



**Review of Safeguards to Protect the
Charitable Sector from Terrorist Abuse**
BOND submission, August 2007

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1. Summary of recommendations

BOND (British Overseas NGOs for Development) welcomes the opportunity to comment. A project group of 26 organisations has developed our response to this consultation, on behalf of BOND's over 300 members. In summary, we agree that more could be done to reduce the threat of terrorist abuse of charities, but we do not think the threat should be overstated. We would like to see,

- A clear undertaking from government to respect the independence of the Charity Commission, and to ensure that it receives sufficient funding to ensure that any new work on anti-terrorism does not jeopardise its existing activities.
- Full, Compact-compliant consultation on the Charity Commission's proposed anti-terrorism strategy and any other measures with significant impact on the sector.
- Clarification that the US list of proscribed organisations has no legal force in the UK, and vocal lobbying by government for the removal of UK organisations where no evidence has been disclosed by US authorities.
- A Regulatory Impact Assessment of the proposals set out in the Review, and an independent assessment of the impact on humanitarian relief and development work of all anti-terrorist measures affecting the sector before they are implemented.
- Removal of the phrase 'charities closely aligned to certain religious or cultural movements' as a criterion for risk assessment in the Review.
- A 'good faith' defence to widely-drafted anti-terrorism legislation to protect trustees in situations where delivering vital humanitarian aid inevitably involves incidental contact with proscribed organisations, as outlined in NCVO's 'Security and Civil Society' report earlier this year.
- Charity Commission guidance focused on charities' legal obligations, within which legal obligation must be clearly distinguished from best practice.
- Work coordinated by BOND to identify, develop and promulgate best practice above the legal minimum.

2. Background

BOND (British Overseas NGOs for Development) is the United Kingdom's broadest network of voluntary organisations working in international development (often called non-governmental organisations, or NGOs). BOND was founded in June 1993, on the initiative of 61 NGOs, and now has over 300 members. It is officially recognised by the UK Government's Department for International Development (DFID). BOND aims to improve the UK's contribution to international development by promoting the exchange of experience, ideas and information amongst BOND members between networks of NGOs in the UK and internationally, with the UK Government, and between BOND members and other UK bodies with an interest in international development.

This submission has been prepared by BOND's Project Group on Charities and Terrorist Financing ('the Project Group'), an informal group of 21 BOND members and several national and international partner organisations, in consultation with BOND's full

membership. Annex II gives further details. During the drawing-up of this submission, the project group met with representatives from the Charity Commission on two occasions to exchange views and inform our response.

3. Overview

BOND welcomes the opportunity to contribute to this consultation on the Home Office's Review of Safeguards to Protect the Charitable Sector from Terrorist Abuse ("The review"). We recognise that responsibilities for protecting the charitable sector from terrorist abuse lie with several different sets of organisations, including the sector itself. With this in mind, there are a number of general comments to make before we respond to the specific questions outlined in the consultation document.

3.1 The role of international charities

Britons can rightly be proud of our country's thriving and dynamic voluntary sector. In the international development sub-sector, BOND's membership alone ranges from major household names to small organisations with just one employee; from global campaigning NGOs to those with deep-rooted projects in one country or even one town; from faith-based charities to groups formed out of diaspora communities. Every year, millions of people's lives in poor countries are transformed by these organisations.

British NGOs are therefore at the forefront of building bridges between Britain and other parts of the world. Whether it is the global reputation of major international charities like Oxfam and the Red Cross, or the individual experience of an HIV/AIDS orphan in Somalia, NGOs are the global face of a caring and concerned people here in Britain.

Any anti-terrorist intervention – regulatory or otherwise – that compromises the depth or breadth of the work of the NGO sector needs to be considered against its impact on British NGOs' beneficiaries and potential beneficiaries; not just on their livelihoods but on the way they perceive Britain's commitment to alleviating global poverty.

3.2 The scale of the threat

The review acknowledges that cases of abuse of the sector by terrorists are 'extremely rare'. It further accepts that, even for the charities it identifies as at 'high risk', 'the risk of abuse is relatively greater'.¹ Few concrete examples are given, and hard data on the actual number of substantiated incidents, as opposed to the numbers of allegations and investigations, is scarce. The tone of the review (phrases like 'choke off funds to terrorists'), and the premise of its argument, does not therefore seem to be commensurate with the scale of the proven threat.

We accept the need for a rigorous approach to ensure that this remains the case, and further that there is more that the sector can do to ensure it maintains public confidence and complies with the law. We do not think it is helpful to overstate the threat, as in our view the review document does; indeed, the only outcome of doing so is likely to be a

¹ Paragraph 2.10, our emphasis.

decrease in public confidence in charity, and a feeling in the sector that Government does not understand the true context correctly.

3.3 Independence of and funding for the regulator

We recognise that the review attempts to locate plans for the charitable sector in the context of a broader, coordinated government strategy. We also recognise that it seeks a pragmatic response to the problems it outlines. But this should not come at the cost of the independence of the regulator, or result in over-regulation.

The Charity Commission ('the Commission') enjoys the confidence and respect of Britain's charitable sector, because of its understanding of the nature of charities, the proportionality and sensitivity of its engagement, and above all its independence from government. The Commission must therefore tread a delicate line between agreeing to take on many of the regulatory challenges posed by the threat of terrorist abuse as recommended by the consultation document, and maintaining the sector's confidence in its independence. Without this confidence, the positive working relationship between regulator and regulated, which is a core enabling characteristic of the Commission, will be jeopardised; this is in no-one's interest, and would undermine rather than enhance the overall response to the terrorist threat.

We are therefore concerned, for example, that the review implies that an indicator of success for the Commission would be a greater number of investigations. Were the Commission to feel obliged to conduct more investigations, under a risk-based rather than evidence-based framework, this would lead to a decline in the sector's confidence in the Commission's independence. It would also lead to falling public confidence in charity.

Furthermore, we understand that additional funding for the Commission to conduct more intensive work on terrorist financing is only guaranteed for one year, and that the Commission will be expected to reduce expenditure year-on-year from the financial year 2008-9 as part of its next CSR settlement. We are concerned that the Commission's other services to charities could be compromised as it takes on this expanding area of work while its resources are reduced, and would like to see this taken into account in the Commission's CSR settlement.

3.4 Status of the review and further consultation

It is appropriate and necessary for government to consult on the overall mix of measures which are needed to minimise the risk of terrorist abuse, and on the correct division of responsibility between the sector, the regulator, and other enforcement agencies (the 'what' and the 'whom'). We will argue in this submission that in many areas the most appropriate and effective response will come from the sector itself, supported and enabled by the Commission.

It is not appropriate for the government to consult on or take decisions surrounding the detailed implementation of measures identified as necessary (the 'how'). By making such detailed recommendations to the Charity Commission as those proposed in the review document, the Home Office sets a precedent with which we are not comfortable.

BOND's members and secretariat are committed to working with the Commission to clarify legal obligations and develop practical guidance on them. We are equally committed to identifying, developing and promulgating best practice ourselves, in consultation with the Commission.

This is a challenging area that will require substantial discussion between the sector and regulator; BOND therefore believes that further consultation with the sector, by the Commission, on its plans for the development of new policies and procedures to safeguard the charitable sector from terrorist abuse is essential. This consultation must cover all new areas of the Commission's anti-terrorism strategy, and any new regulation, and must be Compact-compliant. We ask the government to recognise that such consultation takes time.

3.5 Terminology

The term 'beneficiaries' can refer both to organisational recipients of funding and support, and to the individuals who ultimately benefit from the work of charities and their partners. Clearly, an obligation to gather meaningful and detailed information on the latter would be to the tremendous detriment of many charities' work, not to mention practically impossible in many cases. We therefore presume that the guidance refers to the former when for example 'know your beneficiary' is discussed, and would welcome clarity on this in future communications from government.

BOND also raised before publication the difficulties with the phrase 'veil of legitimacy', both in generating unnecessary suspicion, and as a culturally inappropriate term given the sensitivity of this issue for certain faith-based NGOs. We are therefore disappointed to see that the phrase is used once again, and would reiterate our call for an alternative wording to be found.

3.6 Lists of proscribed organisations

Checking against lists of organisations and individuals proscribed in the UK is one component of due diligence by charities: knowingly to support such organisations or individuals is a clear violation of the law. But it is important to be clear which lists should be referred to, and to clarify organisations' obligations in this area.

In particular, there is significant concern among BOND's membership about the United States Special Designation list. As BOND has made the government aware of on several occasions, it is possible for UK organisations that have been explicitly given a clean bill of health by the Charity Commission to remain designated by the US authorities, with no evidence disclosed nor any meaningful right of appeal.

Charities in this situation would find themselves significantly restricted in their ability to raise funds, as well as sustaining significant reputational damage. UK organisations which operate in the US, including banks and charitable foundations, would open themselves up to legal challenges and significant reputational risk if they facilitate financial transfers for such charities, a kind of 'extraterritorial creep' of the US designation.

Government must not allow designation in the US to become a *de facto* proscription in the UK too. There must be a clear statement that this is not the case, and government must lobby vocally for the removal of organisations not proscribed in the UK from other governments' lists, where no evidence has been disclosed in public or in private to support the proscription. It must state clearly that dealing with organisations proscribed in the US but not the UK is an entirely acceptable course of action for UK organisations. A legal opinion from the Charity Commission in this area would also be welcome.

3.7 Impact assessment

BOND understands that the Home Office must prepare a Regulatory Impact Assessment for, "all proposals (legislative and non-legislative) which are likely to have a direct or indirect impact (whether benefit or cost) on business, charities or the voluntary sector and could have a regulatory solution."² We note that this review was not accompanied by an RIA. An impact assessment would be an important tool for ensuring proportionality of the response expected from the charitable sector.

We would like to see all proposed new measures – regulatory or otherwise – subjected to an independent assessment of their impact on humanitarian relief and development work. In a risk-based framework, the potential risk of terrorist abuse needs to be considered in parallel with the actual risk created if charities do not provide aid or assistance, and the risks created by a changed way of working that might include high-profile checks of partners.

4. Responses to consultation questions

The review poses some difficult questions, the answers to which will take a considerable amount of discussion and investigation. As we have stated earlier, we believe that this process should be conducted by the sector and the Charity Commission in partnership. It is therefore natural that our answers here only scratch the surface, and that the most important discussion at this stage should be to determine the process through which more satisfactory answers will be reached by the Commission and the sector.

4.1 Comments on overall policy

4.1.1 *Do you agree that a risk-based and proportionate approach involving all stakeholders is the best way to counter the threat of terrorist abuse of charities?*

Broadly, we agree with this part of the framework as the best way to minimise the regulatory burden on the sector. We would, however, like to raise several specific concerns:

- We are very concerned about the inclusion of 'charities closely aligned to certain religious or cultural movements' as a criterion for risk assessment. Charities are at risk because of what they do, where, and how; they are not 'at risk' simply because of their religious or cultural origins. Black and Minority Ethnic (BME) charities, many of which are faith-based, are an exciting and welcome growth

² Home office website but also set out in the Government's Code of Practice on Consultation.

area in the charitable sector. To describe some of these charities as 'at risk' in an existing climate of public suspicion and stigma is likely to only to further damage public confidence in certain sub-sectors, without good reason. It is analogous to racial profiling of individuals, towards which there is clear public antipathy.

- Including charities who move funds to areas of conflict or unrest is of course legitimate, but this needs to be with the caveat that these areas are often some of the most in need of humanitarian aid, and it would not be desirable to see charities, especially smaller ones, discouraged from operating in these areas because of an overbearing administrative burden or the danger of coming under suspicion. This is why we would like to see an independent impact assessment of any new measures before they are implemented.
- Charity trustees have an obligation to understand, manage and mitigate risks to their charity. The corollary to a risk-based system therefore needs to be a 'good faith' defence for trustees. This issue is covered in more detail in our response to question 4.2.3.

4.1.2 Are there measures that the Government could take in addition to the recommendations presented here that would help to safeguard public and donor confidence in the integrity of the sector?

Government should:

- Place greater emphasis on the positive value of the voluntary sector in building bridging social capital between countries and communities, and hence in winning hearts and minds. Communicate unambiguously that the number of incidents of terrorist abuse of charities is very small in relation to the size of the sector, and avoid casting suspicion on the whole sector or on certain groups of charities.
- Lobby vocally for the removal of organisations not proscribed in the UK from other governments' lists of proscribed organisations, where no evidence has been disclosed in public or in private to support the proscription. State clearly that dealing with organisations proscribed in the US but not the UK is an entirely acceptable course of action for UK organisations.
- Ensure that funding is available for the international charitable sector to compile and promote best practice. This is a significant piece of work that can only be conducted from within the sector; the BOND secretariat, the organisation created by the sector for exactly this kind of work, is willing to undertake it, but does not have capacity without specific extra funding. See Annex I.

4.2 Responses to specific questions

4.2.1 How should charities assess their exposure to the risk of terrorist exploitation?

As part of their overall risk assessment, charities need to examine the political, social and economic contexts in the areas in which they operate, and the risks created by their ways of working. There is no 'one size fits all' for such a diverse sector, and greater understanding of the risks involved, existing practices, and implications for different types of organisation is needed before a more prescriptive response can be given.

4.2.2 *What information and tools would assist charities to do this?*

The BOND secretariat and project group will support the Charity Commission in developing guidance for charities on how to fulfil their legal obligations in this area, and will then work to identify and promulgate best practice.

4.2.3 *Is there a need for a more explicit 'due diligence' obligation on the charity sector requiring appropriate controls to be put in place by charities for the purposes of detecting and forestalling abuse by terrorists? If so, what is the best mechanism for delivering this change?*

Charity trustees are already under a duty to exercise such skill and care as is reasonable in the circumstances to:

- ensure that a charity's assets and resources are used only for the purposes of the charity (which must be purposes recognised as charitable under English law);
- ensure that the charity is run lawfully;
- safeguard and protect the assets of the charity, including its funds and its reputation;

Trustees must act at all times in the best interests of the charity and its beneficiaries. A duty to take all reasonable steps to ensure that funds are not misused or appropriated for terrorist purposes is implicit in these duties (as is a duty to protect the charity's assets from fraud and mismanagement). We therefore do not think a more explicit 'due diligence' obligation would be appropriate. An explicit obligation may imply a change in the law, and could potentially encourage a 'one size fits all' approach. This would clearly be inappropriate given the diversity of the sector and the differing risks faced by charities, depending on the nature of their activities.

There is, however, a need to set out trustees' legal obligations in a more sophisticated way. BOND believes there is an urgent need for clear guidance for trustees from the Charity Commission explaining how to fulfil their legal obligations in this area. It is important that there is no 'gold plating' of legal requirements in such guidance. The emphasis should therefore be on legal obligations, not on good practice, and the distinction between legal requirements and any recommended practice must be made clear.

As the NCVO report 'Security and Civil Society'³ noted, current anti-terrorist legislation is widely-drafted. BOND would therefore like to see the introduction of an explicit 'good faith' defence for trustees. Trustees of humanitarian charities who can demonstrate that they have discharged their legal duties with due care and skill and acted in good faith, together with the staff of such organisations, should not be held criminally liable for any incidental contact with proscribed organisations required in order for them to deliver humanitarian aid. Such a defence should apply where there is no reasonable alternative means of delivering aid. It should also cover abuse of funds that may occur despite

³ Available at <http://tinyurl.com/2xdomj>

steps taken to prevent it (although there are already defences available for some offences in these situations).

Without such a good faith defence, virtually any humanitarian work in certain parts of the world, including areas where such work is most desperately needed, is currently criminalised. It is unacceptable for trustees to be exposed to a risk of prosecution merely for operating in relatively high-risk areas of the world.

This proposal and the particular offences for which a good faith defence is needed are explored in more detail in the NCVO's report 'Security and Civil Society' (see in particular Appendix I of that report).

To improve the sector's confidence in its independence, we will be calling on the Commission to set out publicly its own criteria and procedures for investigation. By ensuring that charities have a clear understanding of the steps the Commission must take to ensure a proportionate and evidence-based investigation, this will clarify the grounds for appeal where a charity believes there has been a procedural irregularity.

4.2.4 What form should 'know your beneficiary' checks take?

Inevitably this will depend on the size of a charity, the nature of the work being undertaken, and the nature of the partner organisation. In all cases, greater understanding of the complexities involved is needed before a more prescriptive response can be given. The BOND secretariat and project group will support the Charity Commission in developing guidance for charities on how to fulfil their legal obligations in this area, and will then work to identify and promulgate best practice.

4.2.5 Should the proposals for 'know your beneficiary' checks be turned into a standardised requirement across the sector? If so, what is the best way to do this?

Due to the diversity of organisations and their partners, we do not believe that a standardised requirement would be appropriate or possible.

4.2.6 Given the diversity of the sector, what is the best way to raise awareness of its obligations under the Terrorism Act 2000 and financial sanctions legislation?

A single piece of guidance from the Charity Commission, setting out all legal and regulatory obligations in this area, will be the most effective means of delivering this. The BOND secretariat and project group will support the Charity Commission in developing such guidance and help to promote its existence to the sector.

4.2.7 How can existing best practice in the sector be identified and promulgated in terms of a) risk assessment, and b) proportionate controls, systems and processes to reduce exposure to particular risks?

The BOND project group is working on finding, developing and sharing best practice. The principle that best practice recommendations should be produced by and for the sector – not by the regulator, but in collaboration with it – must not be undermined.

This principle notwithstanding, we recognise that the regulator and Government need to have confidence in the mix of hard law, Charity Commission guidance and voluntary best practice. A thorough piece of work to identify good practice among diverse organisations will need to take place, and the BOND secretariat is the organisation created by the NGO sector for just this kind of work; however, BOND does not have the resources to conduct a piece of work of sufficient depth and rigour, and so we have suggested that this work be funded from some of the Charity Commission's extra resources for fighting terrorism, but conducted through the BOND secretariat.

4.2.8 What form should feedback to the sector on relevant terrorist threats take?

Feedback to the sector should be positive as well as negative – that is, should include information on organisations that have been cleared of accusations as well as those that have been found guilty. If it refers to specific organisations or individuals, feedback should be evidence-based and not risk-based.

Various suggestions have been made, including placing information on websites. The BOND secretariat and project group will support the Charity Commission in determining the most effective way to deliver this, and believe that it would be most appropriate for the Commission to act as the provider of information.

5. Further Information

If you require any further information or clarification please contact:

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6. Annex I: What BOND will do

There are examples of good practice on this issue in the sector, but it is fair to say that many organisations are not aware of their legal obligations and examples of best practice are not always made publicly available so many NGOs would not have access to them. On issues such as this, the BOND secretariat's role is to facilitate the sector in identifying, developing and promulgating best practice. Steered and coordinated by the project group (Annex II), the BOND secretariat has been mandated to conduct the following activities:

- Facilitate the BOND project group to steer the sector's reaction.
- Work with the Charity Commission as it updates its guidance notes on charities and terrorism and working internationally, and as it develops its anti-terrorism strategy.
- Research a comprehensive list of the opportunities and challenges faced by BOND member organisations in this area.
- Actively seek out diverse examples of best practice from the UK NGO sector, and from our international partners.
- Raise awareness in the sector of the need to minimise the risk of terrorist abuse, charities' legal obligations, and recommended best practice.
- Develop a best practice guide for NGOs, based on this information and building on the Charity Commission's guidance.
- Offer training and skillsharing on meeting legal obligations and reaching best practice, as part of our learning and training programme.

The BOND secretariat has made it clear to the Charity Commission that funding constraints will not permit us to undertake all of the activities listed above. Of particular concern is that BOND will not be able to conduct the exhaustive investigation of best practice that is needed. The project group believes strongly that any work on best practice should emerge from the sector, through BOND, and not from the Charity Commission or government. The latter two may therefore want to consider reaching an agreement with BOND to fund its proposed work in this area.

7. Annex II: BOND project group

The BOND project group was formed at an inaugural meeting in February 2007, with the following terms of reference:

- a) Work with UK and EU government, and with the Charity Commission, to,
 - ensure an appropriate and proportionate legal and regulatory framework.
 - clarify NGOs' obligations under this legal and regulatory framework.
- b) Pro-actively develop, share and promote good practice among BOND members and the wider sector at home and abroad.
- c) Manage the reputational risk to the sector of disproportionate or erroneous public statements.

Its members are as follows:

ActionAid^

Bates Wells & Braithwaite*
Care International UK
Christian Aid^
Concord*
Friends of Birzeit University
Grantmakers Without Borders*
Health Unlimited
IIED
International Rescue Committee UK
Interpal
Islamic Relief^
LAMB Health Care Foundation
Medical Aid for Palestinians
Mines Advisory Group
Muslim Aid
NCVO*^
OMB Watch*
Oxfam^
Plan International
Practical Action
Responding to Conflict
Salvation Army
Save the Children^
Sense International
Welfare Association UK

^These organisations also made their own submissions, which will be linked to at www.bond.org.uk

*Non-BOND members with observer status

The following BOND members also indicated their support for this submission:

Action Village India
APT Enterprise Development
BasicNeeds
BRAC UK
Bridge2Aid
Cafod
Haringey Somali Carers' Trust
Hives Save Lives-Africa
ICA:UK
International Alert
International Nepal Fellowship
Kingscare
LEAD International
MBC/Heritage of Islam
Merlin
Quaker Peace and Social Witness
Send a Cow
Shared Interest
Sightsavers International
Teach a Man to Fish

Home Office terrorism consultation

British Overseas NGOs for Development

The Mothers' Union
The Rights Practice
VSO
Welsh Centre for International Affairs
Welsh International Sector Network (WISeN)
Worldexchange