



# **The Independent Review of the Disclosure and Barring Regime**

February 2023





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# Foreword

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In accordance with my terms of reference I have delivered a copy of this report to Home Office policy officials. It draws on the entirety of the review team's work and makes some important recommendations to improve and strengthen the disclosure and barring regime.

I wish to thank everyone who has engaged with the review team for their thoughtful considerations and insights into the complex world of disclosure and barring. I hope they feel that it was time well spent.



I would like to record my thanks to Stephen Linehan KC for his support, legal expertise and drafting skills, and James Pierson for the assistance he provided during the review. Without their support I would not have been able to produce the report I have, or to make the recommendations I believe can make a meaningful difference to safeguarding arrangements in England and Wales.

I hope the government supports the recommendations.

A handwritten signature in black ink, appearing to read 'Simon Bailey'.

Simon Bailey CBE, QPM

# Executive summary

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The stated mission of the Disclosure and Barring Service (DBS) is to provide information for employers to help them make safer recruitment decisions.

In the last decade the organisation has conducted 52 million checks and successfully contributed to the safeguarding ecosystem in England and Wales. However, the challenges of protecting children and vulnerable adults are always evolving and new threats periodically emerge.

In response to the challenge, and cognisant of the fact the current disclosure and barring regime had not previously been subject of an independent review, the then Safeguarding Minister, Rachel Maclean, announced in Parliament on 24 February 2022 that I had been appointed to conduct a review to identify key issues of concern about the current regime; to consider current responses to them; assess and advise on risks and opportunities; and make recommendations for improvement.

I agreed my terms of reference (Appendix A) and started the review as soon as my appointment was announced. I was supported by an expert reference group of subject matter experts: Gabrielle Shaw, the Chief Executive of the National Association for People Abused in Childhood; Northamptonshire Police Chief Constable Nick Adderley, the National Police Chiefs' Council Lead for Disclosure and Safeguarding; and Nick Timothy CBE.

I began the review by examining the existing disclosure and barring regime, before engaging with DBS executives and senior staff. Prior to my appointment, the DBS Chair and senior management team had undertaken an exercise to look at areas for improvement which they shared with me at our first meeting. It was clear a lot of thinking had already been done by them to identify areas to improve the regime.

Following this meeting, I engaged extensively across government departments and stakeholders and listened to their observations and concerns. The feedback was consistent and focused on the complexity of the regime and the definition of regulated activity, getting the right balance between safeguarding and rehabilitation, and the risks associated with the self-employed.

A list of those who contributed to the Review is set out in Appendix B.

## **Conclusions**

As a result of reviewing the existing regime, engaging with the DBS, listening to stakeholders and officials across government departments, I believe the disclosure and barring regime, operated by the DBS, is routinely helping employers and organisations that use volunteers to make safer employment decisions. It is therefore delivering its mission. However, there are areas where the regime can be improved by addressing gaps and weaknesses in the existing arrangements and by clarifying an important element of the regime, namely the definition of regulated activity.

I have therefore made eight recommendations to strengthen the regime, and one recommending that further work is done to look at amending the definition of regulated activity to make it more easily understood for those that apply it.

# Recommendations

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## **Recommendation 1**

The definition of regulated activity relating to children be amended to remove the exemption for supervised activity.

## **Recommendation 2**

Consideration be given to amending the definition of regulated activity with the aim of making it more easily understood by those who must apply it.

## **Recommendation 3**

The legislation governing enhanced checks with barred lists checks is amended so that aid workers, who are nationals or residents here, whose contracts of employment are made here and whose work would bring them into contact with aid beneficiaries overseas are eligible.

## **Recommendation 4**

Self-employed persons seeking to work with children or vulnerable adults are rendered eligible to apply for an enhanced DBS certificate with barred list check.

## **Recommendation 5**

An enhanced criminal record check is made mandatory for all councillors in Unitary and Single Tier Authorities who are being considered for appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults. I accept that this would require legislation and therefore some inevitable delay, so I further recommend that these authorities are encouraged to adopt this procedure as best practice pending legislation.

### **Recommendation 6**

Enhanced DBS checks together with barred lists checks are made mandatory for applicants for the grant or renewal of a door supervisor's licence.

### **Recommendation 7**

Enhanced DBS checks together with children's barred list checks are made mandatory for applicants for the grant or renewal of a close protection licence.

### **Recommendation 8**

The Home Office and the DBS continue the work of assessing what, if any, further steps can be taken to mitigate the risk of individuals circumventing the DBS identification validation process, including the consideration of mandating the provision of a birth certificate as one of the documents establishing identity.

### **Recommendation 9**

The DBS carries out the work necessary to establish the feasibility and cost of redesigning the Update service to enable employers, who have been given permission to carry out status checks, to receive notification of any change to the status of the certificate.



# Introduction

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## The regime

1. The disclosure of an individual's criminal history and the barring of an individual from working with children and vulnerable adults are governed by a statutory regime that is intended to protect the public whilst considering the need for ex-offenders to rehabilitate through pursuing employment opportunities. The regime is underpinned by three key pieces of primary legislation, namely: Rehabilitation of Offenders Act 1974; Part V of the Police Act 1997; Safeguarding Vulnerable Groups Act 2006. (The Protection of Freedoms Act 2012 amended both the 1997 and 2006 Acts.) This legislative framework is complex, has evolved over time and reflects changes in Government policy and court judgments.

## The competing public interests

2. The principles underlying the disclosure of an individual's criminal history were considered by the Supreme Court in the case of *R (P, G & W) v SoSHD* [2019] UKSC. The following extract is taken from the judgment of Lord Sumption:

'Such cases raise problems of great difficulty and sensitivity. They turn on two competing public interests. One is the rehabilitation of ex-offenders. The other is the protection of the public against people whose past record suggests that there may be unacceptable risks in appointing them to certain sensitive occupations. The importance of both public interests needs no emphasis. The ability of ex-offenders to obtain employment is often an essential condition of their successful reintegration into law-abiding society at what, especially in the case of young offenders, may be a critical period of their lives. On the other hand, in some employment sectors a more cautious approach is indispensable. The Bichard Inquiry (2004) (HC 653) into child protection procedures and vetting practices was a stark reminder of the importance of ensuring that the rehabilitation of offenders does not undermine proper standards of public protection when those with criminal records apply for jobs involving contact with children.'

## Disclosure and Barring Service

3. The statutory disclosure and barring scheme is administered by the Disclosure and Barring Service (DBS), set up under the Protection of Freedoms Act 2012. The Act merged the functions of the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority and transferred them to a new body, the DBS, a non-departmental public body sponsored by the Home Office. The disclosure and barring regime administered by the DBS operates in England, Wales, and, for disclosure, in the Channel Islands and the Isle of Man. The body known as AccessNI

carries out the disclosure functions in Northern Ireland under similar legislative provisions. The DBS has two functions, namely disclosure and barring. It makes the barring decisions in relation to Northern Ireland.

## **Disclosure**

4. The purpose of the DBS disclosure function is to help employers and organisations to make safer recruitment decisions in respect of employees and/or volunteers.

## **Barring**

5. The DBS performs the barring function described below across all the jurisdictions previously mentioned. The function involves maintaining the Adults' and Children's Barred Lists containing the names of those persons who are barred by law from working with vulnerable adults and/or children in any work that is regulated activity as defined in the Safeguarding Vulnerable Groups Act 2006 (SVGA).
6. Individuals may be barred from working with children or vulnerable adults following conviction or caution for specified offences. The offences are divided into two classes: those which result in an automatic bar (autobar offences); and those where the DBS must give the individual the opportunity to make representations, the consideration of which may result in a decision not to bar (automatic inclusion offences). In the latter cases, the DBS can only bar a person who is or has been, or may in future be, engaged in regulated activity with children and/or vulnerable adults. Without this connection to regulated activity, the DBS is unable to place a person on a barred list.
7. The DBS also makes considered decisions as to whether an individual should be included in one or both barred lists because of conduct that has not led to a relevant conviction but nevertheless may justify a conclusion that they represent a risk to children or vulnerable adults. These cases arise in one of two ways, either because the individual has been referred to the DBS for consideration for barring or because of information appearing on a certificate for which that individual has applied. Referrals are governed by statutory provisions. In the latter case the DBS acts of its own motion.

## **The Review**

8. In February 2022, the Government announced an independent review of the disclosure and barring regime, which I was asked to conduct. The stated purpose of the review was 'to provide assurance to Ministers about the effectiveness of the disclosure and barring regime in safeguarding children and vulnerable adults'.

9. I have attempted to assist those considering this review by setting out the functions of the DBS. As I have said, the legislative framework governing the regime is complex and has evolved over time. Whilst a consideration of the findings of the review does not require a full, detailed understanding of the regime and its history, it does require at least an understanding of the framework. I have set out below a description of that framework largely taken from the final report of the Independent Inquiry into Child Sexual Abuse (IICSA) published in October 2022.

## The framework

10. The IICSA report was the result of seven years' work by the panel and its supporting team. Part II Section E entitled 'Creating a more protective environment for children' makes extensive reference to the disclosure and barring regime. The report sets out a clear and easy to understand description of the framework within which the DBS operates. I have adopted it (IICSA report paragraphs 41-45, 48-50, 53) to prevent differences between the report and the review causing avoidable confusion, although I have made some small amendments and additions which appear in bold. Some of the material is a repetition of matters to which I have already referred but I include them again for convenience.

### The Disclosure and Barring Service scheme (IICSA Report)<sup>1</sup>

41. The Disclosure and Barring Service (DBS) enables organisations in the public, private and voluntary sectors to make safer employment decisions by identifying candidates who may be unsuitable for certain work, especially that which involves children or vulnerable adults. It does so by:

- providing access to criminal records information through its disclosure service;
- maintaining lists of individuals barred from working in regulated activity with children or vulnerable adults; and
- making independent barring decisions about people who have harmed or are considered to pose a risk of harm to a child or vulnerable adult within the workplace.

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<sup>1</sup> [The Report of the Independent Inquiry into Child Sexual Abuse – HC 720 \(iicsa.org.uk\)](https://www.iicsa.org.uk)  
Paras 41–45, 48–50, 53

42. When engaging a person to work with children **(or vulnerable adults)**, the institution or setting is responsible for complying with safer recruitment measures.
43. Some settings may be required by specific statutory guidance to obtain DBS checks. For example, Keeping Children Safe in Education 2021 places an obligation on schools to obtain the appropriate level of DBS check before making an offer of employment for any role. There is, however, no legal obligation to do so for many employers.
44. Applying for the appropriate level of DBS check – a disclosure certificate – is an essential part of safer recruitment because it contains details of an individual's criminal record. It **(a standard or enhanced certificate)** will include convictions and cautions which may be spent or unspent under the Rehabilitation of Offenders Act 1974 and subject to the DBS filtering rules which remove certain older convictions and cautions, albeit not those concerning specified offences (which include violent and sexual offences and offences against children). It can therefore provide an employer with important information about an individual's criminal background and their suitability to work with children **(and/or vulnerable adults)**.

45. The disclosure regime is framed in terms of eligibility for a particular level of check. It is not generally compulsory for employers to obtain a DBS check on a prospective employee. The DBS issues four types of certificate, the extent of the check for each depending upon the role to be undertaken.

Type of Check	Certificate contains	Roles eligible	Who can apply for a certificate	Number issued in 2020/2021
Basic certificate	Details of convictions and cautions that are unspent under the Rehabilitation of Offenders Act 1974	Any role (basic checks can be obtained at any time not only for a job application)	The individual named on the certificate, <b>or the employer with the individual's permission</b>	2.2 million
Standard certificate	Details of unspent and spent convictions, <b>adult cautions (subject to filtering rules)</b>	Certain roles specified in legislation (such as solicitors, barristers, accountants and actuaries) which involve a degree of public trust	Employers (including agencies) registered with the DBS, with the individual's consent	343,000
Enhanced certificate	The same information as standard certificates but also information that the senior officer of the local police force reasonably believes is relevant and ought to be disclosed*	Roles working with children and vulnerable adults, and other positions involving a high degree of trust	Employer (including agencies) registered with the DBS, with the individual's consent	168,000

Type of Check	Certificate contains	Roles eligible	Who can apply for a certificate	Number issued in 2020/2021
Enhanced certificate with barred list check	Barred list checks are only available with an enhanced certificate, and are not available as a standalone check	Regulated activity <b>or a purpose prescribed in legislation e.g. taxi drivers</b>	Regulated activity provider, (employer, including agencies), registered with the DBS, with the individual's consent <b>Licensing authority</b>	3 million

**\* The reference in the table to 'information that the senior officer of the local police force' etc refers to information that is held on local police records about the individual, which the chief officer reasonably believes to be relevant and ought to be included in the certificate.**

48. **[Extract]** Regulated activity does not mean, however, that the activity itself is regulated by any supervisory body, or that the worker engaged in such activity is regulated by a professional regulatory body. Many of those engaged in regulated activity with children **(or vulnerable adults)** are working in occupations that are not subject to workforce regulation, and in settings that are not regulated by any statutory regulatory authority.
49. Regulated activity has a complex definition, set out in the Safeguarding Vulnerable Groups Act 2006. It includes the following activities, provided they are done frequently or for more than three days in a 30-day period or between 2.00am and 6.00am:
- teaching, training or instruction, care or supervision of children (unless the worker or volunteer is supervised on a day-to-day basis by someone in regulated activity);
  - moderating a web service wholly or mainly for children;
  - providing guidance or advice, other than legal advice, wholly or mainly to children; and
  - driving a vehicle for children.

It also encompasses those who work (other than under a contract for temporary or occasional work **or supervised volunteers**) for the same specific frequency in roles where they have the opportunity to come into contact with children in specified establishments, such as educational establishments (including nurseries), detention facilities for children and secure accommodation, children's homes, children's centres and childcare premises.

50. Some activities (such as the provision of personal care or healthcare and registering to be a foster carer or childcare provider) are also deemed to be regulated activity, regardless of where they take place or how frequently they are performed. For example, certain statutory functions such as the inspection of childminding provision, schools, education and training, religious education and the review of local authority children's services are also regulated activities where they give the person the opportunity to have contact with children.
53. Roles which are within the statutory definition of regulated activity with children **and/or vulnerable adults** are eligible for an enhanced certificate with a barred list check. A barred list check can only be obtained by an employer in conjunction with an enhanced certificate – it is not available as a standalone check. If an individual applies for a role working with children **or vulnerable adults** which does not fall within the definition of regulated activity, only an enhanced certificate (without a barred list check) is available, **unless the work falls within the 'other workforce' roles prescribed in legislation.**



# **The Review findings**





# 1. Regulated activity

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## Definition of regulated activity

11. I now turn to the review and begin with the definition of regulated activity. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 provides for the disclosure of matters that would be considered spent under the Act and sets out an exhaustive list of the groups to which it applies, who are thereby eligible for a standard certificate. The purposes for which an enhanced certificate may be required are prescribed by the Police Act 1997 (Criminal Records) Regulations 2002 and known as 'prescribed purposes'. In relation to obtaining an enhanced certificate when considering a person's suitability for working with children or vulnerable adults, the regulations require the work to fall within the definition of 'regulated activity' provided by Part 1 (children) and Part 2 (vulnerable adults) of schedule 4 of the SVGA 2006. There is no exhaustive list. The definition is general, simply because the variety of these roles is such that it would not be possible to produce such a list.
12. Whereas I have received no submissions upon the definition of regulated activity relating to vulnerable adults, the unanimous submission of the stakeholders with whom I have engaged, and who expressed a view, is that the definition of regulated activity relating to children is difficult to understand.
13. In my judgment, those submissions are correct. I am fortified in that conclusion by the IICSA report which describes the statutory definition as 'complex and difficult for employers to understand'. In part this complexity arises from amendments contained in the Protection of Freedoms Act 2012, introduced by the coalition Government with the declared intention of scaling back the vetting and barring scheme to common sense levels. Section 64 of that act restricted the scope of regulated activity as it related to children and excluded roles that were subject to 'day to day supervision' by another person. I quote from the IICSA report Part II, paragraph E.3:55.2:

In 2012 the definition of regulated activity was narrowed to exclude roles which are subject to "day to day supervision" by another person who is engaging in regulated activity. As a result, a role may involve a degree of close contact with children but may not fall within the statutory definition of regulated activity (such as volunteers supervised to a greater or lesser degree by a member of staff). The legislation states that a person does not engage in regulated activity if they are subject to "such day-to-day supervision as is reasonable in all the circumstances for the purpose of protecting any children concerned". Guidance states that the appropriate level of supervision is a matter for the employing organisation to decide. This compounds the difficulty organisations face when trying to understand which roles are regulated activity.

## **Conclusion on the exemption for supervised roles in regulated activity**

14. It appears to me that the approach adopted in 2012, so far as it related to excluding 'supervised' roles, focused on potential abuse occurring in the workplace. Whether or not that approach was correct in the context of that time, it is clear to me that it cannot be correct now. Supervision of individuals having close contact with children cannot prevent those who are so inclined using the opportunity that contact provides to establish relationships which they can then exploit outside the workplace. In my judgment, it is essential that those who are making decisions about the suitability of individuals to work with children, supervised or unsupervised, should have access to the barred list.
15. In this regard I agree with IICSA Recommendation 9: 'Greater use of the barred list' and the reasoning behind it.

## **Recommendation 1: Amendment to the definition of regulated activity**

16. I recommend that the definition of regulated activity relating to children be amended to remove the exemption for supervised activity.

## **Conclusion on the complexity of the definition of regulated activity**

17. I have drawn attention to the complexity of the definition and the acknowledged difficulty it causes to those who must apply it. I recognise that the definition is, of necessity, detailed. I am not suggesting that the meaning of the definition be altered. However, I have concluded that it is desirable, if possible, to provide greater clarity. I have considered whether I could propose a draft that is easier to understand. However, I recognise that that is a task for those competent in the art of parliamentary drafting so I limit myself to recommending that it should be attempted.

## **Recommendation 2: Redrafting the definition of regulated activity**

18. I recommend that consideration be given to amending the definition of regulated activity with the aim of making it more easily understood by those who must apply it.

## 2. Issues raised by IICSA and the International Development Committee

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### UK nationals or residents working overseas: the legal position

19. If a contract for employment overseas, and therefore the employment decision itself, is made within the jurisdictions covered by the DBS, the disclosure and barring regime applies and the employer can obtain DBS criminal record checks according to the eligibility of the role. Aid agencies, for example, can and do conduct checks on staff they are posting overseas. However, if the contract is made outside the jurisdiction, even if the proposed employee is a national or resident here, the role is not eligible for a DBS check. However, in those circumstances, an employer can require an employee or applicant for employment to obtain an International Child Protection Certificate (ICPC) from the ACRO Criminal Records Office. This certificate will confirm whether or not the individual has a criminal history and provide details, including relevant conviction and non-conviction data.

### The relevant Terms of Reference

20. My terms of reference include:  
'...the definition of regulated activity, including issues raised by the Independent Inquiry into Child Sexual Abuse (IICSA), the International Development Committee...'
21. This could be read as directing me to issues raised by IICSA and the IDC upon the definition of 'regulated activity'. Apart from its reference to the complexity of the definition and the difficulties caused thereby, IICSA has raised no issue upon the definition itself nor has the IDC. However, there is a related issue common to both, namely concern over the regimes governing disclosure of criminal records for people working overseas. IICSA's focus is on people working with children whereas the IDC's concern is people working in the International Aid Sector with both children and adults. Both have made recommendations in relation to UK nationals or residents, who apply to work in, or volunteer for, roles that might be regulated activity if carried out within the jurisdictions covered by the DBS.
22. This position of UK nationals and residents working with children or adults in the aid sector is well trodden ground, and it may be helpful for me to assist the reader's understanding by providing some history of IICSA's and the IDC's involvement.

## IICSA

23. In January 2020, IICSA published a report entitled 'Children Outside the United Kingdom Phase 2 Investigation' with sub-titles:
- The protection of children outside the United Kingdom
- and
- Travel restriction orders, extra territorial prosecutions and disclosure and barring regimes.
24. I will restrict myself to the area of disclosure and barring.
25. In that report, IICSA made recommendations in respect of the disclosure and barring regime in relation to persons working with children overseas. I will set out those recommendations together with the Government's response. I recognise that this is somewhat cumbersome, but necessary to avoid the reader having to consult other documents to understand the arguments.
26. **IICSA Recommendation 3:**

Disclosure and barring – extending the geographical reach of the Disclosure and Barring Service scheme

The Home Office should introduce legislation permitting the Disclosure and Barring Service to provide enhanced certificates to UK nationals and residents of England and Wales applying for (i) work or volunteering with UK-based organisations, where the recruitment decision is taken outside the UK or (ii) work or volunteering with organisations based outside the UK, in each case where the work or volunteering would be a regulated activity if in the UK.

### **Government response**

27. I set out the Government's response below:

The Government shares the Inquiry's concerns that effective protections should be in place for children abroad. Criminal record checks are an important part of these protections, and the Government wants to ensure that overseas employers are able to access the information that they need when recruiting UK residents to work with children.

Under current arrangements, individuals applying to work in a school or organisation outside the UK where they will be in regular contact with children can apply for an International Child Protection Certificate (ICPC). This is produced by ACRO Criminal Records Office (a national policing unit which provides criminal records information services to policing bodies and individuals) in conjunction with the National Crime Agency (NCA). The ICPC details the individual's criminal record history in the UK and any relevant information or intelligence on police databases which the NCA deems appropriate for disclosure.

The Government has considered carefully the Inquiry's recommendation which for overseas employers would replace the ICPC with the Enhanced Certificate currently issued by the Disclosure and Barring Service in England and Wales in respect of regulated activity. While the Government agrees with the Inquiry that overseas employers should be able to access criminal records information as effectively and straightforwardly as possible, it is not persuaded that this would be the effect of this recommendation.

The information provided on an ICPC is broadly similar to that provided on an Enhanced Certificate, albeit without a check of the Children's Barred List. In practice the majority of individuals on the DBS's Children's Barred List have a record of convictions, cautions and police intelligence, which can be shared with prospective overseas employers through the ICPC. In other words, although the fact that an individual has been barred will not be disclosed on an ICPC, the information which led to their being barred will in most cases have been recorded by the police so can be disclosed.

Extending the availability of the Enhanced Certificate abroad would also require overseas employers to assess whether the work for which they are recruiting meets the definition of regulated activity for England and Wales as set out in Schedule 4 of the Safeguarding Vulnerable Groups Act 2006. The ICPC sits outside the domestic statutory disclosure framework and disclosure of information is based on police common law powers. The only criterion which needs to be met in order to obtain an ICPC is that the work in question is in a school or organisation outside the UK which involves regular contact with children. Given that the scheme needs to apply to a range of situations in any country across the world, this simpler test is likely to be much easier for foreign employers to apply in practice.

The ICPC is well recognised and used internationally. Between 1 October 2019 and 30 September 2020, there were 10,903 ICPC application requests and 700 new organisations added to the ICPC records. Each month, ICPC applications are processed in an average of around 60 countries within a broader subset of over 130 countries on the ICPC's records. The Inquiry itself commented that no

other country operates such a scheme. The Government notes the concerns expressed by the inquiry that the differences between the ICPC and DBS create a lack of clarity for employers but thinks that the most effective way of addressing this is to build on the existing system.

The Government will continue to work with ACRO to publicise the existence of the ICPC (see recommendation 5 below) and to improve employers' understanding of it and when it can be used, particularly in the aid sector through existing channels.

## 28. **IICSA Recommendation 4:**

Disclosure and barring – extending the mandatory nature of disclosure and barring

The Home Office should introduce legislation making it mandatory for:

- a. all UK nationals and residents of England and Wales to provide a prospective employer overseas with an enhanced DBS certificate before undertaking work with children overseas which if in the UK would be a regulated activity and
- b. UK Government departments and agencies to require their overseas partners to ensure that UK nationals and residents of England and Wales obtain an enhanced DBS certificate before undertaking work with children overseas which if in the UK would be a regulated activity.

### **Government response**

29. Again, I set out the Government's response below:

We have considered carefully the recommendation to introduce legislation to make it mandatory for UK nationals and residents of England and Wales to provide prospective employers with an enhanced DBS certificate before undertaking work overseas which would be regulated activity if it took place in the UK. As indicated above, the Government recognises the value of any employer being able to use criminal record information as part of their recruitment process and is committed to ensuring that overseas employers are able to access the information they need when making recruitment decisions in respect of UK residents.

However, although this recommendation envisages placing the legal obligation on UK nationals, it would in effect amount to the UK Government legislating in respect of employment practices in foreign countries. Foreign employers have to work within their own domestic disclosure regimes which are very different across the world, where they exist, and this recommendation would require foreign partners to undertake checks as if they were in England and Wales, with no regard for their domestic requirements.

Such an approach would require extraterritorial legislation, compliance with which would be almost impossible to monitor and subsequently very difficult to enforce. We do not consider that such an approach would be effective in increasing safeguarding in other countries.

As indicated above, we will continue to publicise the existence of the ICPC to workers and employers and through the ongoing work of FCDO to improve safeguarding standards across the aid sector.

As far as the second part of the Inquiry's recommendation is concerned, we recognise the need for Government bodies to take reasonable steps to ensure that overseas partners have robust safeguarding policies and that those partners carry out all appropriate criminal records checks, along with broader recruitment checks such as references. FCDO is working on 3 initiatives to strengthen the employment cycle across the aid sector that aim to prevent individuals with a known history of misconduct from working in the sector, regardless of their nationality. Together, they will help employers make better informed hiring decisions and prevent perpetrators moving around undetected:

- project Soteria uses INTERPOL's tools and services to better coordinate international law enforcement to limit access to jobs in the aid sector for sexual offenders;
- the Misconduct Disclosure Scheme provides a framework for organisations to legally share information about a past employee's history of sexual misconduct at work; and
- the Aid Worker Registration Scheme will provide employers with a trusted source of evidence about a potential employee's identity and past work history, closing the loop on those who lie or omit information about where they have worked in the past.



## Government's further response

30. Following the first response, IICSA wrote to the Government requesting it to reconsider. In a letter dated 21 June 2021, the Government set out its reasons for declining this invitation. It informed the Inquiry that:

'...the Foreign, Commonwealth and Development Office has set up a working group with the Home Office, Disclosure and Barring Service, ACRO and the Charity Commission to look at the issue of criminal record checks for the international aid sector. The group is working with safeguarding professionals from the UK aid sector to explore the issues faced by organisations in checking criminal histories of potential employees, what can be done within the existing framework, and also where there may be gaps or issues that need addressing.'

## IICSA Final Report

31. In its final report, published in October 2022, IICSA repeated recommendation 3 (as Recommendation 11 in the final report), but not recommendation 4 (which would make the provision of enhanced certificates mandatory).

### IICSA Recommendation 11:

Extending disclosure to those working with children overseas

The Inquiry recommends that the UK Government introduces legislation permitting the Disclosure and Barring Service to provide enhanced certificates with barred list checks to citizens and residents of England and Wales applying for:

- work or volunteering with UK based organisations, where the recruitment decision is taken outside the UK; or
- work or volunteering with organisations based outside the UK, in each case where the work or volunteering would be a regulated activity if in England or Wales.



## **Conclusion on the issues raised by IICSA**

32. I have not found any reasons to recommend departure from the Government's detailed response to the original recommendation 3 in relation to recruitment decisions taken outside the UK, which was repeated in the final report. However, having regard to the fact that IICSA repeated it, I would expect the Government to review the matter.
33. I now turn to the issues raised by the IDC.

## **Issues raised by the International Development Committee and response of the FCDO**

34. In 2018, the House of Commons International Development Committee (IDC) began inquiring into sexual exploitation and abuse and sexual harassment (SEAH) in the aid sector. It has published several reports.
35. In October 2018, the UK Government hosted a summit in London under the auspices of the Department for International Development (DFID), now merged with the Foreign and Commonwealth Office to form the Foreign, Commonwealth and Development Office (FCDO), called the 'London Summit on Safeguarding'. The purpose of the meeting was to drive collective action to prevent and respond to SEAH in the aid sector.
36. In January 2019, the Steering Committee for Humanitarian Response launched the Inter-Agency Misconduct Disclosure Scheme (MDS). The scheme holds no information on specific cases of abuse. Its website states that 'it facilitates the systematic bi-lateral sharing of misconduct data between recruiting organisations and previous employers.' It does not collect data on the extent of implementation. It is supported by the FCDO. The FCDO 'Progress Report on SEAH in the International Aid Sector 2019-2020' stated that in 2019, its first year of operating, the scheme received over 2,900 requests for misconduct data of which 2,100 received responses and prevented 36 people from being hired. By November 2022, over 29,000 checks had been conducted using the MDS, resulting in over 140 applications being rejected at the final stage of recruitment. Over 160 organisations are using the scheme.
37. In May 2019, the Aid Worker Registration Scheme Steering Committee was established. The committee commissioned a legal review from Hugh Davies KC to examine the legal basis for the establishment of a sector-wide Aid Worker Registration Scheme, which would link an individual's work history to a confirmed identity.

38. In June 2020 the legal review made 4 recommendations, which were accepted by the committee. The recommendations were:

1. No single regulator for the international aid sector to receive and control misconduct data from international aid organisations. (Legal difficulties; Scale of the task renders it impracticable; Adverse consequences.)
2. Donors to mandate as a condition of funding:
  - i. registration with the inter-agency misconduct disclosure scheme;  
and
  - ii. 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.
3. Donors to mandate partners as a condition of funding adherence to minimum core safeguarding standards and independent inspections.
4. Donors to mandate partners as a condition of funding reporting of relevant safeguarding and misconduct data to donors and defined third parties.

39. It was agreed with DFID that a consultation process with stakeholders in the international aid sector would then take place.

40. In October 2020, the FCDO published a second annual update 'Progress Report on SEAH in the International Aid Sector 2019-2020'; it set out two developments:

- i. Project Soteria, a UK funded programme with INTERPOL to strengthen the vetting of potential aid workers would start implementation in 2021.
- ii. The department was collaborating with an expert steering committee to develop an Aid Worker Registration Scheme to verify workers' identities and work histories. The department had mapped similar systems, completed a legal review and consultation and planned to pilot the scheme in 2021.

The 2020-2021 FCDO Progress Report on SEAH in the International Aid Sector published in December 2021 confirmed that Project Soteria had moved into the implementation phase. The project is now fully operational following a successful inception phase. Work to design the pilot of the Aid Worker Registration Scheme continues, while also exploring whether its main aims could be achieved through the MDS or Project Soteria given that consultation with the sector has not yet shown a clear appetite for a separate scheme.

41. On 14th January 2021, the IDC published a report in which it referred to 'employment cycle schemes' designed to prevent perpetrators being re-hired within the aid sector. In this context it referred to the Misconduct Disclosure Scheme, Project Soteria and the Aid Worker Registration Scheme. At paragraph 100, the committee recommended that:

'The Government should amend the regulations to designate aid work as a regulated activity, requiring aid workers to undertake an Enhanced DBS check before they can work with aid beneficiaries.'

### **Conclusion on the issues raised by the IDC**

42. As I read the recommendation it does not appear to distinguish between aid workers whose contracts of employment are made outside the jurisdiction and those whose contracts are made within it for posting overseas. As to the former, it seems to me that the Government's detailed response to IICSA in relation to mandating enhanced checks has equal application.
43. In respect of those whose contracts are made here for posting overseas, the situation is different. Currently, aid agencies do conduct checks, certainly in relation to those who work with children. I am not aware of aid workers whose roles would be restricted to contact with adults. However, recent history has revealed instances of aid workers exploiting their positions in relation to adults, who, although in ordinary language might be regarded as vulnerable because of their need of help or assistance, would not fall within that definition for the purposes of an enhanced DBS check. I have concluded that legislation should clearly provide that aid workers whose contract of employment in respect of adults or children is made here should be eligible for enhanced criminal record checks with barred list checks. I note that, recently, the Government achieved this for those who were offering homes to refugees from the war in Ukraine by amendments to the relevant statutory instruments.

### **Recommendation 3: Aid workers and enhanced checks**

44. I recommend that the legislation governing enhanced checks with barred lists checks is amended so that aid workers, who are nationals or residents here, whose contracts of employment are made here and whose work would bring them into contact with aid beneficiaries overseas are eligible.

# 3. The self-employed

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45. Under the current regime, the self-employed cannot apply for a standard or enhanced DBS check, regardless of the activity being undertaken unless they are working for an agency or in regulated sectors where a regulatory, licensing or other body with oversight of the sector can apply for checks on the self-employed individual's behalf. This is because the wording of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 only allows the 'excepted question' (that is asking about otherwise spent convictions) to be asked by any person, in the course of the duties of their office or employment, in order to assess the suitability of an applicant for the eligible role.
46. There are many examples of self-employed persons working in regulated sectors, who can obtain an enhanced check. By way of examples, these include: taxi and private hire vehicle drivers licensed by a local authority; child-minders registered with Ofsted or a child-minding agency; and many others working for registered bodies such as local authorities or working through an employment agency. However, there are many roles and activities where the self-employed are not carrying out work in a sector that is regulated or working through an employment agency, and so unable to get anything other than a basic DBS check. A simple but striking example is a self-employed music teacher or tutor giving lessons as part of a private arrangement (as opposed to through a school or agency). They cannot get an enhanced with barred list check whereas, if they were employed in a school, they would be required to obtain such a check.
47. This anomaly appears likely to have arisen because those who originally devised the scheme focused on providing employers with the assistance they needed to make decisions about the suitability of individuals for employment in the role for which they were applying. Whilst those who engage a self-employed person to provide them with a service are not 'employers' as such, it appears self-evident that they are also making a suitability decision, but, in their case, they cannot ask for a DBS certificate beyond one that arises from a basic check.
48. In the course of stakeholder engagement, this anomaly was frequently raised as a vulnerability within the scheme, particularly by organisations engaged in the sports sector. However, it is by no means limited to that sector but applies to a very wide range of sectors or areas of activity. When it came to considering solutions to this vulnerability, there was no unanimity of approach. For example, Sport England commissioned the Chartered Institute for the Management of Sport and Physical Activity (CIMSPA) 'to develop and consult widely on a proof of concept model for a national workforce register for sport'. In 2019, CIMSPA produced a 15-page document entitled Workforce Registration and Regulation Consultation. A reading of that report only serves to underline the complexity of the issue and the widely differing views as to solutions.

## Ministry of Justice and Home Office

49. Beginning early in 2021, in recognition of this vulnerability, the Ministry of Justice and the Home Office undertook a cross-Government feasibility study into creating eligibility for enhanced criminal record checks for those who are self-employed, so that all those working with children and vulnerable adults are subject to the same standard of checks. They have been examining ways of creating eligibility for enhanced criminal record checks for those who are self-employed, to ensure that eligibility is determined by the nature of the role carried out rather than by employment status. During that time, they have engaged with other Government departments in joint workshops, surveys and meetings with each department or sector within a department.
50. I have been provided with a progress report dated March 2022 (approximately 12 months after the study began), together with documents setting out the responses of Government departments and stakeholders. The progress report demonstrates that there are very large numbers of self-employed persons engaged in activities which fall within the definition of regulated activity, but no single obvious solution to providing the appropriate level of criminal record check for this cohort. The study is not complete. Those engaged in the study have a provisional completion date of Spring 2023. No specific solution has been proposed but currently there are four under consideration namely:
- Broad sectoral regulation with a supporting Regulatory Body (currently in place for particular professions in some sectors)
  - Voluntary Sectoral Accreditation Body (Membership) (currently in place for particular professions in some sectors)
  - Sectoral Accreditation Body (Vetting)
  - Self-employed enabled to apply for enhanced check on their own behalf.
51. I emphasise that the study is not complete, but it seems to me that the extension of the first two options or introduction of the third, are likely to require substantial and costly bureaucracies, and would each be in danger of foundering on the rocks of cost and complexity.
52. The fourth option has the advantage of simplicity although requiring a change in legislation to introduce. The self-employed person would apply to the DBS for an enhanced certificate (including a check of the relevant barred list) setting out the work that they are seeking to do. If the work involved contact with children or vulnerable adults, which would bring the applicant into regulated activity, DBS would provide the appropriate barred list check along with the enhanced check. There remains the problem that the application would not

be overseen by a regulating body and so not mandatory. Further, it may well be that a person who knew that their criminal record would be unlikely to recommend them to a potential user of their services would not go to the trouble of making an application. These problems could be mitigated by a publicity campaign encouraging members of the public, considering using the services of a self-employed person, paid or unpaid, in an activity that involves contact with children or vulnerable adults, to ask to see a DBS certificate.

### **Conclusion on the self-employed**

53. I have concluded that the widespread concern that the ineligibility of the self-employed to apply for an enhanced certificate with barred list check is a vulnerability in the safeguarding regime is soundly based.

### **Recommendation 4: The self-employed**

54. I recommend that self-employed individuals, paid and unpaid, seeking to work with children or vulnerable adults are rendered eligible to apply for an enhanced DBS certificate with the relevant barred list(s) check.

# 4. The eligibility of local councillors for criminal record checks

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55. The terms of reference for the review include the heading: 'eligibility of local councillors for checks'. The generality of this heading might lead to a mistaken interpretation that the review was somehow directed at, or engaged in, a consideration of the suitability of persons to stand for election as local councillors. That is not the case as the stated purpose of the review makes clear namely: 'To provide assurance to Ministers about the effectiveness of the disclosure and barring regime in safeguarding children and vulnerable adults.' The disqualification of persons from standing for election to, or being members of, councils is governed by the provisions of the Local Government Act 1972 and the Local Government (Disqualification) Act 2022. They fall completely outside the area covered by this review.
56. Why then has the eligibility of local councillors for criminal record checks been included in the review? 'Local councillor' can cover the members of all councils from the very large Unitary Authorities and Upper Tier Councils down to the smallest Parish Council. Only Unitary Authorities and Upper Tier Authorities have responsibility for social services including children's services. (I will refer to them both as 'councils'). The work of the elected members of these councils may involve them taking decisions about the care of children and vulnerable adults, thus falling within the area of safeguarding with which the review is concerned.

## The current position

57. I have had neither the time nor the resources to consult the relevant councils, (there are 174 unitary and upper tier local authorities in England and Wales), to establish what is the current position and practice in relation to obtaining criminal record checks for councillors. To obtain the necessary information, I have consulted officials from the Department for Levelling Up, Housing and Communities (DLUHC) and through their kind offices spoken with members of the DLUHC Monitoring Officers Group who liaise with the department on local Government standards and conduct matters.
58. There is no uniformity of practice among councils in relation to obtaining criminal record checks for safeguarding purposes. When a child comes into care, the council becomes the Corporate Parent. Put simply, the term 'Corporate Parent' means the collective responsibility of the council, elected members, employees, and partner agencies, for providing the best possible care and safeguarding for the children whom they look after. It appears that some councils obtain higher level (enhanced) criminal record checks for all elected members regarding them all as falling within the term corporate parent. However, it is my understanding



that this concept does not confer eligibility. Others obtain the checks in respect of councillors prior to their appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults to assess their suitability for involvement in those decisions. It appears that there are some councils which do not obtain DBS checks at all. For the reasons referred to above, I have been unable to establish the figures for those that do and those that don't. In my judgment, this lack of uniformity in approach is in need of correction. Put simply, if a number of councils properly regard such checks as necessary, having regard to their duty to safeguard, how can the need for the checks not apply to all councils having the same duty? That said, it does not seem to me that it is necessary that enhanced checks should apply to all councillors, but rather to those who are being considered for appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults.

### **Are local councillors in fact eligible for criminal record checks?**

59. A basic DBS check can be obtained by any individual for any purpose, so all local councillors are eligible for a basic criminal record check, which discloses all unspent convictions and cautions. Local councillors who have responsibility (e.g. through committee membership) for social services, health and education functions for children or vulnerable adults, are eligible for enhanced DBS checks, which disclose spent and unspent convictions and cautions, subject to filtering rules, and may disclose police intelligence which a chief officer has considered relevant and ought to be disclosed. The legislative basis for the eligibility for enhanced DBS checks for councillors is the Police Act 1997 (Criminal Records) Regulations 2002, as amended in 2013 (by Police Act 1997 (Criminal Records) (Amendment) Regulations 2013/1194 and Police Act 1997 (Criminal Records) (Amendment No.2) Regulations 2013/2669).

### **Use of the material disclosed in an enhanced record check**

60. I did not discover any examples where an enhanced check has revealed material that raised safeguarding concerns in relation to a councillor's suitability to carry out their duties under the council's responsibilities for administering social services, health or education. My understanding is that if that occurred, it would be the responsibility of the council's Monitoring Officer to bring it to the attention of the Chief Executive, who would then be responsible for dealing with the situation.

### **Conclusion on recommendations in relation to local councillors**

61. I have concluded that there should be consistency in the practice adopted by councils in relation to DBS checks and that checks should be carried out where appropriate.



## **Recommendation 5: Local councillors**

62. I recommend that an enhanced criminal record check is made mandatory for all councillors in Unitary and Upper Tier Authorities who are being considered for appointment to any committee involved in decisions on the provisions of children's services or services for vulnerable adults. I accept that this would require legislation and therefore some inevitable delay, so I further recommend that these authorities are encouraged to adopt this procedure as best practice pending legislation.

# 5. The Security Industry Authority

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63. The Private Security Industry Act 2001 (PSIA) established the Security Industry Authority (SIA) as a corporate body having oversight of the private security industry in the United Kingdom and made it a criminal offence to engage in 'licensable conduct' except under and in accordance with a licence granted by the SIA, which is responsible for granting, renewing and revoking these licences.

## Different SIA licences

64. There are two categories of SIA licence: front line and non-front line. A front-line licence is required if undertaking licensable activity other than key holding activities. The latter is required for certain roles that manage, supervise and/or employ individuals who engage in licensable activity. It is with the former that this review is concerned.

## Front-line licences

65. Front-line licences apply to roles that involve a physical presence to carry out the duties. There are a number of categories of which two are relevant to the sphere of safeguarding, namely door supervision and close protection.

## Door supervision

66. A door supervisor licence is required if manned guarding activities are undertaken in relation to licensed premises (alcohol and/or entertainments licence), at times when those premises are open to the public.

## Close protection

67. A close protection licence is required when guarding one or more individuals against assault or against injuries that might be suffered in consequence of the unlawful conduct of others.

## SIA criminal record checks on application

68. The following paragraphs are taken from the written submissions received from the SIA.

“The SIA carries out Standard DBS checks on all applicants and takes these into consideration when deciding whether to grant a licence. As you would expect having a criminal record does not necessarily mean that a licence application or renewal will be refused. The SIA is clear with all applicants in its licensing criteria in advance what offences may affect a licensing decision and how it approaches licensing decisions in those cases. The SIA will consider whether the particular offence is considered to be a relevant offence (as set out in pages 42 to 44 in the statutory guidance criteria ‘Get licensed’), the actual disposal

given to the applicant and how recent the offence was. Other information can also be considered that may indicate whether the applicant is fit and proper to hold a licence.

This means that even if the applicant or licence holder has been convicted of historic sexual offences or it is known there has been a history of sex offending then the SIA does have a discretion to refuse a licence.

The SIA's Licensing and Standards function has set up a specific Sexual Offences Group Review Team which meets weekly to discuss and assess sexual offences and offences against children cases to ensure that the SIA systematic, consistent and robust approach between cases, tracks the decisions and appeals process of often more complex cases and is able to monitor the nature and scale of cases.

Alongside the licensing application process the SIA also has systems and processes set up to act on disclosures made about licence holders and considers further regulatory action, including suspension and revocation of licences where appropriate."

## Door supervisors

69. I note that an applicant for an SIA licence specifically consents to the DBS providing the certificate directly to the SIA. The applicant receives a paper copy. The cost of the certificate is paid by the SIA, which charges the applicant that cost as an element in the fee for the application
70. Door supervisors in premises licensed to supply alcohol are very often working in what is referred to as 'the night-time economy'. Their position invests them with a degree of apparent power and authority. They may be dealing with people who have become intoxicated, whether voluntarily or involuntarily, by alcohol or drugs or both and in that condition may be extremely vulnerable. This contact is not limited to within the premises where they are working but can also take place in the surrounding area. Their work may also bring them into contact with children in premises licensed to supply alcohol or musical entertainment.
71. Recently, there have been notorious cases of serving police officers, persons in a position of authority to whom members of the public would turn for help and protection, who abused their position and committed offences of the gravest kind. I have had to consider the situation where a door supervisor has contact with a person who is vulnerable because they are intoxicated. It is obvious that this would provide an opportunity for abusive conduct. Further, as I have said, their work may bring them into contact with children providing a similar opportunity. The question is whether the risk presented by the existence of that potential opportunity requires

an enhanced check with barred list check that, in addition to the criminal record disclosed in a standard check, would disclose whether the applicant was on a barred list and relevant information held by police forces about the applicant.

## **History of enhanced DBS checks for door supervisors**

72. The history of enhanced checks for door supervisors is a relevant consideration for the review and I will set it out.

## **Independent Review 2002**

73. The PSIA, as originally enacted, amended the Police Act 1997 to allow the SIA to obtain an enhanced criminal record check for applicants for a door supervisor licence. However, Section 328 and Schedule 35 of the Criminal Justice Act 2003 amended Part 5 of the Police Act 1997 that set out the statutory framework under which the CRB, the forerunner to the DBS, provided criminal record disclosures for employment vetting purposes and removed the eligibility of door supervisors for enhanced certificates. Thereafter only a standard check was available.
74. The explanatory note to the legislation states that:

'The changes give effect to a number of the recommendations of the Independent Review Team appointed in September 2002 to take a fundamental look at the operations of the CRB. The amendments to the 1997 Act are designed to improve the efficiency and effectiveness of the CRB so that it can provide greater protection for children and vulnerable adults whilst ensuring that the disclosure process does not act as a bar to speedy recruitment.'

75. This chimes with the information provided to me by the SIA to the effect that at that time there was a backlog of enhanced disclosure checks, and that the SIA was one of the CRB'S biggest customers for those checks.

## **Further Review 2009**

76. I am grateful to the SIA from whose written submissions I have taken the paragraphs below.

"We understand that in 2009, the then Home Secretary ordered an enquiry following a police enquiry, which involved the arrest of twelve men under the Terrorism Act. Eleven of the twelve had enquired about, held or had held SIA licences. This Review concluded that enhanced disclosures would reveal

additional “approved information” over and above a standard check in less than 1% of cases. The Review conclusion, as reported by the Home Office, was that the SIA:

“...remained confident in their current systems, and that they balance the need for security with the individual's right to privacy... They believe that the introduction of EDs would be disproportionate to the benefit they provide and would not add value to or enhance public protection because the result would be that only a tiny proportion of applicants would have their licences refused... On balance, the costs and effort involved seem disproportionate to the benefits”.

77. The SIA was informed the reason for this was because it was considered that door supervisors rarely pose a threat to children or vulnerable adults. So that was the position as it stood in 2009.

### **Number of licences for door supervision and close protection**

78. Figures provided by the SIA show that, as of 1 August 2022, the total number of active licence holders across the sector in round terms was something over 400,000 of which door supervision made up 300,000 and close protection 15,000. However, I have been informed by the SIA that a door supervision licence is a popular choice for applicants because it authorises a wide range of activities over and above door supervision. A recent survey of applicants carried out by the SIA showed that less than 20% of applicants intended to work as door supervisors at licensed premises with the remainder intending to work in the Security Guarding sector.

### **Enhanced certificate disclosure of information**

79. The Protection of Freedoms Act 2012 amended the Police Act 1997 so as to raise the threshold for the disclosure of information. The test now limits the disclosure to matters that the Chief Officer reasonably believes to be relevant, and which, in the opinion of the Chief Officer, ought to be included in the certificate. Previously the test was ‘might be relevant’. As was intended, this amendment resulted in a reduction in the number of disclosures. The 2009 Review estimated that disclosure would have been made in less than 1% of cases. Whilst it is impossible to estimate the percentage of cases in which disclosure would be made today, I have proceeded on the basis that there is no reason to believe it would be any higher.

## SIA submissions

80. I have received both oral and written submissions from the SIA. It is clear that, in the opinion of the Authority, a proposal to apply enhanced checks to applicants for door supervisors' licences has significant financial implications and raises a number of potential difficulties. Their reasons can be summarised as follows:

- **Cost to the applicant**

A standard DBS check costs £18 and an enhanced check £38. The £20 extra per case would need to be passed on to licence applicants even where it would bring back no more information than a standard check.

- **Actual number of door supervisors as against the number of applicants**

Less than 20% of applicants for door supervisors' licences intend to work as such.

- **Reduction in labour supply due to cost and intrusion**

Labour supply may also be affected through potential licence applicants being deterred by any additional cost and the intrusiveness of enhanced checks and choosing more attractive alternatives in a labour market favouring job seekers.

- **Delay in processing enhanced checks**

The processing of enhanced checks will inevitably result in delays in some cases.

- **Use of SIA resources**

There would also be further time, personnel resource and processing consequences for the SIA assessing any non-conviction information disclosed and needing to seek further information in order to make a licensing decision. (Words taken directly from the written submissions.)

- **Inability to rely on disclosed information**

In its original reasoning for not supporting a proposal to extend enhanced checks to applicants for a door supervisor's licence, the SIA queried the extent to which it could rely upon disclosed information in its decision making. However, following discussions, that is no longer an issue.

81. I have taken these submissions into account and find:

- **Cost to the applicant**

I do not accept that the extra £20 cost is unjustified because relevant information will only be disclosed in a small number of cases. If such an argument were valid, it would apply to all enhanced certificates.

- **Actual number of door supervisors as against the number of applicants**

The fact that applicants incur extra cost by applying for a door supervisor's licence, when they do not intend to use it, cannot provide a basis for not extending enhanced checks to this licence, which authorises the holder to work in that capacity and provides evidence that they are considered fit and proper so to do.

- **Reduction in labour supply due to cost and intrusion**

Cost: I do not accept that the additional £20 charged in respect of such a licence would deter any or any significant number of applicants, particularly having regard to the fact that that charge is only imposed at the point of application by which time the applicant will have spent several hundred pounds taking and passing the necessary course.

Intrusion: I accept that applicants who believed that they had something to hide would or might be deterred from applying for a licence, but I do not accept that others would be.

- **Delay in processing enhanced checks**

The DBS deals with these checks in a timely manner. Such delays as might result would only apply in a small number of cases.

- **Use of SIA resources**

Where an enhanced check did disclose information about the applicant that required 'further time, personnel resource and processing consequences for the SIA assessing any non-conviction information disclosed and needing to seek further information in order to make a licensing decision,' this goes in favour of disclosure and not against it.

## **Conclusion on recommendations in relation to door supervisors**

82. I have concluded that the potential risk to both adults and children posed by encounters with door supervisors justifies, indeed requires, the extra level of safeguarding provided by enhanced DBS checks together with barred lists checks.

## **Recommendation 6: Door supervisors**

83. I recommend that enhanced DBS checks together with barred lists checks are made mandatory for applicants for the grant or renewal of a door supervisor's licence.

## **Close protection licence**

84. Whereas an applicant for a door supervisor licence was originally subject to an enhanced check, this was not the case for a close protection licence where a standard check has always applied. The work of close protection licence holders employed to protect adults may bring them into close contact with children who are members of the family. They may also be specifically employed to protect children. In both cases a relationship of trust and confidence is likely to be established. I pay particular attention to this relationship that may be established with children, and which leads me to my conclusion.

## **Conclusion on recommendations on close protection licences**

85. I am satisfied that the extra level of safeguarding provided by enhanced DBS checks together with a check of the children's barred list ought to be provided.

## **Recommendation 7: Close protection licences**

86. I recommend that enhanced DBS checks together with children's barred list checks are made mandatory for applicants for the grant or renewal of a close protection licence.



# 6. Employment involving the deceased

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87. My review was announced by the Government on 24 February 2022. The purpose of the review was stated to be:

‘to provide assurance to Ministers about the effectiveness of the disclosure and barring regime in safeguarding children and vulnerable adults.’

One of the areas upon which the terms of reference stated that the review would focus was:

‘The use and effectiveness of criminal record checks for employment which involves the deceased.’

88. I confess that I did not at first appreciate that the declared purpose of the review and that area of focus did not share any common ground unless one were to stretch the meaning of ‘children and vulnerable adults’ to include the deceased, which in my judgment would involve distorting the plain meaning of the stated purpose. However, I have been faithful to the terms of reference and considered this area.

## **Independent Inquiry into the issues raised by the David Fuller case**

89. I now turn to the inquiry currently being conducted by Sir Jonathan Michael. For reasons that will become clear, I will set out the history and extent of that inquiry in some detail.

90. On 8th November 2021, the Secretary of State for Health and Social Care announced an inquiry into the issues raised by the David Fuller case. During an investigation into two murders committed by David Fuller, the police had uncovered offences carried out by him against the bodies of women and children in the mortuary of Maidstone and Tunbridge Wells NHS Trust. The Trust had already begun an inquiry chaired by Sir Jonathan Michael, but this was now replaced by an independent inquiry with Sir Jonathan as its Chair. The Secretary is Rebecca Chaloner. They are supported by an Inquiry team.

91. The Terms of Reference stated that the Inquiry would be split into two phases:

- an initial report, on matters relating to the Maidstone and Tunbridge Wells NHS Trust, reporting by the middle of 2022; and
- a final report, on the broader national picture and the wider lessons for the NHS and for other settings, reporting by the middle of 2023.

92. The detailed Terms of Reference for Phase 2 are:

- To consider whether procedures and practices in hospital settings, including in the private sector, where bodies of the deceased are kept, safeguard the security and dignity of the deceased, and would prevent a recurrence of matters raised by the case of DF.
- To consider whether procedures and practices (including the use of locum Anatomical Pathology Technologists) in non-hospital settings, including local authority mortuaries, funeral directors, the NHS ambulance service, medical schools, temporary mortuaries, direct funeral companies and hospices, where bodies of deceased are kept, safeguard the security and dignity of the deceased, and would prevent a recurrence of matters raised by the case of DF.
- To consider the role of regulators and their use of regulatory measures in assuring that mortuary practices safeguard the security and dignity of the deceased in all settings, and hence the effectiveness of the national regulatory regime.
- To consider any other issues that arose during phase 1 of the Inquiry.

93. The Inquiry will:

- Produce a Phase 1 report on its findings and recommendations on issues arising from its consideration of events at Maidstone and Wells NHS Trust and identify areas of concern for the wider NHS to be aware.
- Produce a final report which will provide an overview of the information it has reviewed, and which will set out the Inquiry's findings and its recommendations.

94. In May and October, the Inquiry published an update on its process. The October update reported that:

"The volume of evidence the Inquiry has and continues to receive, and the number of witnesses to interview, is far greater than anticipated. In order to ensure all evidence is considered and analysed thoroughly, the Inquiry will require more time than originally planned. Sir Jonathan Michael and his team are committed to being thorough and will balance that with working at pace.

This means that the Inquiry's initial report on matters relating to the Maidstone and Wells NHS Trust will now be published in the first half of 2023."

95. It is worth noting that the interview sessions involve a panel of at least three people, chaired by a member of the Inquiry team, questioning the witnesses. The evidence is audio recorded and transcribed in full.

### **Consultation with the Inquiry**

96. In the early stages of my Review, contact was made with the Secretary and Assistant Secretary. Subsequently, I spoke in person to them and to Sir Jonathan. Everything that I learned from them, together with the details of the Inquiry's scale, scope and resources, which I have set out above, makes it abundantly clear that the Inquiry's examination of the arrangements for protecting the security and dignity of the bodies of the deceased is being, and will continue to be, conducted in greater depth and detail than I would have been able to do.

### **Human Tissue Authority**

97. The Human Tissue Authority (HTA), established by the Human Tissue Act 2004, has among its functions the statutory responsibility for licensing and providing regulatory oversight of places where post-mortem examinations take place. One of its declared guiding principles is the vital importance of maintaining the dignity of the deceased. As a result of the matters revealed in the Fuller case, it has already completed a review of the wording and guidance of its standards broadly concerned with effective control and monitoring of access and storage arrangements that maintain the dignity of the deceased, and oversight of visitors and contractors.
98. The review of the guidance has resulted in some sections being updated to make them clearer and to reinforce the importance of establishments considering all risks to the dignity of the deceased. The functions of the HTA are entirely outside the area of my Review. Nonetheless, its actions and recognition of the need not to pre-empt the findings and recommendations of Sir Jonathan Michael's Inquiry, which it acknowledged in its advice to the Secretary of State reporting on this review, reinforce my conclusion set out below. (I make it clear that my reference to the HTA's updated guidance is my own and not the product of my consultation with the Inquiry.)

### **Conclusion on recommendations in relation to criminal record checks for employment which involves the deceased**

99. I have concluded that Sir Jonathan Michael's Inquiry will be in a far better position than I to make any recommendations about the use and effectiveness of criminal record checks for employment which involves the deceased to achieve the purpose of protecting their security and dignity. It also follows that, were I to make any recommendations, no action could, in the circumstances, sensibly be taken

upon them without awaiting Sir Jonathan's final report. Accordingly, I am satisfied that it would not be possible for me to better any recommendations in that report, nor would it be in the public interest for me to try.

100. I said at the outset that I would set out the history and extent of that Inquiry in some detail for reasons that would become clear and I have done so in order that any reader of the Review will be able to understand why I have declined to attempt any recommendations in this area.

# 7. Name change

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## Background

101. The mechanisms by which an individual can change the name under which their birth was registered by completing either an enrolled or unenrolled deed poll, is straightforward and easy to carry out. Once a name change has been achieved, that person can go on to obtain other documents such as passport or driving licence in their new name. It is not disputed that individuals use the system for varied and perfectly proper reasons. However, concerns have been raised in a number of quarters, and in the media, that the system has been exploited by convicted sex offenders in order to circumvent the current DBS identity validation process (IDV) and avoid past offences being disclosed on a DBS check. On occasions this has been confused or conflated with cases where an offender has changed their name and gone on to commit further offences but made no attempt to obtain a false DBS certificate. I must confine myself to the question of a name change being used to circumvent the DBS IDV process.

## Transgender applicants

102. For transgender applicants the completion of an application for a DBS certificate may be of particular concern requiring as it does the disclosure of extensive personal information, including any names the applicant has used in the past. On the one hand, the fact that they may have transitioned since they were cautioned for or convicted of criminal offences cannot be a reason for not disclosing to potential employers relevant previous convictions. It is after all a criminal record certificate. On the other hand, transgender employees may experience bullying or other negative treatment in the workplace so that, understandably, they would prefer to keep this information from their employer.

103. The DBS has a Sensitive Applications Team that provides a confidential service for transgender applicants to help protect their identity in accordance with the Gender Recognition Act 2004 and the Equality Act 2010. I am satisfied that the system in place protects applicants in this position whilst at the same time ensuring the proper disclosure of any criminal record they may have.

## Evidence of name change circumventing the DBS IDV process

104. It has been asserted that this ability to change name has led to significant numbers of convicted offenders obtaining DBS certificates that did not reveal their convictions. I have been unable to uncover reliable evidence that this is in fact the case. The evidence appears to be anecdotal. Nonetheless, that there is a risk is demonstrated by a notorious case in 2021 where a convicted sex offender, having used a name change and forged documents to obtain a passport, went on to obtain employment with children in Spain and commit further offences. I note that this offender did not attempt to use the name change to obtain a false certificate.

## **Risk of name change circumventing the DBS IDV process**

105. In my judgment, when considering the risk, two matters must be borne in mind, namely:

- a. If an individual sets out to obtain a DBS certificate that does not show their convictions for sexual offences, there is a very high risk that their purpose is to obtain work which would provide opportunities for committing further offences.
- b. If they are successful, that will not be discovered unless and until further offences are uncovered, which would be a gross failure of the safeguarding regime.

## **Investigation of the risk**

106. The Home Office Public Protection Unit and the DBS have worked together to review the risk and the steps that could be taken to reduce it. The police have been engaged with the Home Office on this issue since the case to which I have referred. No hard evidence has been uncovered that demonstrates that the assertions that name changing has enabled numbers of individuals to circumvent the DBS IDV process are correct. Further, the DBS is confident in that process. However, the reviews have not been able to conclude that the risk from name changing has been wholly eliminated.

## **Use of birth certificates to mitigate the risk**

107. Some of the public contributors to this debate have suggested that mandating birth certificates as one of the documents that must be supplied in support of an applicant's identity would eliminate or significantly reduce the risk.

## **Conclusion on name change**

108. I have to accept that the system by which an individual can change their name presents a degree of risk to the integrity of DBS certificates. I am satisfied that those with responsibility for managing the risk (Home Office, Police, HM Passport Office and DBS) are fully aware of the risk and working together to actively manage it. However, as I have said nobody has been able to conclude that the risk has been wholly eliminated. On the material available to me, I am unable to judge to what degree the mandating of birth certificates or other steps would mitigate the risk, so such recommendation as I can make is very limited.

## **Recommendation 8: Name change**

109. I recommend that the Home Office and the DBS continue the work of assessing what, if any, further steps can be taken to mitigate the risk of individuals circumventing the DBS identification validation process including the consideration of mandating the provision of a birth certificate as one of the documents establishing identity.

# 8. The Update service

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## Position pre-Update service

110. Disclosure in a certificate issued by the DBS can only show the position as at the date the certificate is issued. Certificates are issued without limit of time and do not require renewal. Neither the DBS nor the employer who relied upon the certificate as part of their suitability decision will be aware of any changes to the status of a certificate holder as a result of a later conviction or the recording of information about them. This appears to me to be a vulnerability in the regime. The holder of a certificate who applies for a job with a different employer is required to apply for a new certificate even if there has been no change in their details and the role is in the same 'workforce'. This lack of portability was the reason for the changes brought about by the introduction of the Update service.

## Introduction of the Update service

111. In June 2013, the DBS introduced an 'Update Service' for standard and enhanced certificates. The principal purpose of the service was to enable a certificate holder to take their certificate from job to job within the same workforce unless an employer asked for a new certificate, or they needed a certificate for a different type of workforce. The holder of a certificate can subscribe to this service for which an annual fee of £13 is charged. (There is no fee for volunteers.) Holders of more than one certificate can link them to a single subscription. The Update service carries out a weekly check of the subscriber's record of convictions held on the Police National Computer (PNC) and a check of information held by local police forces every nine months.

112. The subscriber to the service, an employer or potential employer with the subscriber's permission can check the status of the subscriber's certificate on-line. If a change has occurred, the status check will show:

'This certificate is no longer current. Please apply for a new DBS check to get the most up to date information.'

Further, if a change occurs that results in a certificate being no longer current, the DBS writes to the subscriber informing them that new information has been identified and giving the general category namely: a new conviction etc recorded on the PNC, or their inclusion on a barred list or new information provided by a local police force. The letter advises them that they should consider whether there is a requirement under their terms of employment to notify their employer or other body of the change. It warns them that it is an offence to seek to, or continue to, engage in regulated activity if barred. To establish the precise reason for the change, the subscriber needs to apply for a new certificate.

## Portability

113. The facility that the Update service offers for employers to check the status of an individual's existing certificate has provided, for subscribers to the service, the solution to the limited portability in the original scheme. However, it is only a partial solution to the vulnerability to which I have referred because employers are not automatically informed of a change occurring in the status of a certificate.

## Figures

114. Before continuing I will set out some figures that I believe assist when considering the Update service.

### Subscribers 18 November 2022

Certificates	Subscribers	Status checks
Enhanced certificates	2,228,976	1,398,176
Standard certificates	34,263	15,548

It is not possible to establish whether the checks were carried out by the subscriber, and/or their employer, and/or another interested party.

### Subscribers with Status Change

Period	Certificate	Status change	Status check following change	New applications following change
Y/E 31/10/21	Enhanced	3198	1102	75
	Standard	25	2	0
Y/E 31/10/22	Enhanced	3764	1131	53
	Standard	39	10	0

115. I am unable to say what proportion of certificate holders subscribe to the Update service. This is because certificates are issued without limit of time and so remain in the records even after the holder has left the relevant employment. However, one can see that very significant numbers of holders of enhanced certificates do subscribe. When one looks at the status changes, the numbers, although not large, are still significant. What is perhaps surprising is that notification of a status change to a subscriber only leads to around one third being checked to discover



the nature of the change. It is not possible to establish: (a) who carried out the check; (b) whether the subscriber informed their employer of the change, in which case one would expect a new application or (c) whether the very small numbers of new applications result from the subscriber voluntarily leaving the employment or continuing in employment without informing their employer. If this last were the explanation, it raises the spectre of significant numbers of individuals continuing to work in roles for which their employer would regard them as unsuitable if they knew of the status change.

116. A few years ago, the DBS did some customer research around the Update service and there was a clear ask from employers that DBS provide 'push' notifications. I accept that this would require changes to DBS systems. I am not in a position to judge the feasibility or cost or of such changes. There would be many details to such changes, for example presently the DBS has no record of a subscriber's employer and there are time limits for applications to join the Update service.

### **Conclusion on the Update service**

117. I believe that greater use of the Update service together with 'push' notifications to employers of a status change would mitigate a vulnerability in the regime arising from a change in the status of the certificate after it is issued. Making subscription to the Update service mandatory would require legislation and, inevitably, delay. However, employers would be free to require applicants for employment to register for the service and to give them permission to check the status of the certificate and to receive notification of any change.
118. I accept that many occupations to which this would apply are not regarded as well paid, but I believe that the fee, amounting to 25p a week, is such that it does not provide a strong disincentive. The numbers of enhanced certificate holders who presently subscribe to the service confirm that belief.

### **Recommendation 9: The Update service**

119. I recommend that the DBS carries out the work necessary to establish the feasibility and cost of redesigning the Update service to enable employers, who have been given permission to carry out status checks, to receive notification of any change to the status of the certificate.

# Appendix A

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## Review into the Disclosure and Barring Regime: Terms of reference

### Purpose

The purpose of the review is to provide assurance to Ministers about the effectiveness of the disclosure and barring regime in safeguarding children and vulnerable adults.

The review will consider the regime with a particular focus on (but not limited to):

- the definition of regulated activity, including issues raised by the Independent Inquiry into Child Sexual Abuse (IICSA), the International Development Committee and areas where there are identified inconsistencies in the definitions of regulated activity for adults and children, for example, hospital porters;
- eligibility gaps for disclosure checks for the self-employed, including private tutors and sports coaches;
- eligibility of local councillors for checks;
- the use and effectiveness of criminal record checks in the private security industry; and
- the use and effectiveness of criminal record checks for employment which involves access to the deceased.

The review will also consider the effectiveness of safeguards against sex offenders changing their names to hide their criminal past, including issues related to gender reassignment.

The review will:

- identify key issues of concern about the current regime;
- consider current responses to them;
- assess and advise on risks and opportunities; and
- make recommendations for improvement.

The review will:

- take account of the need to protect the public while supporting ex-offenders into employment;
- take account of public concern and issues raised in Parliament, the media and by IICSA;
- consult key stakeholders, including other Government Departments, the Disclosure and Barring Service, policing/National Police Chiefs' Council, the Independent Monitor for Disclosure and Barring and the Security Industry Authority;
- learn any lessons from how these issues are dealt with in the Devolved Administrations;
- consider the equality implications of any recommendations.

The review will present a report to Ministers within approximately six months. A summary of key findings and recommendations may be published as appropriate.

# Appendix B

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## List of contributors to the disclosure and barring review

Stakeholder	Key Issue of concern
Access Northern Ireland	All
ACRO Criminal Records Office	Overseas criminal record checks
Ann Craft Trust	Self-employed
Barnardo's	Multiple
British Council	Multiple
British Gymnastics	Regulated activity definition
Chartered Institute for the Management of Sport and Physical Activity	Regulated activity definition
Department for Digital, Culture, Media and Sport	Regulated activity definition
Department for Education	Regulated activity definition
Department for Levelling Up, Housing and Communities	Local councillors
Department for Transport	Regulated activity definition
Department of Health and Social Care	Multiple
Devon County Council	Amount of information disclosed and Regulated Activity
Disclosure and Barring Service	All
Disclosure Scotland	All
England and Wales Cricket Board	Regulated activity definition
Football Association	Regulated activity definition
Foreign, Commonwealth and Development Office	Regulated activity definition
Fuller Inquiry	Employment with the deceased
Home Office	All

<b>Stakeholder</b>	<b>Key Issue of concern</b>
Hugh Davies KC	Overseas aid workers
Independent Inquiry into Child Sexual Abuse	All
Independent Monitor for the DBS	All
Keep Prisons Single Sex	Name change
Ministry of Justice	All
National Society for the Prevention of Cruelty to Children	Regulated activity definition
Rugby Football Union	Regulated activity definition
Safeguarding Alliance	Name change
Security Industry Authority	Licensed security
Sport England	Regulated activity definition
Unlock	Enabling employment for ex-offenders
Youth Justice Board for England and Wales	Young ex-offenders