report of progress on SEAH covering all donors will be published within five years and at least every 10 years after that.
 2. **Strengthened and aligned SEAH language in funding agreements** – Donors committed to review and, where necessary, strengthen formal funding templates to reflect international standards on SEAH, and to include clear and specific language on sexual exploitation, sexual abuse and sexual harassment, including common definitions. Many donors have done that in the past year. Donors’ strong messaging that their partners must apply the same standards in their sub-grant and contract requirements for downstream partners is having a positive impact. In addition, donors have been collaborating to ensure that their requirements of partners are as aligned as possible. After six months of discussions, they are close to agreeing common language on SEAH to be used in future funding agreements with multilaterals. A further initiative to reduce duplication and transaction costs for implementing partners and donors has seen four of the London signatories supporting work to strengthen

independent verification of partners' adherence to the international safeguarding standards recognised by donors.¹³

3. **Higher standards in United Nations' work** – Donors have provided collective and continued support for the UN Secretary-General's Special Measures to tackle sexual exploitation and abuse across all UN operations. This is reflected through joint statements at UN Executive Board meetings, donors chairing SEAH roundtables at high-level UN events, and Heads of State or Government supporting an international media campaign at the UN General Assembly to support the UN Secretary-General's Circle of Leadership. Donors collectively supported the Secretary-General's initiative to ensure that the UN funds and programmes report and certify SEAH allegations annually to their boards, and to the Secretary-General, alongside updates on strategy, actions, resources and partnerships. Donors will continue to support the UN to develop higher standards on safeguarding.

24. In respect of donors, three headline 'Challenges and Lessons' are identified. These are (1) 'More needs to be done to ensure victims and survivors of SEAH receive the help they need'; (2) 'Donors have a responsibility to drive culture change, starting with themselves'; and (3) 'It is necessary to join forces to stop perpetrators entering and moving around the sector'.¹⁴ In respect of the latter, the Progress Report rehearses:

Donors and partners have been developing and supporting measures to prevent offenders from entering and moving around the sector. There are real challenges to linking up human resources and information-sharing systems between organisations of the same family (e.g. NGOs), let alone making the necessary linkages between these and different types of organisation. There has been good progress on three initiatives in the past year. A scheme run by INTERPOL to strengthen vetting of potential employees (which is receiving £10 million from the UK) has entered the pilot phase, and a new Aid Worker Passport to prove an individual's identity and vetting status is in the early stages of development. Donors are also supportive of the Misconduct Disclosure Scheme to check if a potential employee has previous misconduct linked to SEAH, which has already started to yield results and root out perpetrators. A key lesson is the need to join up all three, across different parts of the sector, to maximise their impact and reduce the scope for loopholes.

¹³ Under the commitments, these standards are: Inter-Agency Standing Committee (IASC) Minimum Operating Standards on Preventing Sexual Exploitation and Abuse (PSEA), and Core Humanitarian Standard (CHS). Verification would be conducted by the Humanitarian Quality Assurance Initiative (HQAI)

¹⁴ See also *Transnational Child Sexual Abuse: Outcomes from a Roundtable Discussion*, Hannah L. Merdian, , Derek E. Perkins, Stephen D. Webster, and Darragh McCashin from the International Journal of Environmental Research and Public Health, 2019. This discussion was directed at transnational sex offending, in particular child sex offending – but not confined to the issue of offending within international aid. They suggest four key themes are necessary for prevention of transnational sex offending; including the need to enhance understanding of offender typologies, establishing methods of accountability, enhancing understanding of definitions, (Most crucially) that 'collaborative work from all stakeholders was seen as the route to the most effective responses'

<file:///C:/Users/hd/Documents/DFID%20aid%20worker%20committee/Transnational%20Child%20Sexual%20Abuse%20-%20Outcomes%20from%20a%20Roundtable%20Discussion%202019.pdf>

25. There is similar analysis in the Progress Report in respect of the United Nations (section [2]); International Financial Institutions ([3]); UK NGOs ([4]); UK Private Sector Suppliers ([5]); Research Funders ([6]); the CDC Group ([7]);¹⁵ and Gavi and Global Fund ([8]).¹⁶
26. As to the United Nations, it has developed a detailed set of initiatives summarised in the 2017 report of the Secretary General to the General Assembly *Special measures for protection from sexual exploitation and abuse: a new approach*.¹⁷ As one may expect, there is a high degree of correlation between the themes identified by the London Summit and the defined approach of the United Nations. The introductory Summary states ‘The present report presents the Secretary-General’s strategy to improve the Organization’s system-wide approach to preventing and responding to sexual exploitation and abuse. The strategy focuses on four main areas of action: putting victims first; ending impunity; engaging civil society and external partners; and improving strategic communications for education and transparency.’
27. As I highlight below, in terms of pre-employment checks the Secretary-General endorses the necessity of a coherent and accessible international system directed, in part, at preventing re-engagement of individuals who have been proved to have misconducted themselves in previous roles. The Secretary-General also supports the necessity of a coherent and collaborative international aid sector, and common definitions of misconduct and increased accountability.
28. This wider context is rehearsed to emphasise the limited, but nonetheless important, purpose of the immediate report. It is concerned with the narrow question of developing the agreed concept of an aid worker passport or registration system. Whilst the wider context is relevant to that question and has been considered in producing recommendations, it is wholly outside the report to provide a wider exploration of challenges in the international aid sector or detailed rehearsal of other initiatives.

ii. General matters and scale of the international aid sector

29. Any credible registration scheme must recognise that international aid is a substantial global sector, described by some as an industry. It appears uncontroversial that its scale is not matched by the quality of regulation or accountability in relation to safeguarding, misconduct procedures, or handling SEAH. In respect of these issues public confidence in it appears low and self-regulation has widely failed.
30. As set out above in the Progress Report following the London Summit, as at October 2019 the funding from the signatories was estimated at some \$130 billion per year. Based on this figure alone, and although many of the larger international NGOs are in reality a confederation of multiple smaller agencies, and they in turn deliver aid through in country partners wherever possible, to an outsider it may be thought as a matter of first principle that such funded organisations should already have the resources to deliver safeguarding systems that meet contemporary standards. Given the intrinsic risk of SEAH in the sector, coupled with the lack of resilient child protection systems and law enforcement agencies in many jurisdictions, the duty on them to take proactive measures to do so is obvious.

¹⁵ CDC Group is the UK development finance institution (DFI)

¹⁶ Gavi, the Vaccine Alliance, and the Global Fund to Fight Aids, Tuberculosis and Malaria (Global Fund) are Geneva-based financing agencies that receive funding from public and private sources

¹⁷ <https://undocs.org/A/71/818>

31. Across the sector this positive safeguarding duty has not been fully met in practice – to what degree is a matter of opinion – notwithstanding corporate declarations of commitment to zero tolerance. The proposition that basic duties of accountability are not being met also appears uncontroversial.
32. If evidence is needed, one need look no further than the comprehensive, and authoritative, Final Report of the Independent Commission (‘IC’) on Sexual Misconduct, Accountability and Culture Change,¹⁸ an independent specialist panel commissioned by Oxfam in February 2018 following reports of sexual misconduct by Oxfam staff in Haiti (in 2011) and elsewhere. Dated June 2019, it reflects a confederation-wide review of Oxfam’s ‘culture; accountability; and safeguarding policies, procedures, and practices’.
33. The resultant analysis is uncompromising in relation to Oxfam (‘Reinvent the system. Oxfam requires a complete overhaul of its confederation-wide safeguarding system to combat and respond to sexual violence at every level ...’) but would apply equally across the sector. Whilst Oxfam is to be recognised for the multiple initiatives it has since taken, including as to making public safeguarding and misconduct data, as is paradigm for the sector this independent scrutiny was only catalysed by a widely-publicised scandal. This implies that in the absence of mandated independent scrutiny even leading INGOs will fail to deliver in practice, regardless of what their corporate mission statements may contend.
34. I reproduce the following comment from the Background section of the Final Report:
- As evidenced by the 2002 sex-for-food and other sexual abuse scandals involving a multitude of international nonprofit organizations, United Nations (UN) agencies, and UN peacekeepers, the aid sector has not managed to resolve the organizational, cultural, environmental, and legal challenges to successfully implementing safeguarding strategies and hold perpetrators fully accountable. In fact, the United Kingdom (UK) Parliament’s International Development Committee said in 2018 that “whilst there are clearly actors within the aid community who are dedicated to tackling SEA [sexual exploitation and abuse], the overall impression is one of complacency, verging on complicity.”
35. The UK Parliament’s IDC 2018 Report is entitled *Sexual Exploitation and Abuse in the Aid Sector*.¹⁹ It is also required reading. The distinct issues arising in relation to the UN are documented in multiple publications. The historical perspective would include Bosnia and Herzegovina in the 1990s and can be traced through without interruption to the present day.²⁰ Recent reports into the conduct of those

¹⁸ https://www-cdn.oxfam.org/s3fs-public/oxfam_ic_final_report-en.pdf A report by the UK’s Charity Commission also in June 2019, as part of a statutory inquiry reflected similar conclusions, and rehearsed a culture of not reporting safeguarding matters; the use of personal references; and concluded that in 2011 ‘Oxfam GB was not used to dealing with reports about staffing and safeguarding matters at that time’:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807943/Inquiry_Report_summary_findings_and_conclusions_Oxfam.pdf

¹⁹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmintdev/840/840.pdf>

²⁰ To take but one example to illustrate the recurring themes and recommendations involved, see the 2002 report by the UNHCR and Save the Children UK *Sexual violence and exploitation: the experience of refugee children in Liberia, Guinea and Sierra Leone* <https://www.parliament.uk/documents/commons-committees/international-development/2002-Report-of-sexual-exploitation-and-abuse-Save%20the%20Children.pdf> Its survey of refugee camps found widespread sexual exploitation of refugee children, and allegations against 67 individuals from some 40 aid agencies. The alleged conduct often involved transacting aid for sex (bars of soap, biscuits, etc). Most victims/survivors were under 18 years’. There were significant health consequences, pregnancies and emotional

engaged on the UN Stabilisation Mission in Haiti (MINUSTAH) between 2004 and 2017 – *They put a few coins in your hands to drop a baby in you – 265 stories of Haitian children abandoned by UN fathers*²¹ – detail systematic transactional sex between those engaged by the UN and Haitian children as young as 11, with payments at negligible levels in cash and even as low as providing a single meal. Those responsible either simply abandoned the (child) mothers at the conclusion of their posting, or were repatriated with reported impunity by the UN notwithstanding the UN’s formal policy from 2003 prohibiting sexual activity by its agents with children.²² The report also finds that the needs of the young mothers and their children were not recognised afterwards and they received no support.

36. In terms of numbers, quantifying those engaged in delivering international aid is intrinsically difficult. The multiple reasons for this are well documented. Recognised, but presently unresolved, questions include defining who qualifies to be counted; what misconduct qualifies (and seeking common international terminology as to this); and the lack of in country data, aggregated or otherwise.
37. Dr Orly Stern’s July 2019 report – *Mapping of existing ID systems and security checks* – (‘the mapping report’) commissioned from DAI by the steering committee, helpfully characterises the context as follows:

The challenges in creating a sector-wide vetting system are immense. The globalised, chaotic, often emergency-driven nature of humanitarian and development work presents great challenges to robust pre-employment screening. The humanitarian sector is large and growing – the 2018 State of the Humanitarian Sector report estimates that there are 570,000 field personnel working at the field level (a 27% increase from 2013). They work across 4400 organisations, which range from donors²³ and United Nations agencies, large-scale international non-governmental organisations, all the way to local civil society organisations. These organisations have vastly differing capabilities in relation to vetting personnel. Humanitarian and development organisations operate around the world, working in countries with varying capacities relating to the investigation and prosecution of crimes and recording and sharing of criminal record information.

The UK Department for International Development (DFID) and a dedicated Steering Committee, are exploring the possibility of creating an ‘Aid Worker Passport’; a digital identity for humanitarian and development workers, that will document humanitarian workers’ experiences, credentials and misconduct history. This identity would be accessible to prospective employers – alerting them to past actions which should impede recruitment.

38. Other illustrative data as to scale may be rehearsed.

abuse. Amongst wider recommendations (p. 14-23) were those for a review of training; raising awareness of abuse for the refugee community; better staff management and rotation to prevent entrenched patterns of conduct; and more female staff.. The response from donors and the UN was to mandate commitments for change. The evidence at the London Summit and beyond suggests such change was elusive in delivery

²¹ <https://theconversation.com/they-put-a-few-coins-in-your-hands-to-drop-a-baby-in-you-265-stories-of-haitian-children-abandoned-by-un-fathers-114854>

²² Secretary-General’s Bulletin, Special measures for protection from sexual exploitation and sexual abuse, 2003 <https://undocs.org/ST/SGB/2003/13>. Further associated UN documents are available at <https://www.un.org/preventing-sexual-exploitation-and-abuse/content/documents>

²³ The State of the Humanitarian Sector, Alnap, 2018 Edition

39. HQAI's CHS Benchmarking Report into UNICEF dated 1 October 2019²⁴ sets out that UNICEF operates in some 190 countries with funding of \$6.6 bn in 2018. At [6.2] the Report states 'Decision-making is highly decentralised to regional and country offices' and at [6.4], 'Work with partners', some significant background that needs to be understood in relation to any international registration system or regulator:

Partnerships between UNICEF and both governments and civil society organisations (CSOs) contribute to results for children in development and humanitarian contexts, and UNICEF also procures supplies or services directly from the private sector. In 2018, UNICEF transferred US\$1.04 billion to 3,800 civil society implementing partners: 847 international and 2,953 national NGOs, community-based organisations and academic institutes. During this same period of time, UNICEF transferred \$1.15 billion to governments.

In each of the 190 countries that UNICEF supports and has a presence in, five-year country programmes are planned with governments, based on situation analyses and programme strategies, and confirmed in agreements signed with host Ministries. Country programmes are realised through annual work-planning processes where joint objectives and shared priorities are agreed and budgeted for.

UNICEF identifies CSOs either through open selection (a call for proposals and application package) or direct selection based on corporate experience or knowledge. UNICEF's CSO partnerships are decentralised and most are with local CSOs, in line with UNICEF's commitment to the localisation agenda. Localisation is explicit in the UNICEF 2018-21 Strategic Plan and the organisation's global results framework. The target of 34% of assistance to be delivered through local actors by 2021 was exceeded in 2018 (36%).

40. As to the UN, the 2017 Report of the Secretary-General states ([1]) '... over 95,000 civilians and 100,000 uniformed military and police professionals serve the United Nations around the world', by implication in the context of 'human rights or humanitarian affairs, development or peacekeeping'.
41. As to INGOs, and to take a single illustrative confederated INGO, the 2019 IC Report into Oxfam sets out as background 'The evaluation of Oxfam's response must consider that Oxfam is a large, heterogeneous organization with many different organizational cultures. Oxfam has more than 10,000 staff and some 40,000 volunteers worldwide, and operates in 90 countries.' Additionally, a significant proportion of State donor funding for development aid (I understand it is less for humanitarian emergency aid) is directed through the private sector, including through agencies such as CAI, Cardno, Crown Agents, Adam Smith International and Chemonics. These agencies are contracted following competitive tendering and the funding is distinct from that given to INGOs/NGOs (although the latter may be contracted, typically as part of a private sector consortium). The Safeguarding Leads Network from some 23 private sector organisations has suggested that they have some 10,000 employees in the sector in the UK alone.
42. Precise quantification is not necessary to plan a centralised aid worker registration scheme. Any registration/passport scheme will have to accommodate numbers measured in hundreds of thousands,

²⁴ <https://hqai.org/wp-content/uploads/1-UNICEF-Summary-report-2019-Oct-3.pdf>

and from every jurisdiction. It will obviously work best if it includes all those engaged in the sector regardless of the mechanics of funding.

43. From wider experience and the expert presentations made to the steering committee as part of its work, I do not believe that the absolute number of potential registrants – organisations or individuals – is a technical challenge to any digital database. Many larger secure databases already exist. Similarly, I proceed on the basis that such a database could accommodate this quantity of biometric data for identification purposes. Equally, the number of different organisations and jurisdictions in which aid workers operate, and number of those potentially appropriate for registration, highlight without more the intrinsic difficulty of seeking to create a cross-jurisdictional single international regulator across the sector: a single common international register for the sector is however a wholly different proposition.
44. Further, the delivery of international aid is progressively through – or as a minimum, in partnership with – in country organisations. The policy and practical reasons for this are well documented and I do not rehearse them. If these are existing local jurisdiction entities such as schools or hospitals it may be difficult to mandate registration of employees of such entities under an aid worker registration scheme. I address the sensitive and challenging issue of who should be mandated to register employees briefly further below. It requires further consultation.
45. Even if, however, mandatory (or even voluntary) registration is not achieved for the employees of all in country partner entities, this would not be a reason not to create a scheme for others i.e. those directly working for the donor funded organisation of whatever nationality, including that of the country concerned. Whether this should be (1) every employee of such organisations; or (2) simply those deployed on projects in country; or (3) simply those deployed in country with access to beneficiaries of the project or other specifically defined roles, are subsidiary questions. I presently favour (1), and do not believe that anything less than (2) would deliver the outcome sought. Option (3) invites the obvious risk that a perpetrator will obtain employment in a non-qualifying role, but still be able to manipulate and exploit access to beneficiaries: indeed, this is paradigm for this type of offending.
46. Further, it would be consistent with the responsibilities of donor funded organisations that donors mandate a responsibility for delivering consistent safeguarding standards in any project work, and with whatever in country partner whether or not employees of that partner are required to register with any scheme. There may of course be local variations in what this requires given the specific risk assessment for a project, but the core safeguarding standards should not be negotiable, and should be enforced.

iii. Other relevant schemes

47. The steering committee has already read and considered the mapping report by Dr Stern. This is re-attached for ease of reference. I have considered this mapping report; the referenced material; and additional material as part of the legal review.
48. I gratefully adopt the analysis and it is again essential background reading. It has informed my conclusions.
49. The mapping report addressed (i) systems available in the humanitarian sector; (ii) systems available in the UK; and (iii) private sector checks.

50. The systems available in the humanitarian sector were (1) ID2020 (including iRespond); (2) Australian Red Cross; (3) Hpass; (4) Dutyof.care; (5) the UN ‘Misconduct Tracking System’ and ‘ClearCheck’; (6) the Norwegian Red Cross; (7) Emergency Response Rosters; (8) INTERPOL’s ongoing ‘Operation Soteria’; and (9) the SCHR administered inter-agency misconduct disclosure scheme.
51. The systems available in the UK were (1) the disclosure and barring service (‘DBS’); (2) the Association of Chief Police Officers’ (now the National Police Chiefs Council, NPCC) criminal records office (‘ACRO’); (3) National security vetting; (4) the General Medical Council; and (5) lawyers’ registers.
52. The private sector checks considered were (1) Clearscore; (2) Sterling; and (3) politically exposed persons check.
53. I do not rehearse the detail of all of it for immediate purposes. Some of these schemes are contingent on the consent of the person whose data is reflected, and the data is effectively under their control. Whether or not biometric, each of the initiatives assumes a secure digital platform, and secure encrypted digital identities for users.
54. In my opinion, a central digital library of such basic employment data is inevitable and in the interests of the individual affected. For example, and although based on assumed consent from the data subject, in September 2019 the American Workforce Policy Advisory Board published a White Paper on Interoperable Learning Records²⁵ as part of its wider data transparency function. The underlying philosophy is to ‘empower the American worker’ through creating an easily accessible digital record of their ‘learning records’:
- ‘A learning record is verifiable information about a person’s achievements in education or training processes, formal or informal, classroom-based or workplace-based. An ILR is a system that contains, and can manage communication of, credentials that describe an individual’s skills and achievements. The potential audience for ILRs in the United States is enormous – 160+ million earners, more than six million employers, 700,000+ unique credentials offered, 23,000+ apprenticeship programs, and 7,000+ institutions of higher education. Today, job seekers rely on resumes, job applications, and credentials to tell prospective employers about their skills and work experiences.’
55. The registers maintained by professional regulators, mirroring those in many other jurisdictions, serve to demonstrate that the concept of a professional register is far from revolutionary. Introducing some form of international register for those engaged in international aid is accordingly simply an overdue measure to promote the professionalism of a sector. It is a sector that demonstrably requires regulation given the services it delivers to intrinsically vulnerable people in often intrinsically vulnerable communities.
56. As to those addressed by the mapping exercise, the following merit greater detail.

²⁵ https://www.in.gov/che/files/Interoperable%20Learning%20Records_FINAL.pdf

ID2020

57. ID2020 demonstrates that much informed work has already occurred as to the principles and delivery of reliable technical means, biometric or otherwise, for identity verification (and associated access to databases) for the numbers of people we are considering, and in the locations where such systems would have to operate in practice. As to the capacity of technology to apply biometric data, the mapping report rehearses ‘ID2020 aims to ensure that every person has access to a private, secure and portable digital identity. Over a billion people worldwide, many of who are refugees or stateless persons, are unable to prove their identity through any recognised means, leaving them without the protection of law, and unable to access basic services, rights or economic transactions.²⁶ Individuals need a trusted, verifiable way to prove who they are. ID2020 believe that digital identities are the solution to this.’

58. As to one of the associated pilots under ID2020, iRespond, the mapping report rehearses:

As an example of a pilot, ID2020 have a project called the Mae La Camp Program, run in in partnership with iRespond and the International Rescue Committee. This pilot will offer secure, encrypted digital identities to the approximate 35,000 residents of the Mae La Camp in north-western Thailand. Camp residents can decline to participate in the program – and will not lose access to the existing critical services.

Consenting individuals have their irises scanned to identify them, and an algorithm generates a biometric template assigned to a unique 12-digit identity number called a UNiD. IRC uses the UNiD as a pseudonymous identifier, to store and look up personally identifiable information, which is carefully controlled and completely segregated from iRespond and from any biometric data. Once an individual’s irises are scanned, the UNiD provides access to their health records, rather than their names (which are often misspelled or mistranslated in this multi-ethnic, multi-lingual environment). At the camp clinic, doctors and medics are able to get a clearer picture of each participating resident’s health situation, which was previously buried in paper ledgers, thereby resulting in improved healthcare.

...

This is the first part of a broader programme aimed at giving refugees digital ‘wallets’ that will in time hold a range of information, including educational and vocational credentials, work histories in the camp, and other information that could be useful for them. The aim is to offer refugees **granular control** over what information they share with others. When refugees are faced with doctors, employers or bankers, they will be able to decide which portions of their records they wish that person to see.²⁷ This granular discretion in deciding who can see what, is a feature strongly touted by advocates of self-sovereign identity. This data will be available to individuals as they move from country to country.

...

Digital identity projects do not need to use an iris scan. In another project, users are given a ‘private key’ that can be stored on their phone or elsewhere to enable them to access to their

²⁶ ID2020 Manifesto, <https://id2020.org/manifesto>

²⁷ *Can Blockchain Finally Give us the Digital Privacy We Deserve?* Adam Piore, Newsweek Magazine, 22 February 2019.

information.²⁸ They can then give ‘public keys’ (generated on their phones) to others, with who they wish to share parts of their information.

59. Other IDPs of significantly larger scale require beneficiaries (but not staff) to register with a fingerprint in order to maintain control of the project. Such biometric technology is now routinely available and accordingly cost-effective. Any one system can register hundreds of thousands of individuals. Self-evidently, once identity is verified, the characteristics and purpose of any associated database (security; access; purpose; etc) it engages will be fact-specific.

UN ‘Misconduct Tracking System’ and ‘ClearCheck’

60. As to statements of principle, the 2017 Report of the Secretary-General includes the following:

16. I have also asked the Under-Secretary-General for Management to explore ways to strengthen the initial screening of candidates for every United Nations post, including the use of commercial services that can provide rapid and accurate feedback on the background of individual candidates as part of pre-recruitment formalities. We will adopt measures to ensure that individuals terminated from service in one part of the United Nations system owing to substantiated allegations of sexual exploitation and abuse will not be rehired in any other part. I will also request that a clause be included in every personal history profile, or its equivalent within the specific United Nations entity, as to whether the applicant was the subject of pending allegations or disciplinary measures at the time of separation and agreeing that past records of employment with other United Nations entities may be accessed. We will also cooperate, as appropriate, with Governments and external organizations in the conduct of their own reference checks that may involve such individuals.

38. Finally, I will seek Member State support in establishing a system-wide consolidated confidential repository of case information, to be placed under the supervision of the Special Coordinator on Improving the United Nations Response to Sexual Exploitation and Abuse, that will serve as the United Nations centralized repository of cases. The repository will build on the Misconduct Tracking System developed by the Department of Field Support, to help ensure that information is appropriately tracked, while safeguarding the victim’s rights to privacy and confidentiality. To aid in accountability for victims, I have instructed the Special Coordinator to propose revisions to the way in which the United Nations presents data on allegations, to make it easier to understand how many victims are affected and to improve United Nations responses.

61. Measures taken to implement these principles include the UN Misconduct Tracking System and Clear Check. The UN’s website provides significant detail, and characterises the context and characteristics of the systems as follows:

²⁸ Sovrin: *A Protocol and Token for Self-Sovereign Identity and Decentralized Trust*, Sovrin Foundation White Paper, 2018.

The Screening Database is a critical system-wide tool to avoid the hiring and re-hiring of individuals whose working relationship with an organization of the system ended because of a determination that they perpetrated sexual harassment. The Database also allows for the inclusion of individuals with pending allegations of sexual harassment who leave the organization before the completion of the investigation and/or disciplinary process.

Briefing Note on Clear Check

Clear Check is a highly secure online platform of a centralized database. It permits to share information amongst UN entities, system-wide, on individuals (former UN staff and UN-related personnel) who have established allegations related to sexual harassment (SH), sexual exploitation and sexual abuse (SEA) with the aim to prevent re-employing them within the UN system.

62. These are described in the mapping report as follows:

The Misconduct Tracking System (MTS) is the UN field missions' system for tracking United Nations misconduct. Launched by the Department of Field Support in 2008, the system is now managed by the UN's Conduct and Discipline Service. MTS is a restricted-access database and tracking system for all allegations of misconduct (both SEA, and other forms of misconduct). The system facilitates case management and information-sharing between field missions and headquarters, keeping track of allegations from the moment allegations are received, to the point that all required actions are taken on a case. The system stores extensive case-related correspondence and data; information on both victims and perpetrators, as well as on results of investigations and accountability measures.

The MTS has three primary purposes:

1. To record information and progress on the management of cases of misconduct;
2. To perform a vetting function for staff recruitment and other personnel deployment; and
3. To provide a dataset that can be analysed for reporting purposes.

This database initially took the form of an Excel spreadsheet, which soon became unworkable, so the more comprehensive MTS database was designed. Access to information in the database is restricted to a limited number of designated people performing conduct and discipline functions at both Headquarters and in field missions. Information is encrypted and is only accessible with the necessary authorisation.

In terms of vetting, deploying field mission personnel are verified using this database, to check if there is a match with individuals who have been implicated in misconduct, during prior assignments with UN Field Missions. MTS is used to screen civilian, military, police and other personnel deploying to UN field missions, including volunteers and consultants. MTS has also been used for Special Political Missions and is now being expanded to the rest of the Secretariat; however, it is not available to other UN agencies or entities. Currently, when civilian staff are recruited, manual vetting is conducted by those who have access to the system. For uniformed personnel, due to the large number of staff being vetted, vetting is initially conducted through an 'electronic handshake'. When deployees' names are entered into the Personnel Management System, this triggers an electronic verification through the MTS system, to see if there is a hit.

Where a possible hit is identified, a manual verification is performed. The MTS will soon also start using the electronic handshake for civilian staff, in order to save time.

The Clear Check system was created in 2018 by the UN Office of the Special Coordinator, to serve as a UN-wide, inter-agency vetting system, to record the outcomes of SEA and sexual harassment cases exclusively (as opposed to MTS which also deals with other types of misconduct). This system is only used for vetting – and not for tracking cases as the MTS does – and therefore holds far less information than MTS. As such, in contrast to MTS, this database can be shared across all UN agencies, funds, programmes and the Secretariat.

United Nations Entities and Agencies who participate in Clear Check, enter information about substantiated SEA cases into the Clear Check system. When recruiting, candidate's names are checked against this database. This system only vets against records of misconduct that occurred while in service of the UN – it does not store or check other information, such as criminal or employment records. It is used to check both national and international staff. Guidelines concerning collection, maintenance, confidentiality, security, use and disclosure of information in the database have been developed and shared with participating entities.

At this point, the system is only available to UN agencies, funds, programmes and the Secretariat. There has been discussion about extending Clear Check to NGOs and other actors, however these discussions have not yet progressed, due to challenges around confidentiality, and unanswered questions about how agencies can appropriately share information. Challenges anticipated with the Clear Check system are around confidentiality, linking the system with existing UN reporting mechanisms, and addressing links with legal accountability mechanisms in UN Member States.

63. The objectives and limitations of these UN initiatives are evident from this summary. Aside from the inherent limitations of the data held, a non-UN organisation is unable to access it. Given the complex framework of international law applicable to the UN (i.e. predominantly Treaty based) there is no foreseeable prospect of this changing. It follows that unless a particular UN agency is one that registers with the inter-agency misconduct disclosure scheme, such misconduct by individuals when engaged by the UN will not ordinarily be accessible to other future international aid work organisations.
64. There is nonetheless the potential for common classifications of SEAH to be agreed as between the international aid sector and the United Nations, just as has occurred in relation to the core humanitarian standards. A number of global initiatives are directed at this harmonisation: see [129], below.

INTERPOL: Operation Soteria

65. INTERPOL's full name is the 'International Criminal Police Organisation'. It is an inter-governmental organisation with some 194 member countries. In each country an INTERPOL National Central Bureau ('NCB') provides the central point of contact for its General Secretariat and other NCBs. INTERPOL connects its member countries via a secure communications system called I-24/7. This facilitates access to its 18 distinct databases relating to crimes and criminals. Important those these databases are, they are not the databases held by individual member countries, and nor do they contain wider police intelligence, still less employment misconduct data.

66. At a headline level, it can be characterised as a hub that connects the NCBs of member states to each other for the purpose of exchanging criminal data. It does not hold or control this member state data itself.
67. Equally, it may be observed that if there were to be a single central register identifying jurisdictions (i.e. member states) in which an individual had worked in the international aid sector, this would actively promote investigation in those jurisdictions of a potential employee by their potential employer. As matters stand, there is no such central register and a potential employer can exclude jurisdictions from those disclosed to their prospective employer during pre-employment checks. The potential employer could, from this international aid worker register, identify the jurisdictions in which it needs to make criminal record data checks, either directly or facilitated in some way through INTERPOL.
68. I repeat that it is common ground that there is no prospect of those outside law enforcement agencies having direct access to law enforcement databases. There are multiple reasons for this, not least the necessity of access to such criminal data being highly controlled, and I agree with those reasons. Disclosure of criminal data to those outside the formal law enforcement agencies needs to be strictly justified in each case, and the applicable law varies between jurisdictions.
69. With that said, in many jurisdictions the systems of law enforcement, and in particular centralised records of criminal data, are weak to the point of non-existence. Capacity building is one of the defined objectives of Operation Soteria: see [72], below. In these jurisdictions INGOs are often an intrinsic part of the investigation process, and iterative local arrangements are necessary with law enforcement agencies to promote such investigations. This has proved attritional in the past, with some INGOs frustrated that they provide intelligence and support and yet are not provided with intelligence in return. Operation Soteria will address how such local jurisdiction co-operation can proceed in future on a lawful basis of mutual constructive engagement.
70. Part of this would be the necessity of developing a legal protocol as to the bases on which data from a central register of aid worker deployments can and should be accessible to INTERPOL.
71. Those responsible for Operation Soteria are active members of the steering committee and I have had several meetings with them.
72. Soteria has five components:
1. Online platform
This is directed at facilitating background checks on potential employees during the recruitment process
 2. Local jurisdiction capacity building
This is what is suggested and is intended to be applied in a selection of countries in East Africa and Southeast Asia in the first instance. Early success includes Kenya having recently established, at its own initiative, its second specialist child protection unit, namely in Mombasa, the first having been in Nairobi.

3. Analysis and operational support

Again, as it implies this component is directed at an evidence-based approach to understanding the underlying offending in order to address it. This is relevant to the fourth recommendation I make as to mandatory reporting of defined safeguarding and misconduct data.

4. Assistance to aid sector

This is directed at collaborative initiatives with others in the international aid sector ‘to help them establish internal preventive, detective, investigative and reporting procedures’ to identify and remove those who have miscondacted themselves in relation to SEAH. This is relevant to the third recommendation I make as to mandatory safeguarding standards and independent inspection of them.

5. Promotion of Green Notices

A Green Notice is one of INTERPOL’s most recognised tools, and warn a receiving country of a qualifying risk in terms of SEAH if known to INTERPOL. Wider understanding of their availability and use is required.

The United Kingdom’s International Child Protection Certificate

73. I have deliberately avoided rehearsing a summary of the position in the United Kingdom (which in any event is different as between England and Wales; Northern Ireland; and Scotland) in a report directed at producing an outcome that will apply internationally. The underlying issues are conveniently addressed by IICSA in its January 2020 investigation report to which I have already referred.²⁹

74. Two UK initiatives merit rehearsal however since they illustrate the difficulties of any single country addressing the challenges alone in the absence of a wider system of international registration.

75. The UK introduced (through the NCA-CEOP)³⁰ an International Child Protection Certificate (‘ICPC’) in 2012. It is a non-statutory process directed at individuals and organisations based outside England and Wales, such as in overseas schools, who are accordingly not entitled to seek disclosure and barring service (‘DBS’) checks in relation to potential British employees.³¹ The ICPC is promoted by the NCA through its network of international liaison officers and, according to IICSA, by January 2020 applications had been made for 55,709 certificates from some 128 countries.

76. The basic process is that the British national applies for an ICPC, specifying their identity and the role description of the employment they have conditionally been offered in country. The ICPC then either issues them a certificate (or not) limited to that role at that date.

77. The ICPC, which is issued to the individual and not the potential employer, is in two parts. Part 1 is provided by the Association of Chief Police Officers Criminal Records Office (‘ACRO’). It includes known convictions, reprimands or warnings, as well as spent and unspent convictions and relevant

²⁹ <https://www.iicsa.org.uk/publications/investigation/protection-children-outside-united-kingdom>

³⁰ The UK National Crime Agency, part of which is the Child Exploitation and Online Protection Centre

³¹ This limitation has long been recognised as difficult to justify and IICSA has recommended it is removed

offenders' register entries from the Police National Computer ('PNC'). It also contains information about offences committed in other countries where it has been disclosed to the UK authorities. Part 2 is provided by NCA-CEOP. It includes additional information or intelligence assessed as indicating that the applicant poses a potential risk to children. The ICPC check will not necessarily reveal if someone has been barred from working with children under DBS.

78. These limitations are compounded by others.
79. Firstly, knowledge of the possibility of obtaining an ICPC is limited in some jurisdictions. As stated by the IICSA investigation report ([D.3 27]) 'Use of the ICPC is not mandatory, even for British nationals and residents working in regulated activities overseas. Although the ICPC has been extensively marketed, in some countries 'take up' has been low. APLE³² has welcomed the ICPC as a step in the right direction, but it is understood that only one ICPC has been applied for from Cambodia, where APLE is based. Glen Hulley of Project Karma, which is active throughout Southeast Asia, had not come across it.'
80. Secondly, the organisations in many local jurisdictions even if aware of the scheme simply lack the resources to use it. As IICSA observed ([D.3 28]) 'The cost of applying for an ICPC (currently £60) appears to act as a disincentive to individuals and smaller organisations overseas'.
81. Although I believe the ICPC is a useful initiative, its limitations are evident. For an in country organisation to have to conduct equivalent checks for each potential employee from other countries, even assuming those countries created an equivalent of the ICPC, does not appear a long-term practical solution. A centralised process, involving (1) criminal background checks in the potential employee's home country, and jurisdictions where they have worked or lived (through INTERPOL or directly); and (2) checks with a verified list of previous employers, most specifically in the international aid sector, is a more coherent and deliverable approach.
82. The second UK based initiative is the use of civil prevention orders under the Sexual Offences Act 2003. In absolute summary, these are civil orders applied for usually by a chief officer of police from a court which can be used to restrict foreign travel. The basic criteria are that such an order is necessary to prevent the commission of sexual offences by the subject of the order. A breach of the order is a criminal offence carrying up to five years' imprisonment. Following reform in 2014, it is no longer necessary for the subject of the order to have been convicted of a sexual offence.
83. The chronic underuse of these orders was confirmed by the IICSA investigation. The Executive Summary puts it like this:

'... the use of civil orders, which can be used to restrict foreign travel. Since March 2015, two such orders have been available. A sexual harm prevention order (SHPO) may be made following a conviction for a sexual offence. A sexual risk order (SRO) may be made in cases where there has not been a conviction. Both orders may include restrictions on travelling abroad should this be necessary to protect children or vulnerable adults from sexual harm. In practice, such travel restrictions are rarely imposed. Only 11 of the 5,551 SHPOs made in 2017/18 and six of the SROs in force in March 2019 did so. As a result, many known sex offenders may be able to travel to parts of the world where they can sexually abuse children. Where travel

³² A Cambodian child rights charity

restrictions are imposed which only apply to limited countries, they can often be circumvented by travelling through third countries. Greater use should be made of the civil orders regime in order to reduce further the risks posed by sex offenders travelling overseas from England and Wales’.

84. I agree. To provide further context, the number individuals subject to the notification requirements following conviction for a qualifying sexual offence is measured in tens of ‘000s. A negligible proportion (according to IICSA ([F.1 4]) 0.2%) are subject to a foreign travel restriction. Children in many jurisdictions are acutely vulnerable to sexual offending by this cohort of convicted offenders. As lead author of the ACPO-led report that led to the reform of the law in 2015,³³ a report which itself documented the serious underuse of these powers before reform, it is disappointing to see evidence that such powers as exist are still not being deployed. It is further evidence of the need to ensure independent inspection of any organisation to promote accountability for their actual delivery of safeguarding duties. As was illustrated by the 2019 IC Report into Oxfam, the failure often lies in delivery rather than the absence of policies or powers.

Inter-Agency Scheme for the Disclosure of Safeguarding-related Misconduct in Recruitment Process within the Humanitarian and Development Sector (‘the inter-agency misconduct disclosure scheme’)

85. This scheme has an important place in the ecosystem of recommendations we make. The Stern mapping report describes it as follows:

During the Safeguarding Summit in London in 2018, an Inter-Agency Misconduct Disclosure Scheme was launched. This is a scheme that humanitarian and development organisations can choose to sign up to. The ‘Inter-Agency Scheme for the Disclosure of Safeguarding-related Misconduct in Recruitment Process within the Humanitarian and Development Sector’, or ‘Misconduct Disclosure Scheme’, establishes a minimum standard for information-sharing between organisations, about people who have been found to have committed SEA while they were employed with an organisation. Organisations who sign up commit to a common minimum exchange of relevant sensitive information on misconduct. At this time, the misconduct considered by this tool is limited to sexual harassment, abuse and exploitation, however this might be broadened out in time.

Within this system, information-sharing between organisations will be carried out in a way that respects all applicable legal and regulatory requirements, with organisations each complying with the national data protection laws that apply to them. There is a template for information-sharing, which requests information about the length of employment; whether it has been proven that someone committed misconduct; the type of misconduct; the disciplinary measures taken; and what investigations are ongoing. This tool is designed to be a complimentary tool that organisations can use alongside their existing recruitment processes, and is not designed to replace these.

³³ <https://www.ecpat.org.uk/the-davies-review-civil-prevention-orders-in-the-sexual-offences-act-2003>

86. The Scheme was launched in January 2019 and is administered by the Steering Committee for Humanitarian Response ('SCHR'). Full details are available online³⁴ and we have consulted with those leading the Scheme at SCHR. SCHR is represented on the steering committee.

87. The following features of the Scheme merit rehearsal:

- i. Organisations, rather than individuals, register, and do so on a voluntary basis. Whilst it is welcome that the Registry of such organisations in late April 2020 shows that 25 such organisations have signed up since January 2019 (and 33 individuals identified whose employment did not proceed),³⁵ and others (including some UN agencies) are expected to, on one view this is a strikingly low proportion of the hundreds of organisations that qualify. In that the Scheme will only achieve its potential with widespread adoption, this invites the question whether donors should mandate it as a condition of funding (I have concluded 'Yes': see recommendation 2);
- ii. The Scheme does not itself control or distribute misconduct data of any type. What is disclosed is wholly dependent on the law in place in the jurisdiction of the disclosing organisation. As the legal framework³⁶ produced by SCHR demonstrates, in certain countries disclosure may be contingent on the consent of the individual (Denmark; Netherlands; Spain) and in Germany the law appears to present genuine obstacles to disclosure of any meaningful misconduct data. These variations exist notwithstanding a common GDPR across the EU (and still applied by the UK). The Scheme has to work within these restrictions, although it may be hoped that the interpretation in these jurisdictions will evolve over time to reflect the overwhelming public interest in the disclosure of SEAH misconduct findings within the international aid sector;³⁷
- iii. Although the Scheme is presently limited to SEAH, there is no prescriptive definition of this and it is accordingly ultimately a matter for the organisation providing the data. Definitions vary between jurisdictions and organisations;
- iv. 'The Scheme is designed to be applied by all humanitarian and indeed non-humanitarian agencies worldwide, including international and local NGOs, UN agencies and private contractors, and as such does not rely on UN legal immunities or other mechanisms';
- v. 'The Scheme is intended to ultimately cover all staff, including both national and international/expatriate staff, of a majority of humanitarian and development organisations. This is expected to be achieved within the next five years';

³⁴ <https://www.schr.info/the-misconduct-disclosure-scheme>

³⁵ Organisations currently implementing the scheme include; Act Alliance, Care, Caritas Internationalis, International Federation of Red Cross, International Committee of the Red Cross, ICVA, Islamic Relief, Intersos, The Lutheran World Federation, Oxfam, Plan International, Save the Children, VSO and World Vision. It is to be observed that where an organisation is confederated, it is individual members of the confederation that register, not the entire organisation.

³⁶ <https://www.schr.info/legal-frameworks>

³⁷ There are of course jurisdictions where human rights, most specifically women's and children's rights, are a low priority and/or the institutions of civil society are not functioning so as to prioritise the creation and use of data management systems.

- vi. Organisations must nominate an individual for the purpose of providing misconduct data under the Scheme;
- vii. The Scheme does not have any regulatory function over the organisations in question, and accordingly neither receives nor can verify the quality of misconduct data disclosed. Accordingly, the misconduct data disclosed is only as accurate or fair as the quality of investigation by the organisation providing it; and
- viii. The Scheme is only as good as the history of employment provided by a prospective employee to their prospective employer.³⁸

88. The latter is recognised as a specific weakness in the Scheme.

89. To compound the effect of this weakness, as a matter of culture within the international aid sector individuals regularly take periods of leave measured in months between deployments. This is a cultural norm and encouraged as such to promote, inter alia, psychological recovery from what are intrinsically demanding humanitarian roles. Accordingly, an individual can presently simply, and without generating suspicion, not disclose an employer or deployment if they have been proved to have committed SEAH or left the organisation pending investigation into SEAH. These types of manipulative individuals are the very ones the registration (or ‘passport’) system is designed to identify.

90. Recommendation 2 is directed at remedying this fundamental and central deficit. Recommendations 3 and 4 are directed at producing consistent definitions and safeguarding standards across the sector, such that what is disclosed under the Scheme is consistent and fair. There are other associated benefits to donors; aid organisations; aid workers; researchers; and other decision-makers.

91. The recommendations are consistent with the intended all-inclusive approach under the Scheme set out at (iv) and (v). The extension of the Scheme to private contractors and others is evolving and significant progress is anticipated in 2020 notwithstanding the challenges raised by the Covid-19 pandemic.³⁹

iv. Recommendations

i. Introduction

92. In setting out this analysis, I have had detailed conversations with those I consider central to understanding the issues. Other than the review team and wider iterative discussion with the steering committee, more detailed input has come from parties including (1) Paul Stanfield and four other key members of Operation Soteria; (2) Mary Thompson (DFID, who as Senior Social Development Adviser is the lead on donor issues and the starting points in relation to prescribing core standards, inspections

³⁸ I observe that the information is provided relatively late in the recruitment process. This may create a perverse incentive to employ notwithstanding recorded misconduct if immediate deployment is required

³⁹ The Scheme is completing a governance review which is scheduled to complete (allowing for Covid-19) by c. July 2020. From this date it is intended that private sector organisations can register. Pending that event the Scheme is advising private sector companies to use the Scheme Registry when hiring from NGOs and to share misconduct data in equivalent manner to a registered party

and reporting); (3) Professor Rosa Freedman (a, if not the, leading academic in respect of accountability in the sector, especially in relation to the UN); (4) Sarah Blakemore (lead for Keeping Children Safe ('KCS'),⁴⁰ a major international NGO defining standards and delivering training in relation to safeguarding in aid and development projects); (5) Gareth Price-Jones (SCHR lead for the inter-agency aid worker misconduct disclosure scheme); (6) Steve Reeves (head of safeguarding at Save the Children); and (7) Sarah Maguire (Global Director of Safeguarding at DAI, and a member of the private sector Safeguarding Leads Network).

93. Further, I have reviewed the wealth of literature in order to inform my evaluation. Only a limited proportion of this is referenced directly in the final report.

94. In addressing a summary of my conclusions and recommendations, I revert to the problem we are addressing. It does not involve the huge majority of those engaged in the international aid sector who do so conscientiously and lawfully. It is directed at the minority, quantification of which is presently impossible, who exploit the vulnerabilities of the environment and local population to commit misconduct involving SEAH. Such conduct is prevalent if not endemic across the sector.

95. As quoted in the UK edition of the Times on 25 February 2020, the UK Government's international development secretary ((Anne-Marie Trevelyan) said, in the context of the inter-agency misconduct disclosure scheme, 'It is sickening to think perpetrators of sexual misconduct continue to play the system. I want to see all UK aid agencies signed up, so together we can stop vulnerable people being exploited, abused and harassed'.

96. The background was accurately and succinctly defined by Sean O'Neill as author of the article:

'Charities have been reluctant to exchange employee information because of data protection concerns. Criminal records are checked but often the conduct of rogue employees is not illegal in the country that they are deployed in or there has been no effective investigation. Perpetrators have used tactics to avoid detection including regularly moving between countries on short-term disaster zone deployments, lying about their work history, avoiding organisations that require criminal records checks and changing their names.'

97. There is widespread industry recognition (for example, from Stephanie Draper of the NGO umbrella group Bond, quoted in the article) that the inter-agency misconduct disclosure scheme would only be effective if more NGOs signed up, 'as well the private sector, academia and donors'. I entirely agree.

98. It is common ground that no single measure, or package of measures, will transform the performance of the international aid sector overnight in these respects. Multiple initiatives will produce an evolution in safeguarding and accountability, assuming of course that aid organisations are effectively held to account. Equally, within any process of evolution revolutionary measures are sometimes appropriate. Howsoever characterised, the legal review's recommendations are intended to be both significant and deliverable, and to work with existing schemes.

⁴⁰ <https://www.keepingchildrensafe.global/>

ii. Underlying considerations

99. The following recommendations reflect some underlying considerations. Central to these are:

1. The misconduct we are concerned with is limited to SEAH. The reasons for this include (i) achieving consistency with other related schemes in the sector (e.g. those by the UN, and the inter-agency misconduct disclosure scheme) which similarly restrict qualifying misconduct to SEAH; (ii) addressing SEAH is rightly the priority; (iii) even as to SEAH there is no single international definition, and such problems would be magnified further for non-SEAH misconduct (which should be addressed pro tem under applicable employment law and direct inter-employer references); (iv) the necessity and proportionality of holding and controlling data to detect and prevent SEAH is more readily done than for non SEAH conduct;
2. The steering committee will design and conduct a consultation exercise with stakeholders in the sector in advance of implementation and/or a pilot scheme.

iii. Individual Recommendations

Recommendation 1: no single regulator for the international aid sector

100. I necessarily considered the possibility of a single entity to receive and control misconduct data from international aid organisations, and which would thereby represent a single point of contact for other aid organisations to consult as part of pre-employment vetting.

101. Although superficially attractive, this possibility was rejected on a number of clear bases.

102. These include:

1. There are insurmountable legal difficulties in certain jurisdictions (e.g. Germany) that would prevent employers distributing misconduct data of this type, either at all or other than in the context of a specific pre-employment check by a prospective employer, to a third-party entity and for that entity to assume control of it. This is why the aid worker misconduct disclosure scheme is designed as it is, with misconduct data being controlled and distributed directly between registered organisations and according to the law applicable to those organisations. SCHR, as administrators of the scheme, at no point has or controls the misconduct data;
2. The legal review cannot alter this basic legal context. Whilst it may be that over time the relevant jurisdictions review their domestic law in relation to distribution of such misconduct data in the international aid sector (i.e. that given its unique characteristics, it is necessary and proportionate to do so), the sector cannot wait for this to occur and must accordingly devise a registration scheme that is deliverable now;

3. Even if this fundamental legal obstruction did not exist, the realities of such an international entity with control of such a single set of misconduct data are such that it would be both impracticable and undesirable;
4. As to impracticability, the scale of such of entity would be massive, and it would require corresponding financial, human and technical resources. If the entity became responsible for distributing such misconduct data, it would also become responsible for the accuracy and legitimacy of what was distributed. This would require it to ensure the information was both up to date (what if a misconduct finding was successfully reversed by the submitting organisation?) and, importantly, that it reflected a fair misconduct process;
5. As to the latter, it is simply not credible to conclude that a single international entity could function as a de facto regulator in this respect. It would have to have the resources to evaluate the fairness of the original misconduct finding, this implying a procedurally compliant appeal process for the person affected. No single organisation could perform this regulatory/appellate function. In many cases any form of re-investigation would be impossible;
6. Further, even were such a role to be adopted it would produce serious adverse consequences across the sector. These include (i) those most likely to appeal any misconduct finding, most specifically those arising in country, would be the most economically advantaged employees and/or the most experienced perpetrators. Such inevitable discrimination is to be recognised and avoided; and (ii) employer organisations may rely on the existence of a body with regulatory/superintendence powers to avoid assuming direct responsibility and accountability themselves for delivering acceptable procedures in country to identify and investigate SEAH. The emphasis must be on ensuring aid organisations are directly responsible and accountable at every stage of the process;
7. This emphasis on local and direct accountability is wholly consistent with the local capacity building approach being taken across the sector, including by the UN, INTERPOL, donors, and some aid organisations;
8. The objectives that such a single entity would be designed to meet in terms of addressing SEAH in the sector can in any event better be achieved through other measures, including recommendations 2 – 4.

Recommendation 2: donors to mandate as a condition of funding (1) registration with the inter-agency misconduct disclosure scheme; and (2) registration of basic details of qualifying employees on a new central aid worker register with biometric and concurrent alternative technical means of non-biometric identity verification

(1) as a condition of funding (including private sector contracting), donor mandated registration with the inter-agency misconduct disclosure scheme

103. What is recommended reflects the significant power of donors in the sector. In that (i) self-regulation has demonstrably failed; and (ii) the vast proportion of individual aid organisations have not voluntarily adopted either the inter-agency misconduct disclosure scheme, or independent inspections of safeguarding delivery, or transparency as to the nature and extent of reported and recorded SEAH by its employees, my conclusion is that such engagement should be mandated as a condition of funding by donors.
104. There are probably multiple reasons for the approach of individual aid organisations. I suspect that the better resourced and established the Scheme appears to be (including in respect of governance) the more applicants may be attracted. I recognise that there are some resource implications: equally, safeguarding and fair misconduct procedures for employees are not negotiable elements and require investment and independent continuing superintendence. Other reasons include reputational considerations: why volunteer for measures that may produce adverse findings? This is a sector however where the interests of the vulnerable – direct beneficiaries; local populations; junior employees – must be prioritised and protected ahead of corporate reputations. Strong organisations invite independent scrutiny and accountability. The lack of preceding independent scrutiny, or an organisation failing to accept the findings of independent scrutiny when it has occurred, are paradigm of why institutional safeguarding failures occur.
105. As and until measures are mandated by donors, the probability must be that individual organisations will not deliver the reforms sought. They will perceive that, aside from resource and reputational considerations, they will suffer a competitive disadvantage relative to other organisations by so engaging. If all are mandated, this risk is removed and the proverbial level playing field produced.
106. The legal review has not consulted directly with those responsible for executive decision-making in individual aid organisations as to these issues. No doubt positions may be defined as part of any consultation.
107. The most straightforward component of the inter-related recommendations is that donors mandate that any organisation it funds registers and participates in the existing aid worker misconduct disclosure scheme as a condition of funding.

(2) registration of basic details of qualifying employees on a new central aid worker register, with (i) biometric; and (ii) concurrent alternative technical means of non-biometric, identity verification

Summary

108. Given these conclusions, the recommended practical outcome is to work with the existing aid worker misconduct disclosure scheme in particular, and the co-existing wider matrix of schemes and initiatives more generally.
109. The practical measure I recommend is that from the date of the start of the proposed registration scheme, all those engaged in the delivery of aid or development projects (emergency or humanitarian), and in whatever capacity (any attempt at role definition would fail, and in any event it is about access and/or continuity of the record in the sector), are required to be registered biometrically (where lawful: see below) and in any event through a concurrent technically secure unique manner to verify identity with a legal entity established for this purpose. The duty to register would be on the employing/engaging organisation through a defined and approved person.
110. The data held by this entity would be limited and available in defined circumstances to (1) those conducting pre-employment checks for other aid/development work (either directly, or through the aid worker misconduct disclosure scheme); and (2) INTERPOL for the purpose of conducting its own law enforcement checks for defined purposes. A protocol would have to be agreed between those controlling the database and INTERPOL for this purpose. An obvious central purpose for INTERPOL to have access would be to enable it to know which jurisdictions were relevant for criminal background checks.
111. The data registered would be limited and not include misconduct data. The aid worker misconduct disclosure scheme is a hub that does not itself hold misconduct data. It puts organisations in contact with each other such that they can exchange such misconduct data directly themselves according to local jurisdiction law. The obvious central weakness is that the previous employment is wholly dependent on what an employee tells them. More generally, nominated referees may be simply friends of such an employee rather than reflecting full and objective access to the misconduct history of that employee.
112. Requiring an aid/development organisation to register an ‘employee’ in terms of matters limited to: (1) biometric identity of person registered (and/or the alternative technically secure non-biometric means to verify identity); (2) national identity documentation details (passport details/national identity card); (3) organisation employing that individual (whether in paid or voluntary capacity); (4) place of employment (including details of the relevant international development programme where applicable); (5) duration of employment; (6) role description category? (as defined by registration scheme categories: see [151] below); (7) verified and secure independent point of contact within organisation (this could be a single, secure, organisational email address) for the purposes of (i) who has provided the information so registered; and (ii) other organisations obtaining information under the aid worker misconduct disclosure scheme and/or for other lawful purposes, e.g. INTERPOL. This registration would remove the possibility, at least from the date of the start of the registration scheme, of parts of an employee’s aid and development work history going missing. This is justification without more for the registration card.

Legal context

113. Before developing further commentary it is necessary to set out the legal analysis that underpins the preceding summary. This is of direct relevance to the credibility of the recommendations and any registration scheme.
114. The obvious issue is whether and to what extent any registration scheme can be designed and implemented such that it captures the population group of all those engaged in the international aid sector (or at least a sufficiently large proportion to make the scheme worthwhile) whilst at the same time achieving compliance with data protection legislation. Whilst there are some emerging unifying international principles, there is no single international law as to data control and accordingly the law is as determined by the jurisdiction in which the data is managed, controlled or distributed.
115. It was obviously beyond the scope, and timetable, for the legal review to evaluate the laws in every international jurisdiction. Even within the USA there are differences between Federal law and State law, and of course between different States. One of the purposes of the consultation that will follow the legal review is for any material differences between jurisdictions to be identified such that the delivery of any final registration scheme is through an entity, and in a jurisdiction, that achieves the commonly agreed purposes as effectively as possible.
116. The approach I have adopted is to concentrate on the principles under European Law, and applicable to Member States (see below as to the position of the UK following its departure from the EU). This is for three reasons: (1) a significant proportion of funding originates in the EU/UK; (2) the applicable law, in particular the General Data Protection Regulation ('GDPR'),⁴¹ is recognised as one of – if not the – most restrictive legal approaches to control of personal data internationally, so compliance with it would suggest a reasonable probability of compliance in other jurisdictions; and (3) it is the legislative framework used as the foundation for the aid worker misconduct disclosure scheme, and consistency with that is obviously likely to promote a more coherent outcome.
117. The GDPR is a detailed piece of legislation that came into force in 2019. White & Case have provided a comprehensive, and publicly available, handbook guide to it: 'GDPR Handbook: Unlocking the EU General Data Protection Regulation'.⁴²
118. I address the relevant principles in relation to GDPR in the following sequence: (i) general compliance principles; (ii) 'notice'; (iii) legal bases for processing; (iv) sensitive personal data; (v) consent of data subject; (vi) effect of the UK's departure from the EU ('Brexit'); and (vii) the inter-relationship with Interpol.

⁴¹ EU 2016/679

⁴² <https://www.whitecase.com/publications/article/gdpr-handbook-unlocking-eu-general-data-protection-regulation>

i. General compliance principles⁴³

119. Article 5 of GDPR imposes a number of general compliance principles that apply to all entities that make decisions as to how and why to process personal data. An entity/organisation that processes personal data is referred to as a ‘data controller’. It should be assumed that some or all of the information I have recommended is registered is personal data for these purposes. Providing data relating to individual aid workers to a third party registration entity would qualify as processing personal data and make that entity a data controller. The same applies to the central registration scheme entity that receives and/or distributes such personal data.

120. Article 5 provides for some other core principles:

(i) Art.5(1)(a) GDPR – Personal data must be processed fairly and lawfully

This principle, together with article 24(1) GDPR, essentially places the onus on each controller entity to ensure that its processing activities are compliant with the GDPR, and any other applicable laws. Each aid agency that participates in any registration scheme (and for that matter the existing aid worker misconduct disclosure scheme), together with the entity or entities that control the scheme, will each need to be able to demonstrate that the relevant personal data are being processed, lawfully;

(ii) Art.5(1)(b) GDPR – Personal data must be collected for legitimate purposes that are specified in advance, and not processed in a manner that is incompatible with those purposes

This principle means that the data that are fed into the registration scheme system have to have been collected specifically for the purpose of identification of the relevant workers, and cannot be used for additional incompatible purposes that were not specified at the time of collection of the data;

(iii) Art.5(1)(c) GDPR – Personal data must be limited to what is necessary

This means that personal data can only be collected to the extent that they are actually necessary for the specified purposes;

(iv) Art.5(1)(d) GDPR – Personal data must be accurate and, where necessary, kept up to date

This principle is important in the context of the registration scheme because it means that there must be a mechanism for updating the data;

(v) Art.5(1)(e) GDPR – Personal data must be kept in an identifiable form for no longer than is necessary

This means that once the specified purposes (and all other lawful purposes) for which personal data are used in the context of the registration scheme have been fulfilled, those data must be deleted or fully anonymised;

⁴³ See chapter 6 of the White and Case GDPR handbook <https://www.whitecase.com/publications/article/chapter-6-data-protection-principles-unlocking-eu-general-data-protection>

(vi) Art.5(1)(d) GDPR – Personal data must be kept secure

This point is self-explanatory.

ii. Notice

121. Articles 13 and 14 GDPR require each data controller to explain to affected individuals ('data subjects') the manner in which, and purposes for which, their personal data will be processed. This is standard, and will require detailed privacy notices to be prepared at the outset of any registration scheme. These privacy notices however will be identical across the scheme once prepared.

iii. Legal bases for processing

122. All processing of personal data requires a valid legal basis (or must fall within an exemption). The available legal bases are set out in article 6 GDPR. A thorough analysis of each of these legal bases is beyond the scope of this report, but further commentary on each of these principles can be found in chapter 7 of White & Case's GDPR Handbook.⁴⁴ I have concentrated only on those that appear most likely to be engaged in the immediate context of a registration scheme.

123. Of particular importance is article 6(1)(e) GDPR: personal data can be lawfully processed to the extent that the processing is '*necessary for the performance of a task carried out in the public interest*' (emphasis added). EU data protection law applies a narrow interpretation to the idea of what is '*necessary*': The CJEU in *Stadt Bochum* (Case C 291/12)⁴⁵ stated that processing personal data for a given aim (in that case, preventing illegal entry into the EU) '*should not go beyond what is necessary to achieve that aim.*' Likewise, the article 29 Working Party (as it then was) stated⁴⁶ in Opinion 01/2014 that where any '*less intrusive but equally effective measures ... are available then only these measures will be deemed necessary*'. It will therefore be important to show that the proposed collection of data in the context of the registration scheme is '*necessary*' in this sense, and that there are no '*equally effective*' but less intrusive measures available.

124. In my opinion the test of necessity is clearly made out in the immediate context. Leaving to one side the issue of biometric data (which alone amongst the matters I have recommended is '*sensitive*' personal data: see further below), no '*equally effective*' alternative to this system of registering this body of international aid workers has been identified; the data itself is required to conduct pre-employment checks to mitigate the risk of SEAH (and potentially other significant harm) against vulnerable parties; it is necessary to produce a single record of employment of an individual in the sector over time; and these objectives are in the public interest.

⁴⁴ <https://www.whitecase.com/publications/article/chapter-7-lawful-basis-processing-unlocking-eu-general-data-protection>

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<http://curia.europa.eu/juris/document/document.jsf?jsessionid=4238A7C74047DFDF59386938BFE6FA4E?text=&docid=143189&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=5721248>

⁴⁶ Opinion 01/2014 https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2014/wp211_en.pdf

125. Similarly, in my opinion the test of necessity is also met in terms of applying an ‘all inclusive’ approach to organisations and individuals engaged in whatever capacity in the international aid sector, rather than distinctions arising between INGOs and private sector contractors, or the role played by an individual within such an organisation (most specifically in country). SEAH can occur anywhere between employees. This approach is mirrored under the existing aid worker misconduct disclosure scheme, albeit its extension in practice to private sector contractors is not intended to start until c. July 2020.
- iv. Sensitive personal data
126. This is an important issue since it engages the form in which identities may be verified. Without a secure and accessible in country mechanism to verify identities it is obvious that many perpetrators will simply assume new or false identities and thereby avoid the intended purposes of the registration scheme (and similarly the aid worker misconduct disclosure scheme).
127. GDPR provides special protections for the processing of ‘sensitive’ personal data (i.e. data relating to an individual’s race or ethnicity; political opinions; religious or philosophical beliefs; trade union membership; physical or mental health; biometric data; health data; sexual life; or other information that are deemed to be sensitive under applicable law of an EU Member State (e.g., any actual or alleged criminal offences or penalties, national identification numbers, etc.)).
128. Sensitive personal data can only lawfully be processed if one of the limbs of article 9(2) GDPR is satisfied. It is clear that the biometric data that will be collected in the context of the proposed registration scheme are sensitive personal data. Equally, biometric data is just that: it would not include, for example, a suitably verified photograph of an individual (such as a copy of a passport, so long as the biometric data within it was not used) since this photographic image is not biometric data. The use of facial recognition software to such images is in a grey area: the reality is that the physical comparison will be done by eye where biometric data is not available. Biometric data includes fingerprint and iris data which can of course be used – and is increasingly used – to provide reliable and accessible proof of identification in many other routine daily contexts.
129. Of particular importance in the context of the proposed registration scheme is article 9(2)(g) GDPR: sensitive personal data can be lawfully processed to the extent that the processing is ‘*necessary for reasons of **substantial public interest**, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject*’ (emphasis added). This is a stricter standard than article 6(1)(e) GDPR considered above. It not only requires the public interest to be ‘substantial’, but also requires the public interest to be based on a specific EU or Member State law that must satisfy several thresholds.
130. I have no difficulty concluding that there is a substantial public interest in the purpose of the proposed registration scheme. No such hard-edged law currently exists however in the context of the registration scheme. The European Convention on Human Rights (‘ECHR’) is not either an EU or Member State law as and until it is adopted by parallel provisions by any Member State, as it was for example by the UK under the Human Rights Act 1988. There is nonetheless a reasonable argument that the protection of an identifiable class of victims from serious harm or death engages articles 2 and/or 3 ECHR: this point has presently not been determined in the context of a non-law enforcement database. Whilst it is not necessary for any decided EU case expressly to refer expressly to article 9(2)(g), I have not found any authority that enables me to conclude with certainty that the use of biometric data to

verify identity complies with article 9(2)(g). Accordingly, unless there is a change in the law – through a relevant case, or declarations by Member States – it cannot be safely concluded that public interest justifications will suffice for the purposes of the processing of biometric data contemplated in the context of the proposed registration scheme.

131. This uncertainty means that the scheme should be approached pro tem on the basis that, in the absence of subject consent (see below), alternative means of verifying identity will have to be built in to any scheme. I observe that it is open to EU Member States, and any other country applying GDPR, to state that there is the requisite substantial public interest in the use of biometric data for the narrow purposes of an international aid worker register. This would appear to be consistent with the 2018 London Summit commitments.

132. I also observe however that although alternative forms of identity verification than biometric data may be sub-optimal – they are unlikely to be ‘equally effective’ – as a back-up to biometric data they may be sensible (even necessary) in any event. It cannot be assumed that the facility to read biometric data will always exist in country, and other secure (if somewhat less reliable) non-biometric means are in existence: see for example the ‘private key’ being developed under ID2020 ([57] – [58] above).

133. This approach is enhanced by considerations of subject consent under GDPR.

v. Consent

134. An alternative legal basis for data processing, available under both articles 6(1)(a) and 9(2)(a) GDPR is that of subject consent. It can provide a valid legal basis for the processing contemplated under the registration scheme. I have already reflected a conclusion that other than biometric data, what is proposed for registration is lawful without consent under article 6(1)(e): it is after all rather less than individuals are required to provide to a range of other entities in non-safeguarding contexts.

135. So far as consent to the use of sensitive personal data is concerned – here, biometric data – consent is only valid if it is freely given; specific; and informed. There is a general risk that any such consent will be held to be invalid as a legal basis for processing data at work: see the article 29 Working Party (as then was) opinion that ‘consent is highly unlikely to be a legal basis for data processing at work’.⁴⁷ Consent must be freely given: see article 4(11) GDPR. Any consent given because employment was contingent on it is likely to be invalid and the resulting processing unlawful. Consent, once given, may be withdrawn, and with immediate effect. This would compromise the effectiveness of any registration scheme.

Conclusions as to identity verification and biometric data

136. What I recommend is accordingly a concurrent system of identity verification under the registration scheme that includes (1) biometric verification (for those in jurisdictions where this is lawful under the applicable data legislation, and/or those whom freely consent to the use of their biometric data for the purposes of an aid worker registration scheme); and (2) the best alternative non-biometric means of identity verification that is readily accessible at remote in country locations (for use where biometric verification is not available for whatever reason, including no means to read biometric data in country;

⁴⁷ Opinion 2/2017, p. 3 https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=610169

or no consent from the individual concerned. This would be data processing under article 6 rather than 9 GDPR).

vi. Effect of the UK's departure from the EU

137. In the short term the UK's departure from the EU will not affect the application of GDPR since article 127(1) of the Withdrawal Agreement states that EU law will continue to apply until the end of the transition period, namely 31 December 2020.

138. Subsequent to that the indications are that the UK will implement provisions identical to GDPR. There are a number of reasons for this, including (1) it is in the interests of both the UK and EU that data is transmitted between the two on a common basis and without interruption. It is probable that the UK will seek an 'adequacy decision' from the European Commission to enable this mutual transfer of data to continue as is, and the most straightforward way to obtain this is to apply identical regulations; (2) the relevant regulations have already been drafted in anticipation of the end of the transition period (section 22(1) of and Schedule 6 to the Data Protection Act 2018). The substantive effect is to transpose the terms of GDPR into UK law with such drafting revisions as are necessary to reflect the fact that the UK will not be a Member State.

139. Stated shortly, I have assumed that the terms of GDPR will apply through domestic law for the foreseeable future. This may have implications for whether the UK may be an appropriate jurisdiction to base any registration scheme entity.

vii. The inter-relationship with INTERPOL

140. The future exchange of registered information with INTERPOL is an issue of some significance once any registration scheme is established. INTERPOL is already able to request information from its members in relation to inter alia background checks on individuals where this is justified. The information recorded on the registration scheme database, although in some ways basic, could actively promote the resilience of criminal background checks (and other law enforcement activity) by INTERPOL.

141. INTERPOL has members on the steering committee and I have consulted with them and others within the organisation.

142. It is common ground that the entity established to deliver the registration scheme will not have access to law enforcement databases. The reasons for this are probably obvious: the general principle is that such law enforcement databases are intrinsically sensitive and accordingly restricted narrowly defined individuals within such law enforcement agencies. Another significant distinction is that the processing of personal data, including sensitive personal data, by 'competent authorities' for the purposes of prevention; investigation; detection; or prosecution of criminal offences is generally exempt from GDPR, implementing Directive (EU) 2016/680 although subject to relevant national Member State laws.⁴⁸ In headline terms, outside this law enforcement exception control of access to background

⁴⁸ DIRECTIVE (EU) 2016/680 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal

personal data is defined by reference to the law in any given country. This explains the distinctions even between EU Member States.

143. The legal position as to the future terms on which INTERPOL may request data from the registration scheme is under consideration by INTERPOL, and an important matter for future resolution. Although I am confident that after due consideration by competent authorities (i.e. EU Member States and the UK) and INTERPOL (and no doubt others) that an appropriate protocol could be drafted, as can be seen from the detail and length of Directive (EU) 2016/680 and GDPR this is not a straightforward exercise. It may be that it is achievable in principle before the creation of any registration entity, although I would anticipate (at least at this stage) that any registration scheme entity would retain autonomy as to perfecting the final terms of it.
144. I also anticipate that the objective benefits, and any contended necessary controls over, distribution to INTERPOL of data registered with the scheme will form part of the consultation exercise. With the assistance of White & Case this element of the registration scheme will accordingly attract continuing review, and I do not attempt to articulate even a provisional outcome at this stage.

Constitution; jurisdiction; governance; and funding of any registration scheme

145. Self-evidently, the constitution; jurisdiction (i.e. where it is based); governance; and funding of any entity created to implement and deliver an international aid worker registration scheme are important issues.
146. A number of models could be advanced, including by analogy with existing comparators, in any consultation. It is conceivable that its functions and governance are merged at some point with those of the inter-agency aid worker misconduct disclosure scheme. In narrow legal terms what the registration entity is being asked to do is important but limited: it has to take legal responsibility for the control of data on the register. It is not an international regulator and I do not anticipate that it will have power to sanction any individual or organisation. Sanctions for non-compliance with the register would lie with donors and/or organisations applying local jurisdiction law. Sanctions may include disqualification from funding/contracting.
147. The answers to the four areas for resolution are probably more a matter of policy than law. There is no obvious legal impediment to creating a legal entity to operate a registration scheme, and it may be thought that a number of jurisdictions would qualify to host it (as I have set out, wherever the registration body is located the supply of data to it will be determined by the jurisdiction of the sending party). At a headline level, the registration scheme has to comply with the law, but must also attract the confidence of a range of stakeholders in the sector: this includes donors; individual aid workers; recipients of aid (states; organisations; individuals); and the wider public. The registration scheme is not a punishment for the sector or those who engage in it: it should be seen as a positive development for everyone involved.
148. At an equally headline level, it may be thought that to attract such necessary confidence the registration entity needs to adopt a constitution, and system of governance, that has sufficient qualities of breadth

of experience and independence. By breadth of experience I include (without limitation) considerations of diversity in all respects, and those that have operated in the sector in different roles. It has to avoid becoming politicised, or appearing to, and similarly it cannot be seen as representing the interests of only one set of stakeholders in the sector. A credible set of individuals will be required to deliver governance.

149. Equally, it has to be funded. The mechanics of this as between donors, organisations and registered individuals may affect the other considerations as to constitution and governance. Costs could be apportioned between (some) donors and (some) organisations, the latter potentially on a pro rata basis according to scale. I cannot be prescriptive as to any of this as a matter of law, nor as to what cost if any should be borne by an individual. The latter is likely to be fact specific on any view. I do not see however that registering details across a secure internet-accessible database will add materially in itself to the cost of recruitment of any individual.
150. My recommendation is accordingly that the resolution of these issues is part of the consultation. Assuming some detail as to scale and the resourcing required can be produced – for example, the number of employees required; the scale and cost of appropriate technology – the final form of any such entity will be better capable of determination at the conclusion of the consultation than now. I have accordingly decided not to volunteer my own opinions at this stage. A number of legal outcomes are possible depending on the policy decisions taken following consultation.

Additional observations in relation to Recommendation 2

151. In terms of what is registered, I have questioned inclusion of role because (1) an individual's role may change over time within an organisation; and (2) I have concluded that the definition of role is not relevant to the duty to register an employee. This detail may be addressed by any process of consultation. I believe the location of deployments is necessary, although again a matter for consultation, since it will enable the prospective employer (and law enforcement agencies) to identify the relevant jurisdictions in which to conduct criminal background checks. Under this principle, country of residence may also be included.
152. As set out, the primary obligation would be on the employing organisation to register the individuals it engages on its aid and development programmes. Any other approach would invite manipulation by the potential offender. I observe that the data recommended for mandatory inclusion is less intrusive than that typically requested on a visa application, and for that matter many other routine applications.
153. The clear conclusion of those present at a steering committee meeting was that the obligation to register should extend additionally, wherever possible, to (i) those working for partner agencies in country; and (ii) any third-party private organisation in receipt of donor aid or working on IDPs (international development programmes) with donor permission, again with all employees/volunteers required to register regardless of role description. Any private organisation registering with the aid worker misconduct disclosure scheme would be subject to this duty.
154. I agree with this philosophy. Equally, the consultation should address the challenge of imposing this requirement on in country partners that are not aid organisations, for example schools and medical facilities or religious groups. If it is concluded that not all individuals employed by such organisations can or should be within the mandated duty of registration, the duty to ensure that core safeguarding

standards are met in the delivery of any project through them would fall back on the donor funded organisation. It may be that foreign nationals working for such partner organisations would still have to come within the mandated duty in order to prevent them exploiting the difference between organisations in country.

155. I do not find the imposition of this duty on funded organisations over in country partners objectionable. Diplomacy will be required. But the result should be the raising of standards in the sector. The duty to deliver core safeguarding standards would come under recommendations 3 and 4, below.
156. Any approach based on role description misses the fact that those in any role may engage in SEAH, whether in country or not, and sometimes against co-employees. I received evidence of in country directors demanding sexual relationships from junior colleagues to avoid an adverse reference. Further, it would add an additional layer of complication to what is intended to be a global scheme applicable to every individual working in the international aid sector. It is in one sense a professional registration and accordingly role descriptions are not relevant. Further, if – as is entirely foreseeable – the registration database were to be extended over time to include other records registered with the consent of the individual, for example validated qualifications and vetting histories, role descriptions would again be unhelpful to the coherence of a single database.
157. The process of consultation should consider whether a registered individual could register verified earlier work (with associated scheme-approved contacts in preceding employers). If so, it would need to be understood that such employee-made entries did not represent a verified continuous employment history, and the form in which data was recorded would need to differentiate the source of any information.
158. A separate question is whether the obligation may be applied to existing donor funded schemes, or simply future schemes. The answer to this will lie in the specific terms of funding in place, coupled with the terms of employment between organisations and employees.
159. I also observe that although there are problems with the UN, some of the UN's subsidiary organisations are reportedly considering signing up to the aid worker misconduct disclosure scheme. The registration card would apply to these schemes even if UN employees (or those deployed as military peacekeepers) may still enjoy absolute or functional immunity in other respects.
160. The scheme would continue to operate alongside INTERPOL's schemes. In terms of ensuring that accountability is cemented with the employing organisation in-country, and that a key objective is to raise safeguarding standards and child protection through law enforcement locally, what I recommend is wholly consistent with the philosophy of local accountability and resourcing.
161. As set out below, I recommend not just that future donor funding is contingent on the funded organisation mandating registration of those it employs directly, but additional duties on the same organisation to ensure both registration of staff and the delivery of core safeguarding standards by partner agencies in-country. Meeting these duties would be part of any independent inspection and a pre-requisite to funding.
162. At risk of repetition, as to biometric proof of identity, this is both technically possible (I observe again that many thousands of beneficiaries of aid on IDPs already have to register biometrically) but necessary to the most effective practicable delivery of the scheme. In the modern world, and especially given the

reality of in country verification (i.e. impracticable and/or unreliable based on hard copy documents) this is the only approach that appears to guarantee proof of identity. Biometric data would be associated with other secure means of accessing the database if the requisite biometric reader was unavailable: for example, the various approaches taken by ID2020 summarised above. Particularly if used with some form of independently verified photographic identification on the register this may provide the best alternative mechanism. Any system based on documentary records produced by the individual will be exploited to avoid its objectives.

163. Finally, I recommend – and all members of the steering committee agree – that whatever is held by the individual it is called a ‘registration card’ (or similar) rather than ‘passport’. The latter may be said to imply some kind of verification of suitability to work in the sector, whereas of course it is simply (at present) intended as a database of neutrally registered information. One recurring theme in institutional safeguarding is disproportionate weight being given by employers to pre-employment checks, as if they were some kind of enduring safety certificate.⁴⁹ They are not: good safeguarding involves understanding that, and continuing scrutiny of post-recruitment conduct. What I recommend is a neutral registration card for the international aid sector, in whatever capacity an individual is engaged.

Recommendation 3: donor mandated minimum core safeguarding standards, and independent inspections

164. There are two other core recommendations that are essential if such a registration scheme is to promote genuine improvements in the international aid sector. It should be uncontroversial that serious improvement is required as to (i) the standards of safeguarding; (ii) associated misconduct procedures where SEAH is either suspected or reported; (iii) evidence-led decision making as to addressing SEAH in the sector; and (iv) accountability of organisations for SEAH and misconduct.
165. Sector-wide reform leading to significant improvements in these areas would help protect vulnerable beneficiaries of international aid, and those delivering such international aid.
166. The first of these recommendations is for donors to mandate minimum standards of delivery in all aspects of safeguarding by an organisation as a condition of funding. This would extend to all aspects of the delivery of core safeguarding standards, and include mandatory independent inspections by e.g. KCS or HQAI, which already conduct them for organisations that ask (I observe that although some perceive that HQAI appears to be directed only at humanitarian organisations, development organisations appear to be reflected in those audited).

Mandating standards

167. I am increasingly clear that there is no need to recommend the creation of such standards: they are already widely available and mature (e.g. see KCS standards; the UN Secretary-General’s Bulletin on Preventing Sexual Exploitation and Abuse (ST/SGB/2003/13, as revised); the HQAI standards for inspection; the Core Humanitarian Standards; the 2019 Inter-Agency Standing Committee (IASC) Minimum Operating Standards on Preventing Sexual Exploitation and Abuse (PSEA); and the due

⁴⁹ In an emergency situation, for example, it may be that a document described as an ‘aid worker passport’ would be confused with implied approval for entry equivalent to the UN *laissez-passe* system

diligence criteria already used by funders (albeit differently defined as between donors)). As already stated, there is a wider history of commitment and associated initiatives into achieving these standards.⁵⁰ Such standards also evolve: for example, in the UK there is an emerging consensus as to the need for institutions to develop policies, and a cultural approach, based on reporting and acting on so-called ‘low-level concerns’ as distinct from a threshold of ‘allegation’.⁵¹

168. It is also an existing part of the global strategy to develop a common set of definitions for SEAH to apply across the sector. Whilst there remain some challenges in terms of otherwise lawful sexual activity in country with those under 18 (i.e. children), and lawful in country transactional sexual activity, these are issues that cannot be resolved by the legal review. Anyone considering the point however should review the 23 September 2019 *IASC Six Core Principles Relating to Sexual Exploitation and Abuse*⁵² that not only address the issue in terms of employment (Principle 1: ‘Sexual exploitation and abuse by humanitarian workers constitute acts of gross misconduct and are therefore grounds for termination of employment’), but – without exception – prohibit sexual activity with children and ‘mistaken belief regarding the age of a child is not a defence’ (Principle 2). Similarly they define prohibitions on transactional sexual activity and abuse of position in broad and emphatic terms. For my part, the revised Core Principles are both welcome and unambiguous. Absent a single international code of conduct, in my opinion any future individual code of conduct in this sector should include these Core Principles. They should become non-negotiable standard terms of engagement.

169. These Core Principles reflect my position that such sexual activity should be regarded as intrinsically inconsistent with the standards of the international aid sector. This is no more than to endorse the position of those adopting the commitments at the 2018 London Summit. The reality is that the

⁵⁰ For example, donor signatories to the London Summit 2018 agreed to ‘... demonstrate adherence to one or both sets of international minimum standards related to preventing sexual exploitation and abuse (PSEA), namely the Inter-Agency Standing Committee Minimum Operating Standards on PSEA, and/or the PSEA elements of The Core Humanitarian Standard on Quality and Accountability’; and 30 members committed to the DAC Recommendation in 2019, including the 5th pillar requiring them to ensure international coordination on SEAH between donors and implementing partners to set clear standards and expectations, including existing commitments to the CHS and the IASC MoS-PSEA

⁵¹ *Developing and implementing a low-level concerns policy: A guide for organisations which work with children* Safeguarding Unit, Farrer & Co (Adele Eastman, Jane Foster, Owen O’Rourke and David Smellie), Marcus Erooga, Katherine Fudakowski and Hugh Davies QC

<https://www.farrer.co.uk/globalassets/clients-and-sectors/safeguarding/low-level-concerns-guidance-2020.pdf>

⁵² <https://interagencystandingcommittee.org/inter-agency-standing-committee/iasc-six-core-principles-relating-sexual-exploitation-and-abuse> published 23 September 2019. In full: (1) Sexual exploitation and abuse by humanitarian workers constitute acts of gross misconduct and are therefore grounds for termination of employment. (2) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief regarding the age of a child is not a defence. (3) Exchange of money, employment, goods, or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour is prohibited. This includes exchange of assistance that is due to beneficiaries. (4) Any sexual relationship between those providing humanitarian assistance and protection and a person benefitting from such humanitarian assistance and protection that involves improper use of rank or position is prohibited. Such relationships undermine the credibility and integrity of humanitarian aid work. (5) Where a humanitarian worker develops concerns or suspicions regarding sexual abuse or exploitation by a fellow worker, whether in the same agency or not, he or she must report such concerns via established agency reporting mechanisms. (6) Humanitarian workers are obliged to create and maintain an environment which prevents sexual exploitation and abuse and promotes the implementation of their code of conduct. Managers at all levels have particular responsibilities to support and develop systems which maintain this environment.

imbalance of power between the aid worker (or UN peacekeeper) and local population is such that the risk of exploitation is so great that sexual activity with (i) all beneficiaries of a project; (ii) all children (i.e. under 18 years' following the international definition) in country; and (iii) 'lawful' commercial transactional sexual activity even with adult members of the local population, should be prohibited for such international aid workers. This is no different an approach than applies to the conduct of other regulated professions. The hundreds of children fathered by now absent UN personnel in Haiti demonstrates the realities and the artificiality of concepts of consent in this context.

170. If exceptions based on local jurisdiction norms are to exist at all, these should be narrowly defined on a project by project basis by donors.
171. As the steering committee is aware, it has been possible to define the Core Humanitarian Standards. In principle it should be possible to define equivalent core safeguarding standards. Although a matter for consultation, my present view is that this is not necessary. For any individual project, a donor – or, preferably, all donors engaged in the same location – could agree that a particular existing set of standards be adopted and applied by the funded aid organisations, for example the IASC or KCS standards. These standards would apply, and in addition such specific project requirements as arise from the necessary, and detailed, in country risk assessment of specific risks that should precede deployment.
172. The harmonisation of standards by donors is a work in progress by others: see for example the 2020 event run by the Humanitarian Networks and Partnerships Week '*Towards Grand Bargain Commitment 4: harmonising donor assessments and CHS verification*'.⁵³
173. These standards extend to the code of conduct; training; reporting; recording; investigation and outcomes. If donors could agree a common set of standards for a project, aid organisations would not have to conduct separate due diligence processes in this respect for different donors on the same project, at least as to agreed core elements. This reduction in duplication would benefit these organisations.
174. It would extend as well to the minimum standards of investigation and determination of allegations of misconduct. This is important since (i) these standards are reputationally low; and (ii) it is these misconduct findings that are the subject matter of data exchanged by organisations through the aid worker misconduct disclosure scheme. Those affected need confidence that fair processes will be followed and enforced.
175. Stated shortly, mandating these core safeguarding standards as a condition of funding appears to benefit vulnerable people; aid organisations; and individual aid workers.

Independent inspections

176. Associated with this approach is the necessity of independent inspection of aid organisations both (1) as to safeguarding standards generally within the organisation; and (2) delivery on specific projects.
177. The necessity of independent scrutiny is hardly a revolutionary concept in any other regulated context. Independent audit of these standards should help affected aid/development workers accept the package we are proposing.

⁵³ <https://hqai.org/hnpw2020-summary/>

178. The Humanitarian Quality Assurance Initiative – ‘HQAI’ – is a respected independent specialist body offering third-party quality assurance to the sector. According to its website⁵⁴ the certification it offers is accredited ‘against the ISO/IEC 17065:2012 standard for bodies providing audit and certification against products, processes and services. Through the accreditation HQAI can objectively demonstrate that, as a certification body, it complies with best practice and is competent to deliver a consistently reliable and impartial service which meets the internationally recognised standards’. (I observe that something equivalent will be required for non-humanitarian contexts or for organisations in the sector outside those addressed by HQAI).

179. Further,

There is a dual goal to third-party quality assurance:

Provide an objective and independent assessment of where an organisation stands in the application of a reference standard (e.g. Core Humanitarian Standard CHS). This assessment offers a benchmark against which to measure progress and allows a focus of resources to where they are most appropriate for improvement;

Give confidence to all parties that an organisation fulfils or is continuously improving the quality and accountability of its services to affected populations.

The value of the processes lays in their professionalism, impartiality and in the robustness of the third-party quality assurance mechanisms. The impartial and competent assessment of performances in the application of a reference standard builds stakeholders' trust and strengthens the position of an organisation towards partners in the sector.

In this context HQAI offers three core services: benchmarking, independent verification and certification against the CHS. They build on similar principles, processes and tools which makes them compatible one with another:

Benchmarking is a one-time independent and objective diagnosis of the situation of one or a group of organisations with regard to the Core Humanitarian Standard (CHS), good practices or commitments

Certification is the independent and objective assurance that an organisation or a group of organisations meet the requirements specified in the CHS, good practices or commitments. A certificate is valid four years, providing periodic checks confirm the continuing conformity with the requirements of the standard.

Independent Verification and Certification against the CHS are conducted within the CHS Alliance Verification Scheme.

180. Given the creation and enforcement of common and harmonised standards does not appear controversial, one consideration is whether aid organisations are matching corporate mission statements

⁵⁴ <https://hqai.org/services/>

with genuine investment in independent scrutiny of these standards. It is also to be observed that the international aid sector to which I recommend any registration scheme would extend is more extensive than humanitarian projects and organisations inspected by HQAI. Once core standards are defined, no organisation should enjoy a monopoly of rights to inspect. Different organisations could be nominated for different projects. Local inspectors should be trained to international standards as part of the development of safeguarding networks.

181. In this context, the number of aid organisations that have either sought certification, verification or benchmarking by HQAI appears disproportionately low. The data is available on its website.⁵⁵ Only 20 organisations are certified; 9 are verified; 3 (UNICEF; ADRA International; Plan International Germany) are benchmarked. One only has to read any of these inspection reports to appreciate their objective value.
182. The reasons I have been given for this lack of commissioning include the resource implications, and the adverse reputational consequences of a negative inspection. One organisation is reported to have lost donor funding following inspection. There may be a cultural reluctance to see the necessity of such independent scrutiny, arguably a manifestation of the ‘non-profit paradox’. Whatever the reasons, any culture of resisting external scrutiny must be made to change.⁵⁶
183. My conclusions are (1) that such independent audits, both of organisations generally, and during any project, are absolutely essential to ensuring appropriate safeguarding standards and misconduct procedures are delivered; and (2) as and until they are mandated by donors, a high proportion of aid organisations will not conduct them. How these are resourced is a distinct and probably fact-specific question: donors/clients could add a review line to their budgets when applying for grants/funding; donors/clients could fund it themselves from a separate budget line; or it could be done as a hybrid of these alternatives. From a legal perspective each is lawful.
184. Accordingly, and as a necessary corollary of a registration scheme that is directed at accessing and acting on misconduct findings, I recommend that donors mandate organisation and project specific inspection and audits by HQAI or equivalent as a condition of funding.
185. Once done, all donors could rely on the certification, and duplication by the affected aid organisation could be mitigated if not avoided. If mandated to all equivalent scale organisations there is no risk of competitive disadvantage. It would be a necessary but significant step change in the long overdue professionalisation of the sector, and do no more than bring it into line with equivalent local jurisdiction regulatory regimes. These local regulatory regimes do not – indeed cannot – operate effectively cross-jurisdictionally. This certification of the organisation would operate as the starting point for what is required for a specific project: each project requires specific risk assessment and production of corresponding context-specific additional defined obligations and duties.⁵⁷ Delivery of these would be subject to inspection.

⁵⁵ <https://hqai.org/organisations/>

⁵⁶ Whether, and to what extent, the same propositions apply to private sector contractors – who engage in the sector on commercial terms – would be a matter for empirical research. This supports the bases for recommendation 4

⁵⁷ KCS and Reading University ‘Protection of Civilians and Safeguarding Children’ 2014 toolkit confronts the issue in direct terms: ‘There is an effective and robust method for child safeguarding that can be used to provide prevention, protection and safeguarding specifically in relation to children within peacekeeping. The toolkit, versions of which have been implemented successfully in thousands of organisations in nearly every

Recommendation 4: mandatory and consistent reporting of safeguarding and misconduct data

186. The second of these is that there must be greater reporting of relevant safeguarding and misconduct data (1) to the donors; and (importantly) (2) to third-party researchers. This reporting should be a condition of funding.
187. A clear theme that has emerged is the lack of empirical data as to safeguarding and misconduct in the international aid and development sector. This theme is echoed by INTERPOL; academics; those in the sector; and the immediate experience of those conducting the legal review. The lack of coherent and accessible data as to patterns of safeguarding and misconduct in this sector is striking and unacceptable. Even where data exists it is not prepared to common definitions: for example, the same body of evidence may produce an outcome of ‘unsubstantiated’ in one organisation, but ‘proven’ in another, if different rules of admissibility of evidence and/or standards of proof have been applied.
188. Even allowing for these differences, such data is essential for multiple purposes, including (i) the necessity of accountability by an individual organisation; (ii) understanding and quantifying the nature of safeguarding risks in the sector; (iii) promoting informed risk assessments as to the future; and (iv) promoting mitigation of risks across the sector, and/or in individual countries/regions.
189. For recognisable, but defensive, reputational reasons organisations do not make public such data, even in the anonymised form we all accept it would have to be (anonymous in terms of the victim/survivor, offender, etc.). I repeat: the lack of any coherent and consistent data, even that dis-aggregated from the identity of the organisation but rather looking at the totality of safeguarding across multiple organisations in one country or region, is striking and wholly counter-productive to accountability and understanding risk. What is the scale of offending? What proportions of offenders are non-local for example? How is offending occurring? What are the characteristics of the victims/survivors? Is the identified SEAH transactional and, if so, what are the characteristics of the transactions?
190. My recommendation is that donors agree, as part of core standards, that certain data must be provided (1) to them; and (2) (possibly different data) to defined third-parties and/or open source.
191. Mandating the same requirements on all funded organisations plainly eliminates the risk of any one of them achieving a competitive reputational advantage. At present there is no incentive for such

country in the world, is based on international standards for child safeguarding, and is implemented within an organisation through (i) assessment of current policies and practices, (ii) a robust mapping of relevant local and international laws and practices on child safeguarding, (iii) developing context-specific policies, measures and procedures based on the organisation and the legal mapping, (iv) training, and (v) follow-up’; [11] is sets out ‘... those standards are contained in ‘Child Safeguarding Standards And How To Implement Them’ (2014) and draw upon a range of international legal instruments’; Paras [13] and [14] set out data; and [22] a model for informed, detailed local jurisdiction risk assessment: ‘The mapping of international, UN, and TCC/PCC laws, norms and standards will be contained in a central database held by the [UN]. As a result, any mapping for a new mission will only require a mapping of local laws in order to produce context-specific safeguarding measures. Knowledge of laws and practices provides an essential evidence-base for co-producing and implementing robust and context specific safeguarding measures’. Exactly the same principles could apply to non-UN peacekeeping projects

organisations to live up to their corporate mission statements and be transparent as to their safeguarding records. There are many counter-incentives. Scrutiny, most obviously but not exclusively public scrutiny, really only arises where there is a well-publicised major incident, such as Haiti.

192. HQAI publishes some of its reports (but only with consent of the organisation audited) and makes the following observation in its 'History' document:⁵⁸

While no data regarding an organisation's assessment is released without consent, the data from all those having undertaken any of the independent quality assurance pathways (benchmarking, independent verification and certification) can be aggregated to understand overall trends in the sector. Owing to the number of organisations it has audited, HQAI is one of the few organisations to possess identical data sets on indicators relating to quality and accountability from a broad range of different organisations collected at regular intervals during the auditing cycle. In the coming years, HQAI will be conducting some of the first empirical research into the impact of independent quality assurance on humanitarian organisations' service provision to affected populations.

193. This statement serves to confirm two propositions. Firstly, that there is presently no single set of reporting standards that operate in the sector to enable evidence-led decision making. Secondly, such data as does exist is under the control of third-party organisations and largely inaccessible to others with a legitimate public interest claim in seeing it, including but not limited to academics, researchers and other organisations. This is surely unacceptable.
194. Defining what is reported; to whom; and how would necessarily reflect a process of consultation across the sector with stakeholders. Clearly, core principles would include the necessity of protecting the identity of all victims/survivors (simply removing a name does not always achieve this, since identities may be revealed by triangulation of information), and those of the party against whom misconduct is either alleged or proved. Protections would have to be considered to reflect and protect those with specific characteristics, for example members of the LGBT community in some jurisdictions.
195. The basic recommendation is however clear. Many that I consulted regarded recommendation 4 as the single most important of those advanced. As a minimum I regard it as a central and necessary component. Without it, accountability and evidence-led decision making will continue to be seriously compromised.

v. Conclusions

196. The recommendations are intended to be read as a package, and it is recognised that they require due critical scrutiny and consultation. It is also recognised that the proposed registration scheme produced may only produce an organisation-led verifiable record from the date of introduction of any scheme: earlier work histories will still remain vulnerable to non-declaration by an offending individual. Over time, however, the integrity of the database will build and it will contribute to the ecosystem of protection.

⁵⁸ https://hqai.org/wp-content/uploads/history-of-hqai_web.pdf

197. Donors could define and mandate the core safeguarding, inspection and reporting standards just as they do with the core humanitarian standards and other financial standards.

198. I conclude with a couple of salutary references from the June 2019 IC report into Oxfam.

199. As to in country capacity, its conclusions include:

The research team also found a substantial lack of effective, accessible safeguarding mechanisms in the communities it visited. Alleged perpetrators represent a variety of aid actors, so community members often have a hard time understanding which organization employs an alleged perpetrator; also, interagency reporting mechanisms are not widely available, and people may not even know about them. At the time of writing, one of the research countries has no interagency mechanism in a major humanitarian operation underway. General feedback and reporting mechanisms exist in most of the program sites visited, but community awareness of these mechanisms is weak, information is not always available in local languages, and its use is hindered by the low literacy levels among the local people. At each refugee camp site the research team visited, an extremely small number of participants received any kind of awareness raising regarding sexual exploitation and abuse, and the number of focal points for such information was extremely limited.

200. Further:

In one country the IC visited, for example, Oxfam convened a meeting with partners to share that it planned to prioritize safeguarding, but partner staff did not understand what that meant functionally, and no training took place. Only 46 percent of Oxfam's partner survey respondents affirmed that they undertake a safeguarding risk assessment for all projects and activities to identify and mitigate risks to children and other vulnerable people with whom they work or encounter.

201. The overall pattern was that even where policies existed they too often existed on paper and were not reflected in practice.

202. Much of what I have recommended is simply building on existing initiatives. That is deliberate. Equally, the necessity of fundamental and immediate reform should be recognised by every actor in the sector. After decades of failed self-regulation, the sector will have to be mandated to move as one if the requisite reforms and professionalisation reflected as agreed objectives in the 2018 London Summit commitments are to be achieved.

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30 April 2020



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Hugh Davies QC's principal areas of specialisation are criminal law (including fraud and corporate regulation); police complaints, misconduct and public regulation; inquests; public inquiries; professional misconduct proceedings; the regulation of child protection in institutions; and claims for judicial review arising in each of these areas.

He has extensive experience of prosecuting and defending serious crime of all types, including offences against children. He prosecuted the first allegations of grooming under the Sexual Offences Act 2003, and of causing or allowing the death of a child under the Domestic Violence Crime and Victims Act 2004.

He was Chambers and Partners professional discipline junior of the year in 2009, and QC of the year in 2016.

He was instructed as Counsel to the Inquest into the death of Alexander Litvinenko, the Russian former KGB officer allegedly poisoned by polonium 210 in London in 2006.

In 2011 he was awarded an OBE for services to children and young people reflecting his role as voluntary legal adviser to the Child Exploitation and Online Protection Centre (CEOP). In 2013 he was lead author of an ACPO commissioned multi-specialist report that resulted in the Government enacting legislative reform of the sexual civil prevention order regime in the Anti-Social Behaviour Crime and Policing Act 2014. He advises institutions as to safeguarding responsibilities and performance. He led the independent review into the criminal conduct of William Vahey at Southbank International School, and into RNIB's safeguarding management and governance of regulated services as part of the Charity Commission's statutory inquiry in 2018 – 2019 (outcome expected summer 2020).

He is a member of the UK Government's Department of Media, Culture and Sport's multi-agency committee into domestic safeguarding, which produced national guidance and other resources in 2018 - 2020, and co-author of the 2020 guidance *Developing and implementing a low-level concerns policy: A guide for organisations which work with children* <https://www.farrer.co.uk/globalassets/clients-and-sectors/safeguarding/low-level-concerns-guidance-2020.pdf>

He is a member of the multi-agency DFID co-ordinated Aid Worker Steering Committee exploring how to create and manage an international system of registration for aid workers in the development and humanitarian sectors.