

Written evidence submitted by ... to the International Development Committee inquiry regarding sexual exploitation and abuse in the aid sector

Executive summary

- This evidence describes my experiences as a whistleblower in the aid sector
- It addresses complaints handling mechanisms and the use of non-disclosure agreements
- It includes recommendations on NGO board accountability, whistleblower protection and complaints handling.

1. Introduction

1.1 I am submitting evidence because my experience as a whistleblower in the aid sector has given me insights which I believe are of direct relevance to the Terms of Reference for this inquiry. Specifically, my evidence relates to 'speaking up,' 'culture change,' 'standards' and 'accountability'. Additionally, I have been asked to make a submission following a discussion in July with the Committee Specialist.

1.2 In brief, my contract as ... for ... in ... was terminated by the CEO of ... shortly after I had whistleblown to him, in a witnessed and documented meeting. My concerns included how ... had responded to a sexual assault and ...'s subsequent public communications in the immediate wake of the Oxfam scandal. When I appealed my unfair dismissal, the ... Board Chair offered me a settlement of £70,000 (approximately 2 years' salary) on condition that I signed a non-disclosure agreement and 'erase irretrievably' all documents/evidence.

1.3 In common with the findings of the [2019 Women and Equality inquiry on NDAs](#), I felt I had no choice. At the time of signing, I was on antidepressants and required sleeping tablets due to months of bullying by the [various senior executives] I have subsequently come to realise that signing an NDA did not absolve ... of the responsibility to investigate my allegations. The ... Board has buried an independent investigation into the sexual assault and refused to investigate my allegations.

2. Complaints mechanisms

2.1 Unable to meaningfully engage the ... Board, I have tested all the various complaints mechanisms available in the aid sector – the Charity Commission; the Humanitarian Quality Assurance Initiative (HQAI, of which DfID is the main donor); DfID's own mechanism for reporting concerns, handled by their internal audit team; the Core Humanitarian Standards Alliance (CHSA, of which DfID is an associate member, many UK NGOs are members, CAFOD, British Red Cross and Christian Aid are represented on the CHSA Board and the CAFOD representative chaired the complaints committee which considered my case); and finally the Solicitors Regulatory Authority with regards to potential misuse of an NDA. I have summarised my experience in Table 1 – Complaints Handling Mechanisms.

Table 1. Complaints handling mechanisms

Organisation	Input	Output
...	<p>Whistle blew to CEO March 2018, 1 month after Oxfam scandal.</p> <p>Disclosure to Board Chair (June)</p> <p>Disclosure to new Board Chair (Jan 2019)</p>	<p>The CEO’s documented commitment to get advice and come back to me on how to proceed was subsequently denied and my contract terminated, by the CEO, with no redundancy pay.</p> <p>Offered £70,000 (approx. 2 years salary) with NDA but ruled out an investigation into my allegations.</p> <p>Declines to investigate. Subsequently assures staff in a corporate communication that ... would never use an NDA “to avoid investigation of real wrongdoing.”</p>
<p>Charity Commission</p>	<p>First report made April 2019</p> <p>Protect* discussed my case directly with CC</p> <p>Commenced appeal process Nov 2019</p> <p><i>*Protect is a charity providing support to whistleblowers</i></p>	<p>No follow up or evidence requested. In Sept 2019, >100 working days after submission of report and only because I followed up on my case, told that “no regulatory action required.”</p> <p>Protect include my case in ‘back channel’ discussions with the CC in the hope they will review my case and take appropriate action. Process collapses, damaging relationship between Protect and CC.</p> <p>With Protect’s help, able to prevent appeal being overseen by a Senior Performance Manager who had a conflict of interest because she was involved in earlier ‘back channel’ discussions. Emails to me from the Senior Performance Manager are completely contradictory to statements she has made to Protect.</p> <p>My case is then referred up to a Senior Manager, who reviews my case and agrees it has been mishandled and that he will oversee my appeal. However, he also says “<i>If charities thought that we routinely made correspondence public, it could inhibit them from providing us with information and being open and frank with us. Further, we are not seeking redress on behalf of an individual as an ombudsman would; we are dealing with regulatory issues and ensuring compliance. I can only commit to providing as much information as it would be appropriate to do so to a third party.</i>”</p> <p>Again, CC fails to request evidence. When I put this in writing, they agree I can submit evidence. Case manager subsequently confirms she cannot investigate my case in the absence of evidence (much of which my NDA requires me to have destroyed). Because I took the risk to keep documents, in breach of my NDA, an investigation is now in process.</p>
<p>Humanitarian Quality Assurance Initiative –</p>	<p>Submit complaint Sept 2019</p>	<p>Under the HQAI complaint procedure, a complaint will not be investigated unless the complainant first signs an agreement, in the case their complaint is rejected, to pay the costs up to and including the full costs of the complaint process.</p> <p>HQAI propose to consider my complaint during next (2 stage) audit process, due March and June 2020. Stage 1</p>

<p>HQAI. (DfID is the primary donor).</p>		<p>completed – my complaint is not upheld and ...’s certification is renewed. After referral to DfID, HQAI auditor contacts me in relation to evidence which I had asked him to request under Stage 1. HQAI refuses to clarify situation so my conclusion is that inadequate investigation has been done. Stage 2 has been delayed by Covid-19 and is now due to be concluded by Sept 2020 (one year after submission).</p> <p>Separately, HQAI agree that “with regard to the issue of NDAs, this would appear to be a reasonable expectation that the use of NDAs – especially related to issues contained in the standard – may contravene the spirit and intent of the CHS.” However, neither HQAI nor CHSA will respond to questions about the implications of implementing this decision.</p>
<p>DfID</p>	<p>Email ‘reporting concerns’ Feb 2020</p> <p>Official response, April 2020</p> <p>Official response, May 2020</p>	<p>Raise concerns wrt ..., Charity Commission, CHSA and HQAI to Head of Safeguarding who refers to Internal Audit Investigations team.</p> <p>DfID has been in touch with Charity Commission, CHSA and HQAI and is awaiting outcome of various processes. However, response on CHSA is factually wrong and the amount of money DfID states it has given to ... is grossly under-reported (letter says £50,000 since 2013 whereas ...’s publicly available accounts record £17,563,000), questioning the thoroughness of the investigation.</p> <p>DfID agrees to do further follow up, including speaking with other government donors of HQAI and CHSA. Process ongoing.</p>
<p>Core Humanitarian Standards Alliance - CHSA</p>	<p>Submit complaint Sept 2019</p> <p>Commenced appeal process Feb 2019</p>	<p>No follow up or evidence requested. In Dec 2019, told that “we are satisfied that steps have been taken to address the concerns raised.”</p> <p>Probably as a result of my engagement with the Australian government, CHSA commissions an independent review of the initial complaint handling. Although they will not provide me a copy of the report, nor even tell me the identity of the independent consultant to whom my sensitive data was given, the review agrees that the original process was mismanaged [Chaired by Int. Director of CAFOD] and that it should be ‘completed’. CHSA appoints a member of the complaints committee to oversee a review of that committee’s decision. I put three process questions to the CHSA Board that they refuse to answer, eventually deciding that I am declining to comply and unilaterally close the case.</p> <p>Referred to DfID and currently under review by Australian government.</p>
<p>Solicitors Regulatory Authority - SRA</p>	<p>Submit report May 2020</p>	<p>Focus on breach of SRA warning notice wrt NDA. Main point is that the clause permitting me to make a disclosure to a regulator is undermined by the clause requiring me to destroy all data (evidence). [The NDA is also extremely broad and not time bound]. The SRA response provides an insufficient response on the main point, presumably as it is a common feature of the majority of settlements with an NDA.</p>

2.2 I believe my experience shows how difficult it is to make a complaint in the aid sector. I await decisions from the Charity Commission (more than 16 months after submission of my report) and HQAI (nearly a year after submitting my complaint). When I have appealed initial decisions, a review has upheld my point that my case was not dealt with properly at the first time of asking at the Charity Commission and CHSA. I have had to actively follow up to ensure my case was investigated, otherwise I believe it would have been dropped, with the Charity Commission, HQAI and CHSA. I have been provided with inaccurate and misleading information multiple times (Charity Commission, CHSA). I have evidence demonstrating complaints handling which falls well short of good practice standards, including conflicts of interest (Charity Commission, CHSA) and may even show deliberate cover-up and concealment (CHSA).

2.3 I am a white, British man, with good access to internet, sufficiently well resourced to have been able to invest countless weeks in these processes, well supported by knowledgeable family, friends and advisors. My story is not one which carries significant stigma, so that the multiple times I have had to tell it, whilst frustrating, are not deeply damaging. I cannot help but think that if I have failed to be heard, how much more difficult must it be for people without my privileges and for whom the stigma of what happened to them will make it much, much harder for them to raise their voice. It is of concern that, to my knowledge, very few complaints are ever submitted to HQAI and CHSA – and that they have never upheld a complaint. Given that UK taxpayers fund HQAI, and that we know the problem of abuse is endemic in the aid sector, this in itself should raise alarm bells. I believe that the lack of transparency, the conflicts of interest and the convoluted governance and accountability mechanisms in these two Geneva-based organisations requires greater scrutiny if the UK government is to continue its association and funding to HQAI and CHSA. The role of UK NGOs in the governance structures and complaints handling mechanism of CHSA should also be of concern.

3. The use of NDAs by NGOs

3.1 In common with other sectors, the use of NDAs is increasingly prevalent in NGOs – primarily as a tool to protect reputations, and therefore income. These ‘contracts of silence,’ often issued following the reporting of abuse of power (such as sexual exploitation and abuse, discrimination and bullying) are often damaging, both for the affected employee and the organisation.

3.2 NDAs have the following effects.

- NDAs exploit the power imbalance between the employer and employee, which is often accentuated in the NGO sector. NDAs can be a tool of further abuse, perpetrated by the organization against the employee (victim/survivor or whistleblower);
- NDAs actively diminish organisational learning, transparency and accountability;
- NDAs offered prior to conducting an investigation undermine a credible process because they prevent further disclosure and often require the erasure of supporting evidence. This means that poor practice cannot be investigated, nor are there reference documents if there is another similar incident at a later stage. This allows bad practice

to be perpetuated, which is especially serious if the wrong doing is criminal or at a senior level.

- NDAs operate by intimidation: the Business, Energy and Industrial Strategy report states that NDAs “may not be enforceable in law, although they may intimidate the former employee into silence.”¹
- Since NDAs are generally used when the allegations are against senior staff, they allow for a “lack of consistent application of the staffing policies and procedures”² – and therefore risk being discriminatory.
- Given the well documented existence of gender and racial pay gaps in salaries it is likely that secret settlement payments accompanied by NDAs are even more susceptible to discrimination. In my experience with ..., I (a white male) was offered substantially more money in legal fees in connection with my settlement than a black colleague alleging racial discrimination was 8 months later. I also received a significantly higher settlement payment in regards to unlawful termination of a whistleblower than did the survivor of the incident I whistleblow about. Whilst race and gender are not the only variables, the secret nature of NDAs makes discrimination harder to discern.

3.3 Whilst theoretically lawful, NGOs regularly use NDAs which I believe are in contravention of the [warning notice by the SRA](#), [ACAS guidelines](#) and recent [CHSA guidelines](#). Numerous recent House of Commons committees have raised serious criticisms of NDAs and made as yet unlegislated recommendations, including the [Women and Equality committee](#), the [Business, Energy and Industrial Strategy committee](#) and the [APPG on Whistleblowing](#). I would urge the IDC to use this opportunity to ensure that meaningful progress is made to limit the abuse of NDAs in the aid sector – and more widely.

4. Recommendations for IDC inquiry

Based on the evidence above, I would like to propose the following recommendations.

4.1. Board accountability. In the absence of an effective regulator or ombudsman, NGO Board’s are essentially unaccountable. Consequently, Board members are appointed in some cases for their networks and fundraising potential, or for their reputations, at the expense of their governance role. High profile Charity Commission inquiries (e.g. Oxfam, Save the Children) have revealed the weakness of charity Boards. Given their role in setting the tone/culture of an organisation, this must be addressed through the following measures:

4.1.1 Introduce Board performance measures with annual reporting to the regulator.

4.1.2 Board members who do not fulfil their duties should be investigated and held to account.

4.1.3 UK government should support the development of a specific standard on PSEAH which would include standards regarding whistleblower protection and the use of non-disclosure agreements.

¹ [UK Department for Business, Energy & Industrial Strategy: Consultation on measures to prevent misuse in situations of workplace harassment or discrimination.](#)

² [Charity Commission report into Oxfam](#), page 7.

4.2. Whistle blower protection. My experience has shown that whistle blowers are not protected and are perceived negatively by those with power in the aid sector. Despite the commitments made and funds allocated in response to the public outrage regarding the Oxfam scandal, significant shifts in accountability and leadership attitude has not been forthcoming. The abuse of NDAs lies at the heart of this issue - tough new regulation is required.

4.2.1 Clear UK guidance on NDA use in the sector, including prohibitions on their general use and tight restrictions for exceptional cases. CHSA guidance a good first step but unless incorporated in legislation it will not be implemented.

4.2.2 Require all UK NGOs to record and report all use of NDAs at Board level. Reporting should include rationale for issuing an NDA, the scope and the cost. This information to be reported to the Charity Commission on an annual basis as a statutory requirement.

4.2.3 Clear restrictions on the use of UK taxpayer funds for NDAs, with their prohibition in cases involving sexual exploitation and abuse.

4.3. Complaints handling. Despite renewed public pressure since the Oxfam scandal, the aid sector has demonstrated that self-regulation is untenable. The Charity Commission is a weak regulator which lacks appropriate transparency and is not an ombudsman. Industry regulated schemes are ineffective to deal with the scale of the problem and provide a false sense of confidence which puts vulnerable people at greater risk. An international ombudsman has been found too complex to initiate.

4.3.1 A national ombudsman should be established covering all UK registered organisations and in addition all those which receive UK government funds. This should be a robust, independent body, sufficiently resourced to handle sexual exploitation and abuse allegations safely and with appropriate transparency to provide public confidence.

4.3.2 Tax payer money should not be used to fund complaints handling mechanisms which do not work, including HQAI and CHSA.

4.3.3 DfID should review its membership of the CHSA, which is essentially a trade body of the aid sector.

Additional written evidence

Charity Commission annex.

1. Through a FOI submitted to the Charity Commission I requested the following information: "What communication has the Charity Commission had with the charity ... in the last 24 months regarding:

- ...'s use of non-disclosure agreements;
- How ... has handled whistleblowing.

Please could you also provide information on what actions ... has agreed with the Charity Commission as a response to the above issues."

2. The Charity Commission responded: “I can confirm that we hold information that is relevant to your request. However, I am withholding disclosure of this information under the following exemptions: sections 31, 40(2) and 41 of the Act.”

3. Amongst the reasons for withholding disclosure, I was told: “If the details of all communications which may be subject to regulatory engagement by the Commission are routinely disclosed, charities, and other parties, would be reluctant to cooperate or enter into open and frank discussions with the Commission in the course of its work.”

4. Since the majority of NGOs are in part or in whole publicly funded, either through taxpayer funded government grants/tax rebates and/or through gifts from the general public, there is a duty for charities to be transparent.

5. It is disquieting that the regulator appears to rely so heavily on the voluntary cooperation of NGOs, suggesting a reluctance to use their powers as a regulator to promote transparency and demand information and compliance if need be.

6. It is of concern that the most high profile public inquiries by the Charity Commission into international aid organizations have only come about following sustained media coverage. This implies that Charity Commission is reactive rather than proactive on important issues of preventing sexual exploitation and abuse in the aid sector.

7. I believe that this evidence points towards a regulator which is not fit for purpose when it comes to ensuring that those with power in charities are effectively prevented from abusing that power – whether that be with aid recipients themselves or subordinate staff and volunteers.

8. Unless this situation is addressed, charities will continue to invite complainants to contact the Charity Commission, safe in the knowledge that nothing of substance will come of this process. Indeed, it critically undermines the legally required clause in nondisclosure agreements and allows the charity to use a standard ‘get-out’ statement such as: “Our settlement agreements make clear that they do not in any way prevent the individual from making a disclosure to the relevant regulatory bodies.”

9. Let unaddressed, this evidence suggests that the regulator is failing in its duty to uphold 3 of its 5 strategic objectives:

- holding charities to account
- dealing with wrongdoing and harm
- informing public choice

HQAI Annex A

With reference to a letter received from HQAI on 9 October 2020

1. The HQAI Executive Director essentially sets out the case that an audit is an inappropriate tool for managing a complaint, because it can only look at the pre-determined criteria of the standard. I had raised this concern to the HQAI Board in March/April 2020. Although it

was dismissed by the HQAI Governing Board, HQAI's Advisory and Complaint Board (ACB) Chair upheld this point in a letter in May 2020 in which he stated: '... the responsible auditor will be requested to investigate the issue and to provide the HQAI Secretariat or the ACB with the information obtained, who then decide on how to use this information as seen fit. ... It needs to be emphasized though that the auditor does not conduct the investigation – this remains the responsibility of HQAI's Executive Director...' It would appear that the ED has relied solely on evidence collected by the auditor and failed to take his own responsibilities for the investigation seriously.

2. Additionally, in the same letter of 5 May 2020, HQAI's ACB determined that: "In the opinion of the ACB, with regard to the issue of NDAs, this would appear to be a reasonable expectation that the use of NDAs – especially related to issues contained in the standard – may contravene the spirit and intent of the CHS." The ACB's deliberations preceded the publishing of the CHS Alliance guidance on NDAs and is based on an auditors reasonable interpretation of compliance with the CHS. It is unclear therefore why the HQAI Executive Director is appealing to the lack of specific guidance on NDAs as a reason for dismissing my complaint.

3. The HQAI Executive Director is admitting that an HQAI audit is insufficiently 'granular' to pick up issues of non-compliance with respect to PSEAH. Although CHS Alliance and HQAI have promoted the CHS as robust for PSEAH, in reality it appears that the audit is unable to detect noncompliance, because the standard (the CHS) is not sufficiently detailed. This raises questions about the ability of an HQAI audit to detect PSEAH non-compliances – and even more so in the absence of a complaint/whistleblower report.

4. Despite having reviewed the documents relating to my case, the HQAI Executive Director concludes that my NDA was not used to "cover wrongdoing, inappropriate behaviour, misconduct, or to punish or discourage whistleblowing." In explaining this, he refers to the 'terms of your NDA in particular specify that you are entitled to "making a disclosure to a regulator regarding any misconduct, wrongdoing or serious breach of regulatory requirements ore reporting any criminal offence to any law enforcement agency."' Whilst I will accept his offer to escalate my complaint to the ACB, my point here is that this is an illogical argument. I have previously pointed the auditor to the following evidence, among other evidence: notes of a witnessed meeting where I whistleblew to the ... CEO in which he committed to come back to me on my allegations after receiving advice; subsequent denial of this commitment by the CEO; minutes of my contract termination meeting showing the decision had been taken by the CEO; my settlement agreement with large settlement payment and NDA. I do not know if this evidence was actually requested by the auditor and hence if it was available to the HQAI Executive Director.

I am happy to provide any further supporting evidence should the Committee require it.

HQAI Annex B

1. ... [I have received a further] letter from HQAI [which] indicates two key concerns: i) that there is insufficient rigour in the HQAI auditing process with respect to investigating whistleblower allegations and ii) that the investigation of whistleblower allegations is dependent on the ability to pay.

2. It would appear that the HQAI auditor either did not request the evidence that I pointed him to, or else ... refused to give it to him. Either way, the ACB response in the attached letter supports my contention that the auditor's finding on ...'s use of NDAs is not consistent with evidence that I have previously informed the auditor about.

3. I recently received confirmation from ...'s Company Secretary, in response to a subject access request, that my allegations have never been investigated. Investigating allegations of bullying and other grievances is a minimum requirement under the ACAS Code of Practice. I had asked the HQAI auditor to check if an investigation had been done.

4. I have previously engaged the HQAI Governing Board on the 2018 complaints policy in which the complainant was asked to agree to pay costs before a complaint was investigated. The Board committed to look at this and a revised complaints policy has been produced. Whilst the language has been softened, the principle remains.

5. The evidence indicates that the HQAI ACB is effectively saying that, in my case as a whistleblower, I must be prepared to pay to have my allegations investigated. Note that they do not say that the ACB has considered my complaint and dismissed it - but that they will only consider it if I am prepared to pay for it, should the complaint not be upheld. The implication is that investigating whistleblower allegations will be done according to the ability to pay.

6. I believe it is unacceptable for an organisation which receives UK taxpayer funds to ask whistleblowers to be prepared to pay to have their allegations investigated - especially when their auditor has failed to do the job properly. In his recent testimony to the IDC inquiry, the HQAI Executive Director stated that the DfID/FCDO £300k grant goes to core funds. My understanding is that it was allocated to support PSEA – which would include funding complaints handling, so that whistleblowers can report safely and in confidence.

I am happy to provide any further supporting evidence should the Committee require it.

CHS Alliance annex.

Recent communications with the CHS Alliance in connection with the contradiction between the Executive Director's testimony to the inquiry on 22 September 2020 and my experience of their complaint handling process show ongoing reticence by the CHS Alliance to hold members to account. Their response shows the following familiar pattern of responding to a complainant:

1. Ignore the question
2. Mischaracterise the complainant and/or misrepresent previous communications
3. Divert attention to a subject which is not contested
4. Attempt to push responsibility for decision-making elsewhere
5. Ignore conflict of interest issues
6. Close down the conversation

Given the evidence heard on 13th October from the journalists who brought the latest DRC abuse to public attention it is shocking that the CHS Alliance has received so few complaints through its complaints mechanism – and that it has never upheld a single complaint. It is similarly alarming, more than 2½ years after the Oxfam scandal, that the CHS does not make whistleblower protection an explicit requirement. It is instead relegated to the revised guidance notes. Lack of robust whistle blower protection across the industry may provide one reason (among many) why aid workers are so reluctant to report misconduct, even when it is blatant.

I am happy to provide any further supporting evidence should the Committee require it.