



Department
for International
Development



Legal Review consultation

Aid Worker Registration Scheme

June 2020

This legal review was commissioned by a cross-sector Steering Committee established in 2019. Members of the Committee include:

- **Hugh Davies, QC**
- **Catherine Edginton**, Senior Safeguarding Lead, Charity Commission;
- **Laurent Felgrolles**, Vulnerable Communities Programme Manager, Interpol;
- **Kathryn Gordon**, Executive Director People and Organisation Development, VSO;
- **Sharon Garner**, Resourcing Consultant, Cardno.
- **Sir Oliver Heald QC**, Member of Parliament (MP) for North East Hertfordshire (and co-author of the 2019 IC Report into Oxfam);
- **Alex Jones**, Deputy Head of Emerging Futures and Technology, Emerging Policy, Innovation and Capability (EPIC), DFID;
- **Sarah Maguire**, Global Director of Safeguarding, DAI, and member of the Safeguarding Leads Network;
- **Laura McDonald**, Senior Director Insights & Impact, Digital Impact Alliance;
- **Fiona Power (chair)**, Deputy Head Safeguarding Unit, DFID;
- **Gareth Price-Jones**, Executive Secretary, Steering Committee for Humanitarian Response (responsible for the aid worker misconduct disclosure scheme);
- **Steve Reeves**, Director of Child Safeguarding, Save the Children;
- **Cheryl Richardson**, Head of Human Resources, Plan International UK;
- **Claire Sanford**, Director of Humanitarian Business Transformation, Save the Children;
- **Georgina Sheppard**, Strategy and Programme Manager, Safeguarding Unit, DFID
- **Peter Taylor**, Head of Safeguarding Unit, DFID;
- **Valdecy Urquiza**, Assistant Director of Vulnerable Communities, Interpol;

This is not a government consultation and does not represent government policy. The recommendations are those of the Committee.

Introduction

This presentation will guide you through the legal review consultation process for the Aid Worker Registration Scheme.

It provides:

- The context of the idea and problem statement
- The employment cycle initiatives that the registration scheme is a part of
- An introduction to the Aid Worker Registration Scheme
- A summary of the recommendations from the legal review
- Guiding questions for your consideration and response

Context

At the 2018 London Summit on Safeguarding, [8 sets of organisations made commitments to raise safeguarding standards](#), particularly in relation to sexual exploitation and abuse and sexual harassment (SEAH), across the aid sector.

These commitments were based around **four fundamental changes** for the way the aid sector operates:

1. Ensure **support for survivors**, victims and whistle-blowers, enhance accountability and transparency, strengthen reporting and tackle impunity.
2. Incentivise **cultural change** through strong leadership, organisational accountability and better human resource processes.
3. Agree **minimum standards** and ensure we and our partners meet them.
4. Strengthen **organisational capacity and capability** across the international aid sector, including building capability of implementing partners to meet the minimum standards.

SEAH in the Aid Sector: Problem Statement

Aid workers have been able to enter or move around the international aid sector without prospective employers being aware of previous misconduct, including SEAH.

The **globalised, highly-mobile** and sometimes **chaotic** nature of humanitarian and development work presents challenges for organisations and aid workers in obtaining and maintaining **robust employment screening**.

Individuals with a **past history of misconduct** may not be identified as such and could continue to work in the sector, potentially putting others at risk.

The Aid Sector Response: the employment cycle initiatives

Organisations across the sector have been working to address these challenges through a number of inter-related initiatives, designed to detect and deter abusers, improve employment practices, strengthen background checking and reduce the ability of perpetrators to move between organisations. These are known as the 'employment cycle initiatives', and include:

1. **Project Soteria** focuses on using INTERPOL's tools and services to enable international law enforcement coordination and to support wider efforts to limit access of sexual offenders to aid sector positions.
2. **Misconduct Disclosure Scheme** (run by the Steering Committee for Humanitarian Response) provides a framework for organisations working in the aid sector to share information about someone's sexual misconduct during employment via a disclosure form. [www.schr.info/the-misconduct-disclosure-scheme]
3. **Aid Worker Registration Scheme** which will provide an accurate work history linked to a person's identity. It is being developed by a multi-agency committee and will be piloted later this year.

Employment cycle

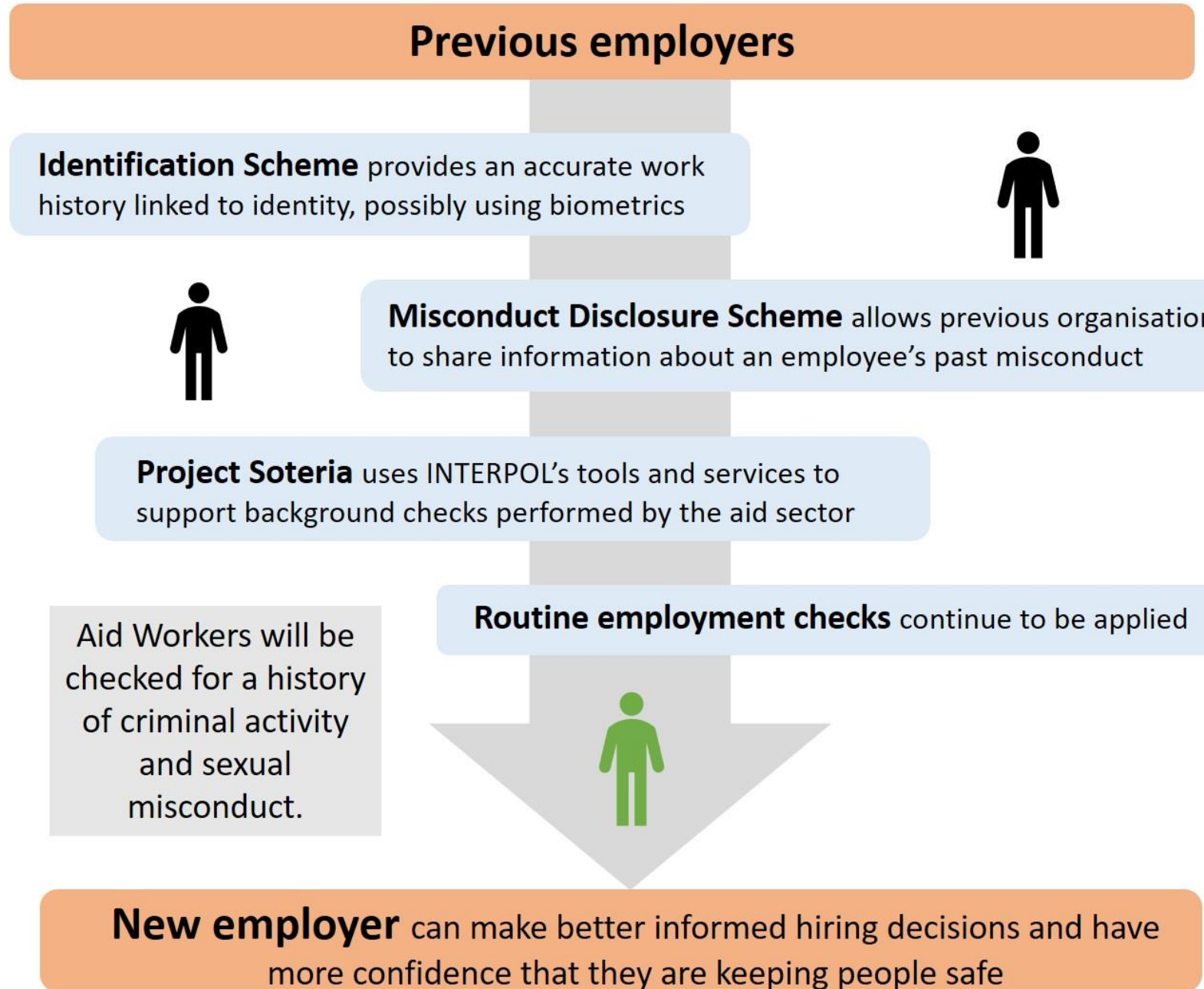
initiatives to tackle sexual exploitation and abuse and sexual harassment in the international aid sector



Perpetrators of abuse may:

- Lie about their identity
- Falsify their work history
- Falsify references
- Avoid criminal reference checks

Working together these initiatives help keep people safe from sexual exploitation and abuse and sexual harassment



Current status of the initiatives

Project Soteria: operational and currently in a pilot year. Has so far identified five potential workstreams:

- An online platform to support background checks performed by the aid sector and information sharing between law enforcement agencies and aid sector organisations;
- Law enforcement capacity building in priority countries;
- Criminal analysis and operational support to law enforcement;
- Assistance to the aid sector by INTERPOL in the prevention and detection of abuse; and
- Promotion of information sharing at a global level and INTERPOL Green Notices.

Misconduct Disclosure Scheme: operational. 2,600 checks conducted in 2019; 36 people were not employed as a result of information shared.

Aid Worker Registration scheme: Multi-agency steering Committee established in 2019. Legal review now complete. Consultation underway. Pilot planned for autumn 2020.

Aid Worker Registration Scheme

The Aid Worker Registration Scheme Steering Committee was established in May 2019 consisting of legal, technology and human resource experts from across the aid sector.

The Committee commissioned a legal review in 2019 which was conducted by Hugh Davies, QC.

This examined the legal basis for the establishment of a sector-wide Aid Worker Registration Scheme which links an individual's work history to a confirmed identity.

The review makes four wide-ranging recommendations about the registration scheme and wider processes across the sector aimed at raising standards across the sector.

We are now circulating the review for comment across the aid sector to gather opinions on the conclusions and recommendations drawn.

Legal Review recommendations

- 1) No single regulator for the international aid sector
- 2) Donors to mandate – to NGOs and private sector contractors – as a condition of funding:
 - I. registration with the inter-agency misconduct disclosure scheme (which should accordingly include private sector entities); and
 - II. 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
- 3) As a condition of funding, donor mandated minimum core safeguarding standards, and independent inspections
- 4) As a condition of funding, mandatory and consistent reporting of safeguarding and misconduct data

Legal Review recommendation 1

No single regulator for the international aid sector

- The possibility of a single entity to receive and control misconduct data from international aid organisations was considered as part of this review. Although superficially attractive, this possibility was rejected on a number of clear bases:
 - There are insurmountable legal difficulties in certain jurisdictions (e.g. Germany) that would prevent employers distributing misconduct data of this type
 - 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
 - The scale of such an entity would be massive, and it would require corresponding financial, human and technical resources.

Legal Review recommendation 1 *cont.*

No single regulator for the international aid sector

- If the entity became responsible for distributing such misconduct data, it would also become responsible for the accuracy and legitimacy of what was distributed. It is 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 findings, this implying a procedurally compliant appeal process for the person affected. No single organisation could perform this regulatory/appellate function.
- Were such a role to be adopted it would produce serious adverse consequences across the sector, including discrimination and a lack of local accountability.
- 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.

Legal Review recommendation 2 (i)

Donors to mandate – to NGOs and private sector contractors – as a condition of funding:

(i) registration with the inter-agency misconduct disclosure scheme (which should accordingly include private sector entities)

- The review concludes 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.
- 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.

Legal Review recommendation 2 (ii)

Donors to mandate – to NGOs and private sector contractors – as a condition of funding:

ii) 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

- The review recommends that all those engaged in the delivery of aid or development projects (emergency or humanitarian), and in whatever capacity should be required to be registered biometrically (where lawful) 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.
- 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.
- The data registered would be limited and not include misconduct data. It would instead contain information about an individual's work history.

Legal Review recommendation 2 (ii)

Donors to mandate – to NGOs and private sector contractors – as a condition of funding:

ii) 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

- The review recommends requiring an aid/development organisation to register an ‘employee’ in terms of matters limited to:
 1. biometric identity of person registered (and/or alternative technically secure non-biometric 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 development programme where applicable);
 5. duration of employment;
 6. role description category;
 7. verified and secure independent point of contact within organisation for the purposes of (i) identifying 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
- 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.

Legal Review recommendation 3

As a condition of funding, donor mandated minimum core safeguarding standards, and independent inspections

- International standards already exist and donors should require partners to adhere to them.
- Independent inspections of aid organisations provide an objective and independent assessment of where an organisation stands in the application of a reference standard (e.g. Core Humanitarian Standard) and; gives confidence to all parties that an organisation fulfils or is continuously improving the quality and accountability of its services to affected populations.
- 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.

Legal Review recommendation 4

As a condition of funding, mandatory and consistent reporting of safeguarding and misconduct data

- There is a lack of empirical data as to safeguarding and misconduct in the international aid and development sector. The lack of coherent and accessible data as to patterns of safeguarding and misconduct in this sector is striking and unacceptable.
- Where data exists it is not prepared to common definitions: e.g. 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.
- 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.
- Donors should agree, as part of core standards, that certain data must be provided to them; and (possibly different data) to defined third-parties and/or open source.
- Mandating the same requirements on all funded organisations plainly eliminates the risk of any one of them achieving a competitive reputational advantage.

Consultation

This legal review has been developed and reviewed by the Steering Committee for the Aid Worker Registration Scheme.

The Committee would like your thoughts on the conclusions and recommendations made, with particular focus on recommendation 2(ii) that relates to the establishment of a registration scheme.

On the following slide are a series of questions to guide you in your response. Please don't feel constrained by these and provide wider feedback if you wish.

Please send your responses to g-sheppard@dfid.gov.uk by 31 July 2020. Please also use this address to contact us if you would prefer to provide feedback orally rather than in writing. Many thanks in advance.

The Committee will share a short summary report of the findings within one month of the review to those who submit a response and other interested parties; all inputs will be anonymised and we will not attribute any comments to any individual or individual organisation. The Committee will review the comments and make its recommendations on the way forward.

General Questions

(NB: it is important to read the full legal review before answering these questions.)

1. Are there any recommendations which you disagree with, and if so please say why, including if it is related to the legal basis?
2. What do you see as the most likely barriers to adoption of the recommendations?
3. Do you think the recommendations will contribute to solving the problem outlined in slide 3?
4. Please rank the proposed recommendations in order of importance (1 = most important).
5. Do you have suggestions for other employment cycle initiatives to tackle SEAH in the aid sector?
6. Any other comments on the report are welcome.
7. Please indicate if you would like to be directly involved in the further development and piloting of a Registration Scheme

Questions on recommendation 2(ii)

8. How likely is your organisation/you to engage with the Aid Worker Registration scheme (rec 2(ii))? Please indicate using Very/Quite/Unlikely. Explain the reasoning behind your response.
9. What would be the top 3 benefits and top 3 challenges for your organisation/ you participating in the scheme as proposed?”
10. Are there any “red lines” that you can see in you/your organisation being able to sign up to a Registration Scheme?
11. Do you anticipate significant push back from employees and individuals working in the sector to being part of a Registration Scheme along these lines?
12. If a central register is established, what type of entity would you want to see administering it?
13. Is there key information that you think should be included in the register that isn't listed under recommendation 2(ii)?
14. Are you aware of any existing schemes that already provide this function or a similar function?

Thank you for you participation

If you have any questions or accessibility requirements,
please contact g-sheppard@dfid.gov.uk