



INDEPENDENT INQUIRY  
CHILD SEXUAL ABUSE

# Children Outside the United Kingdom

## Phase 2

Investigation Report

*January 2020*

2020



# Children Outside the United Kingdom

## Phase 2

The protection of children  
outside the United Kingdom

Travel restriction orders,  
extra-territorial prosecutions and  
disclosure and barring regimes

Investigation Report  
*January 2020*

A report of the Inquiry Panel  
Professor Alexis Jay OBE  
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Ivor Frank  
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The following corrections were made to this version of the report on 9 January 2020:

Page 32, paragraph 17: was amended to read 'seven **concluded** prosecutions' and the text in footnote 130, to read 'the case of Patrick Matthews which did not result in **conviction**'.

Page 54, paragraph 4: '5,550' was amended to read '5,551'.

Page 55, paragraph 11: was amended to read 'seven **concluded** prosecutions' and footnote 247 should read 'the case of Patrick Matthews which did not result in **conviction**'.

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# Executive Summary

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The full scale of the sexual abuse of children by UK nationals and residents outside of the UK is unknown but it is extensive. Between 2013 and 2017, 361 UK nationals requested consular assistance abroad after being arrested for child sex offences, 78 of which were in 2017. British offenders figure highly in prevalence surveys and there have been numerous convictions. Inevitably, these represent a fraction of the numbers of offenders and offences. Moreover, sexual abuse of children abroad does not have to take place abroad. It has been estimated that some 80,000 people in the UK may present a sexual threat to children online, increasingly through live-streaming. This activity targets the poorest and most vulnerable children in many parts of the world.

This investigation focusses on three forms of response by institutions in England and Wales to the sexual abuse of children outside the UK.

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

The second response examined by this investigation concerns the prosecution in England and Wales of UK nationals and residents who sexually abuse children whilst abroad. Section 72 of the Sexual Offences Act 2003 (and its precursor) extends the jurisdiction of domestic courts to permit this. There appear to have been eight successful such prosecutions since 1997. One example was Keith Morris, who was sentenced to 18.5 years' imprisonment for 10 sexual offences against vulnerable children in Kenya and two counts of attempting to pervert the course of justice. Another concerns Mark Frost, who was sentenced to 13 terms of life imprisonment having pleaded guilty to 45 offences against boys in Thailand. Once again, it may be that section 72 is underused. While in principle prosecutions ought to take place in the country in which the offence occurred, there are numerous instances where a prosecution in England and Wales can and should take place. It ought not to be considered a matter of 'last resort', given that the quality of local justice may be suspect. There is a need for increased awareness of section 72 by police forces in England and Wales, to be achieved through guidance and training. There is also a need to ensure effective cooperation between law enforcement agencies internationally. This requires an adequate number of international liaison officers able to work effectively with international partners in high-risk countries.

The third response examined concerns the operation of disclosure and barring regimes, the purpose of which is to enable employers to make safer recruitment decisions and help prevent those who pose a risk to children from working with them. Agencies based in England and Wales which recruit staff in England and Wales to work with children overseas are obliged to undertake Disclosure and Barring Service (DBS) checks. Institutions which are based overseas cannot request a DBS check when recruiting British nationals but may request an International Child Protection Certificate (ICPC) if they wish. Neither a DBS certificate nor an ICPC will necessarily contain information concerning offending which has taken place outside of the UK. Moreover, there are some discrepancies between the information which the two certificates contain. The system is confusing, inconsistent and can be exploited by those who wish to sexually abuse children abroad. It needs to be reformed.

The Inquiry experienced some difficulties in accessing comprehensive statistics concerning the use of travel restrictions and section 72 prosecutions.

Each of these regimes is therefore limited in its effectiveness. The gaps in these regimes operate, in some cases together, to enable offenders to perpetrate sexual abuse and exploitation overseas. This is symptomatic of a general lack of focus on this aspect of child protection.

We have made several recommendations aimed at providing a more coherent national strategy on these issues, making better use of the travel restriction regime, and enhancing the Disclosure and Barring Service scheme by extending its geographical reach to work with children overseas and making it mandatory in certain circumstances.



# Pen portraits

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## OU-A1

OU-A1<sup>1</sup> attended a school in Germany for children of British armed forces personnel. She described regular incidents of sexual abuse perpetrated by a male teacher (OU-F3) in the early 1980s, when she was of primary school age, that continued for several years. She said he touched her and that she was made to touch him. She felt frightened and knew that it was wrong.

OU-A1 later disclosed the abuse to a boyfriend and her mother, as well as to a counsellor in 1992, who drafted a statement which she understood had been passed to the Royal Military Police (RMP). She later discovered that OU-F3 had become a head teacher in Wales and she contacted the police herself. She described a hearing in November 2005 where she gave evidence for three hours but was later told that the RMP investigation would not be proceeding further. She settled a civil claim against the Ministry of Defence in 2017, without any admission of liability.

## OU-A2, OU-A3 and OU-A5

The Inquiry received several accounts of abuse of children perpetrated in Uganda by OU-F2. He was a member of a UK-based religious charity which engaged in various activities, including missionary, educational and pastoral work with disadvantaged youths in Africa. It is understood that he travelled between the UK and Uganda from the 1980s to 2007.<sup>2</sup>

OU-A2<sup>3</sup> described encountering OU-F2 at a youth group which he ran. He also provided financial support for her education when she was aged 15. On one occasion, after accusing her and other students of stealing his sweets, he drove them to his “workshop” and took them to his bedroom, one by one. When it was her turn, he made her remove her top and lean over a sink, and he hit her on her buttocks. Her father told her she had to forgive OU-F2, because he was paying her school fees. For this reason, she felt “*completely at [his] mercy*”. She described being sexually harassed by another student around four years later. The charity Kiddies Support Scheme (KISS) was helpful and put her in touch with British lawyers, but she has not spoken about her abuse to Ugandan or British police.

OU-A3<sup>4</sup> described abuse by OU-F2. OU-A3 was blamed for misbehaviour and taken to OU-F2’s bedroom, where OU-F2 removed OU-A3’s trousers and underwear, made him bend over and hit his bottom with a ruler, causing serious pain. OU-A3 also felt unable to complain because OU-F2 was paying his school fees. He was beaten for a second time, this time with OU-F2 using his bare hands. OU-F2 was known to have done the same to other children. OU-A3 did not go to the police.

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<sup>1</sup> OU-A1 11 February 2019 8-10

<sup>2</sup> Spreckley (INQ003616) paras 8–9

<sup>3</sup> OU-A2 11 February 2019 10-11

<sup>4</sup> OU-A3 11 February 2019 11

OU-A5<sup>5</sup> also described abuse by OU-F2, after he agreed to pay for OU-A5's schooling. OU-A5 had met him at a youth group which he attended from the early 1990s. OU-A5 described three incidents of abuse, two of which involved OU-F2 beating his bottom with his bare hands and a metal brush. OU-A5's grandmother knew about the abuse but said that nothing could be done because OU-F2 was paying OU-A5's school fees. OU-A5 disclosed the abuse to friends and family and to a KISS representative after OU-F2 had returned to England in around 2008. OU-A5 never spoke to the Ugandan or British police, believing that to do so would lead OU-F2 to withdraw financial support.

## Lorna

Lorna<sup>6</sup> is eight years old and from the Philippines. She is a recent victim of online sexual exploitation. Lorna started doing online "shows" when she was seven years old. She was recruited by a neighbour to perform online sexual acts on a webcam for foreigners. Lorna did "shows" three times a day and was paid US\$6. She explained that a man told her to take off her clothes, spread her legs and rub her thighs. She described that he was "white and hairy". Lorna used the money to buy food. Her mother never knew anything about the abuse. Lorna said she felt angry and wanted to forget it.

Lorna was taken by the police from her family home to a UNICEF-sponsored shelter. She is required by law to be separated from her family until the dispute with her neighbour is resolved. Her family have only visited her once. Lorna hopes they will visit her again and that she can be reunited with her family.

## Girl A

Girl A lived with her mother and eight siblings in Goa, in very impoverished conditions after the death of her father. Her brother sold peanuts on a beach, where he met a man from Hertfordshire who befriended their family. The man offered to sponsor the education of Girl A's brother, paying for him to attend a boarding school. He would ask Girl A's brother to bring her to his apartment, which he did. There, the man would sedate her by putting temazepam in her mango juice. He raped and sexually assaulted her on several occasions and filmed himself in doing so.

Girl A felt unable to report the abuse because the man was sponsoring her brother's education. The abuse was discovered when UK police seized the perpetrator's computer on the suspicion that he was downloading child sexual abuse images, and eventually he was prosecuted and imprisoned.<sup>7</sup>

## Boy B

Boy B lived in an orphanage in Albania founded by a British man. When Boy B was four years old, he and other children were sexually abused by a former salesman and a former social therapy nurse, who had come from Britain to work at the orphanage as caretakers.

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<sup>5</sup> OU-A5 11 February 2019 11-12

<sup>6</sup> 'Lorna' 15 February 2019 89; 96

<sup>7</sup> *Off the Radar: Protecting Children from British Sex Offenders who Travel*, ECPAT UK, 2011 (ECP000006), p23

At the men's trial, three years later, Boy B wept when he gave evidence via video-link. One of the men claimed that the allegations were a "fantasy" and that he had quit his job in England to "help the needy in Eastern Europe". In January 2010, both men were convicted and received lengthy custodial sentences with an order for deportation at the end of the custodial term. The founder of the orphanage had been convicted in November 2008 for sexually abusing children and was also imprisoned.<sup>8</sup>

## Boy C

Boy C was living in Pattaya, Thailand. In an account given to the Royal Thai Police, he described a British man tricking him into going to a hotel room and asking him to perform oral sex for 1,000 Baht (around £25). The man was charged with having sex with a minor.<sup>9</sup>

## Boy D and Boy E

Boys D and E, aged 12 and 14, lived in Thailand. They did not go to school because their parents could not afford it. A British man made financial arrangements with their parents for them to live with him and acted as their guardian. The man would hire tutors to teach them at home. He also bought them games, gave them money and sent presents to their parents. However, the man would sexually abuse them. He made the boys sleep naked with him in the same bed, and would take photographs of them. The man threatened the boys that if they told the police, he would not give them any more money and that their lives would be in danger. When Pattaya tourist police entered the house where the man was staying, they found a notebook computer containing indecent images of sex acts involving young boys. The man admitted the allegations during police questioning.<sup>10</sup>

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<sup>8</sup> *Off the Radar: Protecting Children from British Sex Offenders who Travel*, ECPAT UK, 2011 (ECP000006), p15

<sup>9</sup> *Return to Sender: British child sex offenders abroad - why more must be done*, ECPAT UK, 2008 (ECP000005), p20

<sup>10</sup> *Return to Sender: British child sex offenders abroad - why more must be done*, ECPAT UK, 2008 (ECP000005), p21



Part A

# Introduction

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# Introduction

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## A.1: Introduction

1. In the Protection of Children Outside the United Kingdom investigation, we examine the extent to which institutions and organisations based in England and Wales have taken seriously their responsibilities to protect children outside the United Kingdom from sexual abuse.
2. The first phase of this investigation was a case study on the Child Migration Programmes. It considered the sexual abuse of children sent overseas from England and Wales.
3. This second phase of the investigation is concerned with adults who leave England and Wales and who pose a risk of sexual harm to children overseas. Its scope is drawn from three separate but overlapping areas of concern:
  - The apparently limited use of powers to make civil orders restricting foreign travel by those known to pose a risk to children.
  - Difficulties in ensuring accountability in the criminal courts for British nationals and residents who commit sexual offences against children overseas.<sup>11</sup>
  - Issues with how disclosure and barring regimes apply to those who leave England and Wales to work with children overseas.
4. Some high-profile cases highlight these issues.
  - 4.1. Paul Gadd (also known as Gary Glitter) was sentenced to four months' imprisonment in 1999 after he admitted possessing 4,000 indecent images of children and was placed on the sex offenders' register. He was acquitted of charges of child sexual offences pre-dating that conviction but the allegations were well known to the British authorities. He then went on to travel to Cambodia, Thailand and Vietnam. In 2002 he was expelled from Cambodia over unspecified allegations and in March 2006 he was convicted of sexually abusing two girls, aged 10 and 11, in Vietnam. On his return to the UK, he was placed on the sex offenders' register for life. In 2015 he was convicted of six sexual offences in the 1970s and 1980s against three girls aged between eight and 13 and was sentenced to 16 years' imprisonment.
  - 4.2. The case of Richard Huckle received widespread media attention because of the scale of the abuse he perpetrated. He was investigated by the National Crime Agency (NCA) following the receipt of intelligence from the Australian authorities. After extensive collaboration with the Australian and Malaysian authorities, Huckle was charged with 91 offences over an eight-year period against 25 children aged between several months and 13 years old. In 2016, he pleaded guilty to 71 of these counts. He was sentenced to 22 life sentences and ordered to serve a minimum term of 25 years' imprisonment.

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<sup>11</sup> Under the Sexual Offences Act 2003, section 72(9), a UK national is a person who holds British nationality or citizenship either as a British citizen, British overseas territory citizen, a British National (Overseas) or a British Overseas citizen and a UK resident is a person who resides in the UK.

5. The Inquiry examined the three legislative regimes in England and Wales that seek to address the areas of concern set out above:

- the framework of civil orders to prevent individuals known to the UK authorities as posing a risk to children from travelling abroad, set out in the Sexual Offences Act 2003;
- the use of section 72 of the Sexual Offences Act 2003 to prosecute British nationals and residents for sexual offences committed against children overseas; and
- the operation of various disclosure and barring regimes in respect of those travelling from England and Wales who intend to work with children overseas.

These issues were derived from the Inquiry's terms of reference set by the Home Secretary and the scope of this investigation set by the Inquiry.

## A.2: The nature and scale of allegations of child sexual abuse overseas

### The nature of the abuse

6. The Inquiry heard evidence of child sexual abuse and exploitation in a large number of countries, including Kenya, Uganda, Malaysia, India, the Philippines, Cambodia, Indonesia, Thailand and Myanmar. We were told about foreign nationals travelling overseas specifically to sexually abuse children.

7. Child sexual abuse overseas often involves the use of tourism-related accommodation, transportation and other services which facilitate contact with children and enable the abuser to remain inconspicuous. There may be a locally based trafficker who will assist, such as by arranging accommodation and enabling the abuser to visit remote areas.

8. Poverty and corruption in many countries leaves children vulnerable. Abusers (whether foreign nationals<sup>12</sup> or local) often target poor children who may already be sexually exploited. They also target poor families where family members or other third parties are willing to act as facilitators. In those cases, the disparity between the financial position of the abuser and the victim and their family is a key factor. Abusers establish trust with vulnerable children and families by masquerading as philanthropists by providing money and subsistence, before sexually abusing the children.

9. Where abusers 'put down roots' in a particular country, they are better able to exploit victims in institutional care, education establishments, charities or religious groups. We were also told about a particular offending pattern where an individual sets up a shelter, orphanage or school, perhaps with other volunteers, specifically to create an opportunity for the sexual abuse of children.<sup>13</sup>

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<sup>12</sup> Those who travel from England and Wales and sexually abuse and exploit children overseas are known by law enforcement agencies as transnational child sex offenders. (See Jones (Robert) 13 February 2019 112/17-113/2; witness statement of Robert Jones dated 3 October 2018 (NCA000296\_002 para 2b).)

<sup>13</sup> Beddoe 11 February 2019 182/2-18

- 10.** Child sexual abuse and exploitation are often linked with child trafficking. Children are treated as objects, trafficked from location to location, kept in conditions of sexual slavery and subjected to torture.<sup>14</sup>
- 11.** The increasing use of the internet, including through the use of low-cost live-streaming services that can cost less than £1, substantially adds to these risks. The NCA has also observed an increase in the severity of offending involving sexual abuse images, particularly on the “*dark web*”.<sup>15</sup> Online and “*contact*” abuse and exploitation also often overlaps. For example, abusers may first interact with children online and then travel to the country in question to abuse them in person. Travelling offenders may also take videos and photographs of the abuse.
- 12.** These elements combine to create an illicit market in child trafficking, live-streaming of abuse and exploitation tourism involving local and foreign offenders.<sup>16</sup>
- 13.** Some abusers operate in sophisticated networks, for example by sharing tips and strategies to avoid detection, such as information about legal frameworks and areas which have active law enforcement or non-governmental organisations (NGOs) focussing on crimes against children. They also share information about what to do if caught, including the amount of money they can expect to pay to “*bribe their way out of it*”.<sup>17</sup>
- 14.** Disaster areas can pose a particular risk of sexual abuse for children.
  - 14.1.** In February 2018, it was reported that, in Haiti in 2010, Oxfam staff had sexually exploited children. Additional allegations were made about Oxfam GB’s Country Director in Haiti, including that he had been allowed to resign. Subsequently a different allegation arose about the conduct of Oxfam staff in the Philippines in 2013. This also alleged sexual misconduct. As a result, in February 2018, the Charity Commission opened an inquiry into the charity. Its report was published in June 2019, finding that the charity repeatedly fell below expected safeguarding standards, had a culture of tolerating poor behaviour and failed to meet commitments on safeguarding.<sup>18</sup>
  - 14.2.** After Typhoon Haiyan devastated part of the Philippines in 2013, many foreign NGOs came to assist with disaster relief. Concerns were expressed that children were disappearing; the suggestion was that there was a direct correlation between disaster relief and child trafficking.<sup>19</sup>

## The scale of the abuse

- 15.** The true scale of child sexual abuse overseas by foreign nationals and residents is unknown.<sup>20</sup> The victims and survivors of child sexual abuse overseas were described by ECPAT (Every Child Protected Against Trafficking) as “*off the radar*”.<sup>21</sup>

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<sup>14</sup> Hullely 13 February 2019 5/5-19; witness statement of Glen Hullely dated 4 December 2018 (INQ003648 para 7); see also *Protecting the Future: Improving the Response to Child Sex Offending in Southeast Asia*, UNODC, 2014 (CRS000004), p4; *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism 2016*, ECPAT, 2016 (INQ003707), p49.

<sup>15</sup> Jones (Robert) 13 February 2019 120/9-13

<sup>16</sup> For evidence of this overall context, see for example the evidence from Bharti Patel, Chief Executive Officer of ECPAT UK (ECP000007), Professor W Warren H Binford, Trustee of Child Redress International (CRS000021) and Robert Jones, Director of Threat Leadership at the National Crime Agency (NCA000296).

<sup>17</sup> Hullely 13 February 2019 7/18-8/16

<sup>18</sup> Charity Commission Inquiry into Oxfam GB

<sup>19</sup> OU-X1 14 February 2019 188/3-10; INQ003949 para 32

<sup>20</sup> Lemineur 12 February 2019 56/20-25; NCA000287\_026 para 116; ECP000003\_009

<sup>21</sup> ECPAT Opening Statement 11 February 2019 39/7-10



**16.** Some have estimated that US\$36.6 billion is made from child sexual exploitation and that around 2 million children in Southeast Asia are affected.<sup>22</sup> The Inquiry heard that there are thought to be at least 100,000 children in the sex “*industry*” in the Philippines alone.<sup>23</sup> The NCA’s Child Exploitation and Online Protection Command (NCA-CEOP) considers that abusers are highly likely to operate in a wider range of countries than official data indicate.<sup>24</sup> It estimates that around 80,000 people in the UK present some kind of sexual threat online to children both in England and Wales and abroad.<sup>25</sup>

**17.** Similarly, the potential involvement of British individuals in child sexual abuse overseas is difficult to quantify. As at March 2018, there were 58,637 registered sex offenders in England and Wales who were subject to requirements to notify the authorities of an intention to travel.<sup>26</sup> When Action Pour Les Enfants (APLE) reviewed the nationalities of sex offenders on its database in Cambodia, Britain was one of the countries disproportionately highly represented. British offenders amounted to 6.3 percent of those on the database, the fourth largest group by nationality.<sup>27</sup> Significant numbers of British nationals also request consular assistance after having been arrested for child sex offences; there were 361 such requests between 2013 and 2017.<sup>28</sup>

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<sup>22</sup> Hulley 13 February 2019 4

<sup>23</sup> Loseno 11 February 2019 138/8; INQ003718 para 12

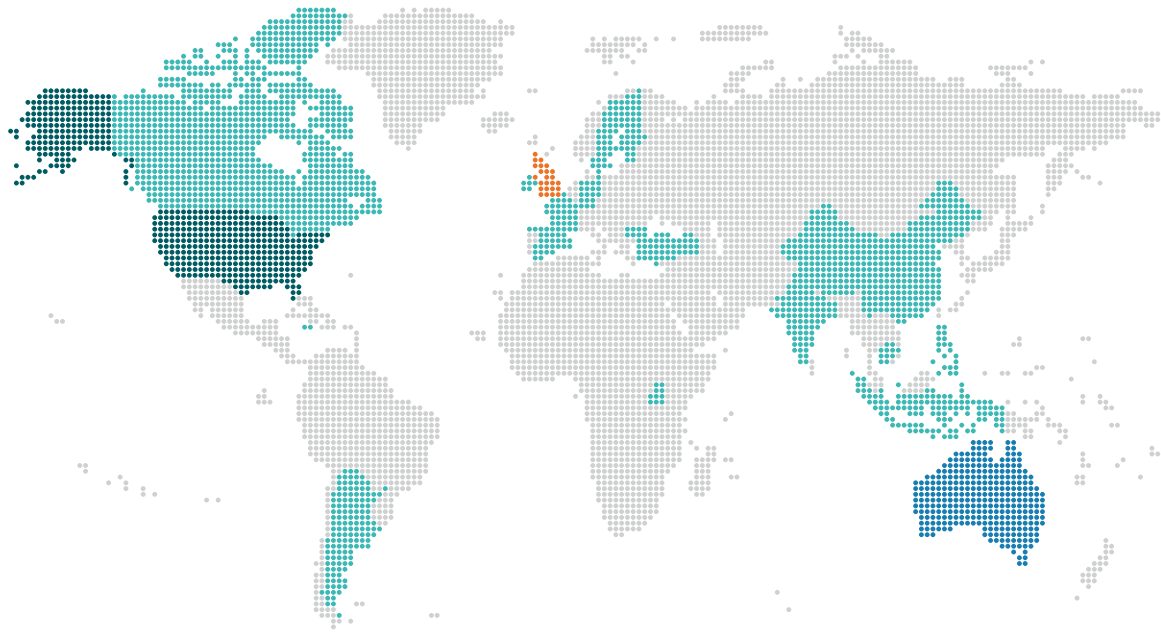
<sup>24</sup> Jones (Robert) 13 February 2019 121; NCA000287\_028 para 128

<sup>25</sup> HOM003221\_003

<sup>26</sup> INQ003128\_005

<sup>27</sup> Samleang 12 February 2019 5/17-6/20; INQ003685\_009. The database consisted of 288 offenders who were arrested from 2003 to 2013 as a result of APLE investigations.

<sup>28</sup> Patel 11 February 2019 128/6-129/7; ECP000007\_003-4 para 11; ECP000001



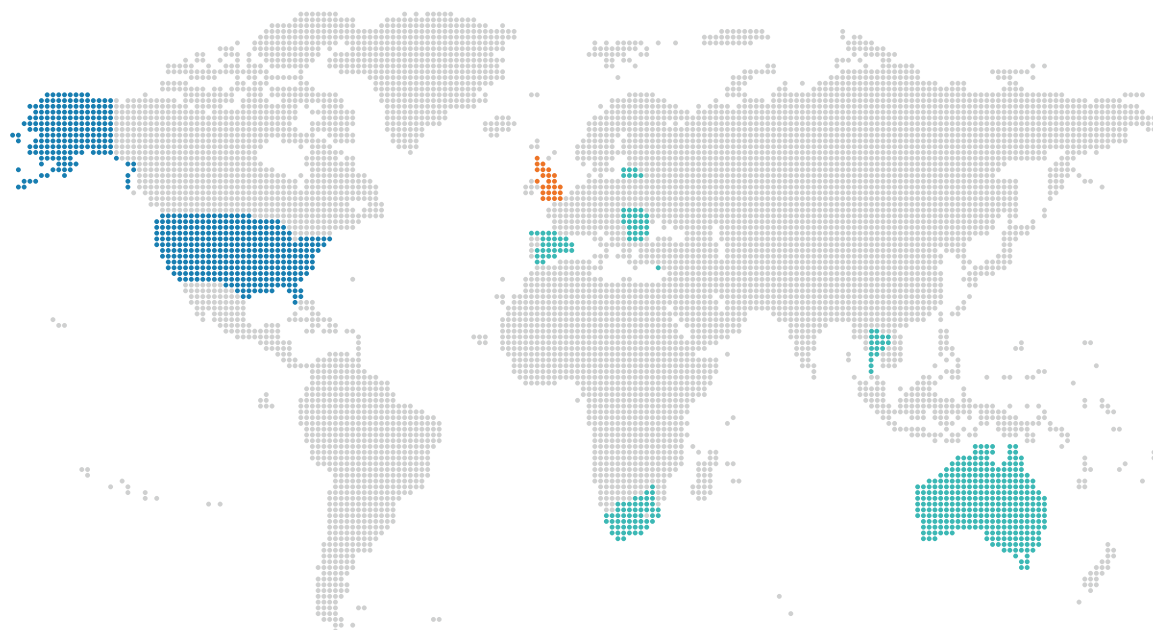
ARREST/DETENTION: CHILD SEX



ARGENTINA	<5	CYPRUS	<5	INDIA	<5	SPAIN	<5
AUSTRALIA	7	ESTONIA	<5	INDONESIA	<5	SWEDEN	<5
BULGARIA	<5	FINLAND	<5	IRELAND	<5	TURKEY	<5
CAMBODIA	<5	FRANCE	<5	JAMAICA	<5	UGANDA	<5
CANADA	<5	GERMANY	<5	PHILIPPINES	<5	USA	23
CHINA	<5	HONG KONG SAR	<5	SINGAPORE (CTRY.)	<5		

Source: Foreign and Commonwealth Office Consular Data 2018

*Number of British nationals requesting consular assistance abroad having been arrested for child sexual offences (2018): child sex*



ARREST/DETENTION: 'CHILD PORNOGRAPHY'



Source: Foreign and Commonwealth Office Consular Data 2018

*Number of British nationals requesting consular assistance abroad having been arrested for child sexual offences (2018): 'child pornography'*

## A.3: The issues for phase two of this investigation

18. There are a number of specific issues considered in this second phase.

### Civil orders:

- In what circumstances can the civil orders in question be made? What do they seek to achieve?
- How often have the powers to make such orders been used since they were introduced?
- What is the practical impact of such orders on known offenders when they have been used?
- Does the civil order regime offer effective protection from sexual abuse for children overseas? If not, how might the regime be improved?

### Section 72 prosecutions:

- How often has section 72 been used in recent years to prosecute alleged child sexual abuse committed abroad?

- If section 72 is used relatively rarely, what are the reasons for that? Are these reasons justified?
- Does section 72 offer effective protection from sexual abuse for children overseas? If not, how might the regime be improved?

### **Disclosure and barring:**

- How does the statutory disclosure and barring regime operate within England and Wales?
- To what extent does this regime take account of the sexual abuse of children overseas?
- To what extent does this regime operate in respect of organisations based in England and Wales which send workers or volunteers who have contact with children overseas?
- What regimes operate in respect of organisations based overseas which recruit British nationals or residents to work with children?
- Do these disclosure and barring regimes offer effective protection from sexual abuse for children overseas? If not, how might the regime be improved?

## **A.4: Procedure adopted by the Inquiry**

**19.** The procedure adopted by the Inquiry in this phase is set out in Annex 1 to this report. Core participant status was granted under rule 5 of the Inquiry Rules 2006 to two independent organisations and five institutions. In addition to two preliminary hearings, public hearings were held from 11 to 15 February 2019.

**20.** The Inquiry received evidence from a small number of adult complainants, who described non-recent sexual or physical abuse by adults with links to England and Wales while they were children abroad in Germany or Uganda. However, we did not consider it appropriate or proportionate to obtain individual complainant evidence from those who are still children or young adults abroad. This was for a range of reasons, including the inherent vulnerabilities of such children and young adults, the logistical challenges in obtaining such evidence from abroad, the fact that the voice of those children could be heard indirectly through the evidence of various NGOs, and the legal and policy nature of the issues in this phase of the investigation.

**21.** We also heard from a range of professionals with extensive experience:

- Bharti Patel, Chief Executive Officer of ECPAT UK;
- Christine Beddoe, a freelance consultant and former Director of ECPAT UK;
- Seila Samleang, Executive Director of Action Pour Les Enfants (APLE) Cambodia;
- Marie-Laure Lemineur, Deputy Director for Programmes at ECPAT International;
- Professor W Warren H Binford, Trustee of Child Redress International (CRI);
- Glen Hulley, founder and director of Project Karma;
- Cecilia French, Director of the Public Protection Directorate at the Home Office;
- Robert Jones, Director of Threat Leadership at the NCA;
- Chief Constable Michelle Skeer, National Police Lead for the Management of Sexual Offenders and Violent Offenders from the National Police Chiefs' Council (NPCC);
- Gregor McGill, Director of Legal Services for the Crown Prosecution Service;

- Peter Jones, Chief Operating Officer of the Foreign and Commonwealth Office;
- Adrian Greer, Chief Operating Officer of the British Council;
- Jane Larsson, Executive Director of the Council of International Schools (CIS) and Chair of the International Taskforce on Child Protection; and
- Colin Bell, Chief Executive Officer of the Council of British International Schools (COBIS).

**22.** The Inquiry had selected six police forces from which to obtain evidence: South Yorkshire Police, West Midlands Police, Lancashire Constabulary, Staffordshire Police, Hertfordshire Constabulary and Gwent Police. These forces provided evidence about their own use and understanding of civil orders and section 72, which was summarised for us.

**23.** Further witness statements were read or summarised, and we considered a number of additional documents obtained by the Inquiry and disclosed to the core participants, including some which were provided after the hearing.

**24.** Many of the witnesses expressed concerns about the efficacy of the three systems under consideration, and made various proposals for reform. Prior to the hearing, Counsel to the Inquiry distilled this witness evidence into a list of key concerns and proposed reforms.<sup>29</sup> This was used during the hearings to focus the witness evidence on the two key issues for the Inquiry: the efficacy and reform of each of the three areas.

## A.5: Terminology

**25.** References in this report such as 'ECP000007' and 'ECP000007\_001' are to documents or specific pages of documents which have been adduced in evidence and that can be found on the Inquiry website. A reference such as 'Patel 11 February 2019 67-68' is to the hearing transcript which is also available on the website; that particular reference is to the evidence of Ms Patel on 11 February 2019 at pages 67–68 of that day's transcript.

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<sup>29</sup> INQ004049



Part B

# Civil orders

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# Civil orders

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## B.1: Introduction

1. The preventive civil orders regime in England and Wales, under which sex offenders may be restricted from travelling abroad, has been the subject of concern for several years. This concern has included the low number of orders made.

## B.2: The legal framework

2. Civil orders, including those restricting the foreign travel of sex offenders, were introduced in May 2004 under the Sexual Offences Act 2003. At this time, a foreign travel order (FTO) could be imposed after a conviction for a sexual offence against a child such as rape, sexual assault or possession of indecent images of children.<sup>30</sup>

3. In 2013, an Association of Chief Police Officers (ACPO) review<sup>31</sup> of these civil orders was published. It concluded that the regime presented an “*unnecessary and unreasonable obstruction to the objective of preventing sexual abuse of children, most particularly in vulnerable jurisdictions*”<sup>32</sup> and was “*deeply flawed*”.<sup>33</sup> The review recommended the simplification and strengthening of the legal framework.<sup>34</sup>

4. Amendments were made to the legal framework with effect from March 2015 and FTOs were replaced by two new orders:<sup>35</sup>

- A sexual harm prevention order (SHPO) may be made after a person has been convicted of a sexual offence, such as rape, sexual assault or possession of indecent images of children.<sup>36</sup>
- A sexual risk order (SRO) may be made where there has been no conviction but the person is proven to have done an act of a sexual nature.<sup>37</sup>

5. An SHPO or SRO can include a range of restrictions, including on foreign travel. Before making any SHPO or SRO, or including any restriction, the court must be satisfied that it is necessary to protect the public from sexual harm. This includes protecting children or vulnerable adults outside the UK.<sup>38</sup>

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<sup>30</sup> Sexual Offences Act 2003, sections 114–122. The power to make an FTO after conviction for sexual assault or possession of indecent images was subject to criteria relating to age of victim, age of offender and in some cases type of sentence imposed being met: Sexual Offences Act 2003 (section 116(2)(a) and (d), Schedule 3 paras 15 and 18). The legislation also made provision for sexual offences prevention orders (SOPOs) (Sexual Offences Act 2003, sections 104–113) and risk of sexual harm orders (RSHOs) (Sexual Offences Act 2003, sections 123–129).

<sup>31</sup> Commissioned by the ACPO Child Protection and Abuse Investigation Working Group (NCA000288\_003 para 1.1).

<sup>32</sup> NCA000288\_004 para 2.1

<sup>33</sup> NCA000288\_042 para 7.9.1

<sup>34</sup> NCA000288\_004-005 paras 2.4–2.10

<sup>35</sup> The two new types of order also replaced SOPOs and RSHOs.

<sup>36</sup> Sexual Offences Act 2003, sections 103A–K. The power to make an SHPO on conviction for sexual assault and possession of indecent images of children is subject to criteria relating to age of victim, age of offender and in some cases type of sentence imposed being met: Sexual Offences Act 2003 (section 103A(2)(a), Schedule 3 paras 15 and 18).

<sup>37</sup> Sexual Offences Act 2003, sections 122A–K

<sup>38</sup> An order may also be made to protect a particular child or vulnerable adult.



6. If an order restricting travel is made, this can apply to any foreign travel or only travel to certain countries. An order may last for up to five years, although this can be extended. A person subject to an order restricting any foreign travel must surrender their passport to a police station until the order ceases to have effect.
7. A court may impose an SHPO when dealing with an offender after conviction, if conditions are met at that stage.
8. Breach of either order without reasonable excuse is a criminal offence, punishable with up to five years in prison.<sup>39</sup>
9. The civil orders regime coexists with other preventive measures.
  - 9.1. Most convicted sex offenders are subject to notification requirements (often referred to as being on the sex offenders' register).<sup>40</sup> This includes notifying the police of any intended foreign travel.<sup>41</sup> Failure to do so is a separate offence, punishable with up to five years in prison.<sup>42</sup>
  - 9.2. The police may apply to a court for a notification order requiring an offender convicted abroad of certain sexual offences to comply with notification requirements.<sup>43</sup> In 2017/18, 97 notification orders were imposed.<sup>44</sup>
  - 9.3. Regardless of whether a civil order has been imposed, law enforcement agencies may notify overseas authorities of individuals known to pose a risk of sexual harm. Intelligence about offenders is disseminated through multilateral and bilateral channels.<sup>45</sup> For example, the NCA is aware of 41 high-risk individuals from the UK who were refused entry into another country between 1 January and 2 June 2018 after intelligence was shared.<sup>46</sup>

## B.3: The regime in practice

### The number of orders made

10. Obtaining a consistent data set for the number of offenders whose travel has been restricted by a civil order is not straightforward.
  - 10.1. Neither the Home Office, the Ministry of Justice nor the Crown Prosecution Service collect data about the number of orders containing foreign travel restrictions that are imposed.<sup>47</sup>

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<sup>39</sup> For SHPOs, see [Sexual Offences Act 2003, section 103I](#); for SROs, see [Sexual Offences Act 2003, section 122H](#).

<sup>40</sup> [Sexual Offences Act 2003, sections 80–82, 86, 103G and 122I](#)

<sup>41</sup> [Sexual Offences Act 2003, section 86 and Sexual Offences Act 2003 \(Travel Notification Requirements\) Regulations 2004 \(SI 2004/1220\) as amended by the Sexual Offences Act 2003 \(Travel Notification Requirements\) Regulations 2012 \(SI 2012/1876\) Regulation 5\(a\)](#). Prior to 13 August 2012, a person subject to notification requirements did not need to notify police of foreign travel if the period of travel was less than three days: see the original form of [SI 2004/1220, Regulation 5\(1\)](#) and [Patel 11 February 2019 75/12-19](#); for commencement of [SI 2012/1876](#), see [Regulation 1\(2\)](#).

<sup>42</sup> [Sexual Offences Act 2003, section 91](#)

<sup>43</sup> [Sexual Offences Act 2003, sections 97–100](#)

<sup>44</sup> [INQ003128\\_016](#)

<sup>45</sup> These include the [Europol regime and Interpol Diffusion Notices \(Jones \(Robert\) 13 February 2019 146/23-25, 147/1-20\)](#).

<sup>46</sup> [Jones \(Robert\) 13 February 2019 150/10-14](#)

<sup>47</sup> [Davison 14 February 2019 117/11; CPS004660 paras 14–17; HOM003000\\_005 footnote 1](#)

**10.2.** The Multi-Agency Public Protection Arrangements<sup>48</sup> (MAPPA) annual reports include data for SHPOs but not SROs.<sup>49</sup>

**10.3.** Data on SROs are held by the National Police Chiefs' Council (NPCC), based on information provided by individual forces each quarter.<sup>50</sup> Although data on civil orders is stored on the Violent and Sex Offender Register (ViSOR), it has been difficult to extract figures for those orders which contain foreign travel restrictions.<sup>51</sup>

**11.** With those caveats, the data provided to the Inquiry show that few SHPOs or SROs restricting foreign travel (whether to one or more countries) have been made in recent years.

*Table 1: Number of SHPOs made per year in 2015 to 2018<sup>52</sup>*

	2015/16	2016/17	2017/18
Total SHPOs made	3,873	5,931	5,551
SHPOs with foreign travel restrictions	8	4	11

**12.** As at March 2019, from data provided by 40 police forces, only six SROs with foreign travel restrictions were in existence.<sup>53</sup>

**13.** To put these figures into context:

- Foreign travel restrictions were attached to less than 0.3 percent of SHPOs each year.
- Taking the most generous reading of the foreign travel order statistics,<sup>54</sup> only around 0.2 percent of the 58,637 registered sex offenders in England and Wales on 31 March 2018 had their foreign travel restricted.<sup>55</sup>
- In 2017, 78 UK nationals requested consular assistance abroad after being arrested for child sex offences.<sup>56</sup>

**14.** Following our hearings, the Home Office provided the Inquiry with its 2019 review of the civil orders regime, which we consider below.<sup>57</sup>

## The making of civil orders

**15.** The success rate of applications for foreign travel restrictions remains unclear.

<sup>48</sup> This is the process through which the police and the probation and prison services work together with other agencies to manage the risks posed by violent and sex offenders living in the community in order to protect the public.

<sup>49</sup> Skeer 14 February 2019 19/12-20

<sup>50</sup> Skeer 14 February 2019 19/12-20

<sup>51</sup> Steps are being taken to address this problem (Skeer 14 February 2019 18/1-13; French 13 February 2019 41/19-43/9).

<sup>52</sup> Ministry of Justice, *Multi-Agency Public Protection Arrangements Annual Report 2017/18: Ministry of Justice Statistics Bulletin 25 October 2018* (INQ003128\_016), p14. Figures are for 1 April to 31 March in each period.

<sup>53</sup> OHY007094 para 4

<sup>54</sup> This assumes that (i) all those against whom a civil order restricting foreign travel had been made were Registered Sex Offenders, (ii) no individual was made subject to more than one of the orders recorded and (iii) that all the orders made since 1 April 2006 have been renewed and so remained applicable in 2017/18, and so working on a total of 124 orders (six SROs with foreign travel restrictions in existence, plus a total of 118 other foreign travel restriction orders made since 1 April 2006: INQ003128\_016).

<sup>55</sup> There were 55,236 on 31 March 2017 and 52,770 on 31 March 2016 (Ministry of Justice, *Multi-Agency Public Protection Arrangements Annual Report 2017/18: Ministry of Justice Statistics Bulletin 25 October 2018* (INQ003128\_009), p7).

<sup>56</sup> There were 80 such individuals in 2016 and 82 in 2015 (ECP000001; see also FCO000150). Between 2013 and 2017, the Foreign and Commonwealth Office responded to 361 requests for consular assistance from UK nationals who had been arrested for child sex offences (ECP000007 para 11).

<sup>57</sup> HOM003297

**15.1.** Chief Constable Michelle Skeer of the NPCC told us that, across 40 forces, 31 SROs had been sought but not granted.<sup>58</sup> It is not clear how many of these, if any, included applications for foreign travel restrictions.

**15.2.** Data for the success rate of SHPO applications including foreign travel restrictions were not available.<sup>59</sup> Chief Constable Skeer's impression is that SHPOs are generally granted by courts when sought, and that police forces have a better success rate in SRO applications than they had in applications under the previous regime.<sup>60</sup>

**16.** Non-governmental organisations (NGOs) such as ECPAT (Every Child Protected Against Trafficking) and Child Redress International (CRI) have expressed concern that orders restricting foreign travel are not made as often as they could or should be. This concern is understandable. It is therefore necessary to consider why the number of orders made is as low as it is.

**17.** Orders restricting foreign travel must correspond to risk. The Court of Appeal's decision in *R v Smith and Others*<sup>61</sup> reinforces that civil order restrictions must be tailored to the exact and identifiable risks posed by a perpetrator.<sup>62</sup> It appears that concerns about this need for proportionality may lead to:

- some caution by law enforcement agencies in applying for foreign travel restrictions, especially worldwide orders;<sup>63</sup>
- police force legal advisers rejecting proposed applications for foreign travel restrictions;<sup>64</sup>
- a potentially overstated need for evidence either that the underlying sexual behaviour had been committed abroad or of a specific intent to travel;<sup>65</sup>
- orders being sought or made which limit an offender from travelling to a particular country only;<sup>66</sup> and
- some reluctance by courts to impose foreign travel restrictions.<sup>67</sup>

**18.** However, we heard of a number of cases which suggest that such concerns may be misplaced or overstated.

**18.1.** An SHPO with foreign travel restrictions was obtained by West Midlands Police on a sex offender's return to the UK after he had travelled to Cambodia without notifying police that he would also travel to Thailand.<sup>68</sup>

**18.2.** A travel restriction order was obtained by South Yorkshire Police after an offender, originally convicted of raping a child, failed to notify authorities of travel to Ireland after being released from prison.<sup>69</sup>

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<sup>58</sup> OHY007094 para 6

<sup>59</sup> OHY007094 paras 8-9

<sup>60</sup> Skeer 14 February 2019 26/18-27/1

<sup>61</sup> *R v Smith and Others* [2012] 1 WLR 1316, 19 July 2011 (INQ004602)

<sup>62</sup> See also the following witnesses' evidence on the requirement for restrictions to be proportionate: Skeer 14 February 2019 12/11-19, 13/11-23, 14/4-8; French 13 February 2019 72/25-73/14; Jones (Robert) 13 February 2019 135/2-18

<sup>63</sup> HOM002998 para 15

<sup>64</sup> HOM003297 p6

<sup>65</sup> Hertfordshire Constabulary: Jephson 14 February 2019 69/14-15; OHY006935\_008; HOM003297 p5

<sup>66</sup> Jones (Robert) 13 February 2019 178/1-4

<sup>67</sup> HOM003297 p6

<sup>68</sup> West Midlands Police: Southern 14 February 2019 50/23-51/7; OHY006936

<sup>69</sup> South Yorkshire Police: Forber 14 February 2019 56/24-57/5; OHY006964

**18.3.** An SHPO preventing travel to all countries was imposed on an offender in Lancashire who wanted to move to a country where he believed the age of consent was 14.<sup>70</sup>

**18.4.** The Court of Appeal recently upheld a worldwide travel ban imposed on a person convicted of offences committed in England who had absconded to Southeast Asia during proceedings and failed to attend court for sentencing.<sup>71</sup>

**18.5.** A travel restriction order was made based on a perpetrator's oral confession while inebriated of his intentions to travel abroad.<sup>72</sup>

These cases show that courts can and do impose travel restrictions without direct evidence of sexual offending abroad, albeit that some evidence of past or intended future travel does seem to be required.

**19.** However, the impression held by some is that travel restrictions are unlikely to be made in cases involving 'non-contact' offending. Several police forces reported to the 2019 Home Office review that judges "*rarely associate non-contact offences (i.e. viewing indecent images) with risk of a contact offence*".<sup>73</sup> The NCA agreed that a significant proportion of the evidence gathered on individuals relates to criminal activity online, which is unlikely to be sufficient to support a foreign travel restriction in the absence of a clear intent to commit a contact offence overseas.<sup>74</sup>

**20.** Knowledge and training gaps may provide some explanation for the low number of orders made. Although the NCA, NPCC, individual forces and Crown Prosecution Service told us about their training events and materials, Christine Beddoe (former Director of ECPAT UK, who co-authored the ACPO review of civil orders) suggested that police forces are inconsistent in their assessment of risk and have differing levels of experience with civil orders. The Home Office reviews in 2017 and 2019 also referred to some training issues.<sup>75</sup> The Inquiry understands that following the public hearings a training event was held at the Home Office on 3 October 2019 which was attended by senior delegates from police forces to share best practice and knowledge in respect of offenders who travel overseas and sexually abuse children.

**21.** The 2019 Home Office review also identified other issues.<sup>76</sup>

**21.1.** Some forces find seeking foreign travel restrictions is extremely resource-intensive.

**21.2.** Serving court summonses on offenders may increase the likelihood that they travel abroad prior to the hearing at which the travel ban is to be considered.

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<sup>70</sup> Lancashire Constabulary: Edwards 14 February 2019 63/1-6; OHY006956

<sup>71</sup> *R v Marco Cheyne* [2019] 2 Cr App R (S.) 14, 8 February 2019 (INQ004600)

<sup>72</sup> HOM003297\_005

<sup>73</sup> HOM003297\_005

<sup>74</sup> HOM003297\_005. See also Jones (Robert) 13 February 2019 139/11-17 for an example of an unsuccessful application where the NCA could not provide evidence of contact abuse committed abroad.

<sup>75</sup> Jones (Robert) 13 February 2019 136/16-24; NCA000295; Skeer 14 February 2019 2/15-3/9; 7/16-9/16; 29/1-15; 30/14-21; 36/7-12; OHY004926\_002-013; OHY004924\_008-014; OHY004929\_004-006 paras 13-21; OHY006401\_002-013; Barnett 14 February 2019 67/7-14; McGill 14 February 2019 79/22-81/17; CPS004661; Beddoe 11 February 2019 179/9-17; French 13 February 2019 55/9-56/14; HOM002433 p3; HOM003297\_006

<sup>76</sup> HOM003297\_007

**21.3.** In one case, it took four months to obtain an interim SRO. Such a delay could, of course, impact on the efficacy of the regime by providing an offender with an opportunity to leave the jurisdiction.

**22.** Finally, SROs are available where an individual has not been convicted, but it is still necessary to prove the required sexual behaviour to the high criminal standard of proof.<sup>77</sup> In many (but not all) cases where such evidence is available, a prosecution would have been initiated and the case would therefore more likely lead to an SHPO if there is a conviction (and if any order was deemed necessary and proportionate). Christine Beddoe's evidence was also that police forces did not appear to be applying for SROs based on offending overseas which had not resulted in a prosecution or in other 'non-prosecution' scenarios detailed in the 2013 ACPO review.<sup>78</sup> These are further reasons that may explain the low number of SROs.

### The effectiveness of the regime

**23.** The Home Office considers that the current civil orders regime is an improvement on the previous regime and is effective.<sup>79</sup> This view is shared by several of the police forces from which the Inquiry obtained evidence.<sup>80</sup> Chief Constable Skeer indicated that MAPPA processes for the management of registered sex offenders (including those subject to SHPOs) are some of the best internationally.<sup>81</sup>

**24.** However, ECPAT and other NGOs consider that the low numbers of civil orders restricting foreign travel mean that the system is, overall, ineffective.<sup>82</sup> ECPAT's position is also that to restrict an offender from travelling to a specified country or region is "redundant" because it is so easy to travel from one country to another.<sup>83</sup> In the 2016 Home Office review, one police force commented that anything other than a worldwide travel restriction is ineffective.<sup>84</sup> In the 2019 Home Office review, several forces said the same.<sup>85</sup> An order preventing a sex offender from travelling to only one or two countries plainly has some value, as it restricts the offender from travelling to some degree. However, given the ease of contemporary travel, such an order is inherently limited in its impact, as it may not prevent an offender from abusing children in other countries.

**25.** Even if an order is made, if an offender succeeds in leaving the UK in breach of the order, the authorities may not be able to prevent further offending. Gwent Police and Father Shay Cullen (founding member and president of the People's Recovery, Empowerment and

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<sup>77</sup> The legislation does not state the standard to which facts must be proved in an application for an SRO. However, case law in analogous circumstances has established the standard of proof to be the criminal standard (requiring proof beyond reasonable doubt), as opposed to the civil standard (requiring proof on the balance of probabilities): *R (on the application of McCann and Others) v Crown Court at Manchester and another* [2003] 1 AC 787 (HL), concerning anti-social behaviour orders (INQ004601); *Commissioner of Police of Metropolis v Ebanks* [2012] EWHC 2368 (Admin), concerning RSHOs (INQ004603). Home Office guidance refers to the criminal standard in making an SHPO or an SRO: *Guidance on Part 2 of the Sexual Offences Act 2003*, Home Office, September 2018 (HOM002997\_028), p26.

<sup>78</sup> INQ004103

<sup>79</sup> Jones (Robert) 13 February 2019 140/13-14; French 13 February 2019 70/5-8; HOM002433\_002; Skeer 14 February 2019 24/3-10

<sup>80</sup> Southern 14 February 2019 51/23-52/11; Barnett 14 February 2019 67/9-18

<sup>81</sup> Skeer 14 February 2019 33/18-22

<sup>82</sup> Patel 11 February 2019 78/24-80/7; witness statement of Bharti Patel dated 9 November 2019 (ECP000007) para 31; Binford 12 February 2019 114/17-19

<sup>83</sup> *The end of the line for child exploitation: Safeguarding the most vulnerable children*, ECPAT UK, 2006 (ECP000003) p16; Patel 11 February 2019 81/23-82/3

<sup>84</sup> French 13 February 2019 51/5-9 referring to HOM002998 para 15

<sup>85</sup> HOM003297, p6

Development Assistance (PREDA) Foundation, based in the Philippines) suggested to us that the fact restrictions cannot be acted on outside the UK is a key reason why the civil orders regime is ineffective in protecting children.<sup>86</sup>

## B.4: Reform

**26.** Given the considerable disparity between the high number of registered sex offenders and the low number of orders made, it is a reasonable inference that there are more registered sex offenders whose travel could properly be restricted. The Inquiry considers that the number of civil orders made restricting foreign travel must increase.

**27.** We heard a number of proposals for strengthening the current civil orders regime which might achieve such an increase.

**28.** Witnesses referred to the difficulties in meeting the standard of proof applicable to an SRO, and so we considered whether it should be lowered to the civil law standard.<sup>87</sup> Furthermore, it was suggested that an applicant for an SRO be permitted to rely on closed evidence.<sup>88</sup> We do not consider that these reforms would be likely to lead to a substantial increase in the number of orders being made, even if concerns about the cost and procedural fairness of closed hearings could be justified.

**29.** Since 2017, the USA has adopted a system of unique identifiers inside the passport of those convicted of a sex offence against a child. This does not prevent sex offenders from travelling abroad, but those working in US embassies are reported to have found this to be a useful tool. Entry might still be permitted, however, if the identifier is not understood by immigration officials in the destination country.<sup>89</sup> There is also concern that the scheme could lead to individuals being harmed on entering countries with low human rights standards.<sup>90</sup> While there was some support for the adoption of a similar scheme in England and Wales,<sup>91</sup> overall it was considered disproportionate or of doubtful efficacy.<sup>92</sup> The Inquiry does not consider that the adoption of such a passport identifier scheme for British nationals would be sufficient to limit the risk that those with predatory intent may pose to children overseas from sexual abuse.

**30.** We note that, since 2017, the Australian government has imposed a complete ban on registered child sex offenders from travelling overseas. The context for the ban was an evidence base that around 800 registered child sex offenders had left Australia over four years without notifying the authorities and travelled to many destinations known for child sexual abuse by tourists. There were also concerns that, when notifications were given, they were not acted on by the destination country in time. Glen Hulley of Project Karma, who

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<sup>86</sup> Brain 14 February 2019 70/19-22; OHY006951 para 12.2; Cullen 12 February 2019 77/3-79/3

<sup>87</sup> See French 13 February 2019 47/7-12; Jones (Robert) 13 February 2019 126/8-11, 142/6-9; Skeer 14 February 2019 13/12-23. The civil law standard is applicable in several other civil order frameworks: see, for example, the *Serious Crime Act 2007*, section 35, concerning serious crime prevention order applications and the *Crime and Security Act 2010*, section 28(2), concerning domestic violence protection order applications.

<sup>88</sup> Jones (Robert) 13 February 2019 127/13-22, 142/6-9, 145/12-14; Skeer 14 February 2019 37/6-14

<sup>89</sup> Smolenski 12 February 2019 51/15-52/13

<sup>90</sup> Jones (Robert) 13 February 2019 143/3-16

<sup>91</sup> Cullen 12 February 2019 81/9-10

<sup>92</sup> Patel 11 February 2019 107/8-108/15; Binford 12 February 2019 124/16-125/4; Hulley 13 February 2019 22/20-23/4; French 13 February 2019 73/20-74/2

was actively involved in lobbying for the change in Australian legislation, considered that a complete ban was necessary, proportionate and the only effective means of protecting children.<sup>93</sup> Father Cullen also expressed support for the Australian system.<sup>94</sup>

**31.** More time is needed to see whether the Australian system has been effective in practice. Offenders might still be able to travel on a passport issued by another country.<sup>95</sup> A worldwide lifetime ban also raises proportionality questions and has the potential for misuse.<sup>96</sup>

**32.** A change in the approach to the use of civil orders is necessary to ensure that they are used more extensively. This will contribute to a reduction in the risks posed by known sex offenders travelling overseas.<sup>97</sup>

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<sup>93</sup> Hulley 13 February 2019 13/23-19/19; 20/2-18. For excerpts of Australian legislation, see OHY003677, and OHY003676

<sup>94</sup> Cullen 12 February 2019 81/7-10

<sup>95</sup> Hulley 13 February 2019 19/22-20/6

<sup>96</sup> Patel 11 February 2019 107/8-108/15; Lemineur 12 February 2019 64/5-65/23; Samleang 12 February 2019 24/3-13; French 13 February 2019 73/2-14

<sup>97</sup> Professor Warren Binford supported the idea of a “*presumptive travel ban where exceptions are sought by the offender in court*” (Binford 12 February 2019 124/6-9; witness statement of Warren Binford dated 11 December 2018 (CRS000022) para 27); for CRI’s position see witness statement of Warren Binford dated 6 February 2019 (CRS000026) para 7.





Part C

# Section 72 prosecutions

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# Section 72 prosecutions

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## C.1: Introduction

1. Generally, individuals can only be prosecuted in England and Wales for alleged offences committed within this jurisdiction. Section 72 of the Sexual Offences Act 2003 is an exception to this rule for alleged child sexual offences committed abroad. It is therefore an important measure to ensure perpetrators are brought to justice, reducing the risk of further offences being committed.

## C.2: The legal framework

2. Since 1 September 1997, it has been possible to prosecute UK nationals and residents in England and Wales for alleged child sexual offences committed overseas.

3. Originally, section 72 could only be used in relation to alleged sexual offences against children under 16 years old. It was also only triggered if the act in question was an offence both in the UK<sup>98</sup> and in the country in which the act took place.<sup>99</sup>

4. The current version of section 72, in effect since July 2008, applies more widely. It applies to alleged offences against children aged under 18 (unless the offence under the law of the UK can only be committed against a person under the age of 16).<sup>100</sup> The alleged abuse also now only needs to be an offence here (not in the country in which it took place) in respect of UK nationals (but not residents).<sup>101</sup>

5. The Ministry of Justice has overall policy responsibility for the operation of section 72<sup>102</sup> but other organisations are also involved.

**5.1.** Individual police forces are responsible for investigating cases, as is the National Crime Agency (NCA) through a network of 140 international liaison officers (ILOs) posted around the world.<sup>103</sup>

**5.2.** The Crown Prosecution Service initiates and conducts any section 72 prosecutions.<sup>104</sup>

**5.3.** Consulates provide assistance to those arrested for criminal offences overseas, including those to whom section 72 applies.<sup>105</sup>

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<sup>98</sup> As originally enacted, section 72 applied where the act would have constituted an offence if it had occurred in England and Wales or Northern Ireland.

<sup>99</sup> See, for example, Greer 15 February 2019 16-17.

<sup>100</sup> However, the current section does not apply retrospectively, ie to alleged offences committed before the relevant provisions came into force (NCA000296 pp28–29).

<sup>101</sup> However, if the person charged is not a national but only a resident of the UK, the conduct must be a criminal offence in both the UK jurisdiction and the country in which the act took place.

<sup>102</sup> MOJ 14 February 2019 125/5-7

<sup>103</sup> Jones (Robert) 13 February 2019 157; NCA000300; NCA000305

<sup>104</sup> McGill 14 February 2019 85/9-21; CPS004427

<sup>105</sup> Jones (Peter) 14 February 2019 139/12-19

5.4. The Home Office produces guidance on Part 2 of the Sexual Offences Act 2003, including section 72.<sup>106</sup>

### C.3: The regime in practice

#### The number of section 72 prosecutions

6. Obtaining accurate data on the number of section 72 prosecutions is difficult. National statistics are not collated by the Ministry of Justice, the National Police Chiefs' Council (NPCC), the Crown Prosecution Service or the Home Office. This is because section 72 does not create an offence itself but is merely an “enabling” provision, permitting prosecutions to be brought in relation to the underlying sexual offences (on which data are kept).<sup>107</sup>

7. The NCA collates data on the use of section 72 but only on those cases where it (rather than a local police force) has been the investigating agency.<sup>108</sup>

#### NCA investigations

8. Investigations by the NCA have led to seven successful prosecutions in England and Wales under section 72, or its predecessor, between 1997 and 2019.<sup>109</sup>

8.1. Operation Thereva resulted in the successful prosecution of Richard Huckle, a UK national. He pleaded guilty to raping and sexually assaulting 22 children from minority communities in Malaysia and one child in Cambodia. He took images of the sexual abuse and published them on the dark web.<sup>110</sup>

8.2. As a result of Operation Shoran, Keith Morris was sentenced to 18.5 years' imprisonment for 10 sexual offences against vulnerable children in Kenya, and two counts of attempting to pervert the course of justice.<sup>111</sup>

8.3. Operation Carapax led to the prosecution of Mark Frost (also known as Andrew Tracey), who had a history of sexual offending against children in the UK. In 2013, under a separate operation, he was investigated for sexual abuse in Thailand. He fled prosecution and was later found living in Spain, before being extradited to the UK. In 2016, Frost was charged under section 72 with 22 offences, including sexual abuse of boys between 10 and 14 years of age in Thailand. After joint operations with the Spanish and Dutch authorities, he was charged with a further 67 offences, before pleading guilty to 23 of those charges. He also pleaded guilty to the original 22 counts. Frost was sentenced to 13 terms of life imprisonment.<sup>112</sup>

8.4. Operation Kamas investigated Trevor Monk, who paid nearly £15,000 for the live-streaming of child abuse from the Philippines. He sexually abused a child during one of his visits to the Philippines. In January 2016, he was sentenced to 19.5 years' imprisonment.<sup>113</sup>

<sup>106</sup> HOM002997 pp64–65

<sup>107</sup> MOJ000904; Skeer 14 February 2019 39/20-25; McGill 14 February 2019 89/1-2

<sup>108</sup> Jones (Robert) 13 February 2019 166/19-25

<sup>109</sup> NCA000298 para 2

<sup>110</sup> Jones (Robert) 13 February 2019 153; NCA000296 paras 78–83; NCA000298 paras 15–19

<sup>111</sup> Jones (Robert) 13 February 2019 154-155; NCA000296 para 84–94; NCA000293 para 3; NCA000298 paras 20–24

<sup>112</sup> NCA000298 paras 6–14

<sup>113</sup> NCA000293 para 4(b); NCA000298 paras 25–28

**8.5.** Operation Acrostic concerned David Graham, who sexually abused children in Cambodia, was extradited from France and then prosecuted in the UK. In May 2013, he pleaded guilty to a charge of sexual activity with a male under 16 years old. He was sentenced to 21 months' imprisonment, ordered to pay £2,500 and was placed on the sex offenders' register for 10 years.<sup>114</sup>

**8.6.** A female British national was charged under section 72 and pleaded guilty to a number of sexual offences against children committed while resident in Cyprus.<sup>115</sup>

**8.7.** James Alexander admitted one count of arranging or facilitating the commission of a child sex offence, three counts of attempting to cause/incite a girl under 13 to engage in sexual activity, and one count of making an indecent image of a child. He had sent at least 15 money transfers to abuse facilitators in the Philippines between August 2017 and June 2018 and tried over Skype and WhatsApp to arrange to travel to the Philippines to abuse girls himself. In May 2019 he was sentenced to five years' imprisonment and was placed on the sex offenders' register for life. A sexual harm prevention order (SHPO) was made, banning him from any foreign travel.<sup>116</sup>

**9.** At the time of the Inquiry's public hearings in February 2019, the NCA told us that its current investigations included six cases where it was considering referring the case to the Crown Prosecution Service for a possible prosecution under section 72, and three cases in which the Crown Prosecution Service was considering prosecution under section 72.<sup>117</sup>

### *Local police force investigations*

**10.** Although local police forces may conduct international investigations leading to the potential use of section 72, Chief Constable Michelle Skeer of Cumbria Constabulary, NPCC lead for the management of sexual offenders and violent offenders, considered that the number of occasions on which this had happened was "very low".<sup>118</sup>

**11.** The Inquiry selected six police forces from which to obtain evidence, in order to understand the frequency of use of section 72.

**11.1.** Hertfordshire Constabulary has not used section 72 to prosecute offences committed outside the UK.<sup>119</sup>

**11.2.** South Yorkshire Police does not record the use of section 72 in an extractable form.<sup>120</sup>

**11.3.** Gwent Police does not record the use of section 72.<sup>121</sup>

**11.4.** West Midlands Police does not hold data on the number of offenders prosecuted using section 72, as it explained there is no requirement or mechanism to do so. It described one case from 2015, where officers referred evidence to the Crown

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<sup>114</sup> Jones (Robert) 13 February 2019 174/1-4; NCA000298 paras 29-34

<sup>115</sup> Jones (Robert) 13 February 2019 156/3-6; NCA000298 paras 3-5

<sup>116</sup> <https://www.nationalcrimeagency.gov.uk/news/five-years-in-jail-and-worldwide-travel-ban-for-british-teacher-who-wanted-to-abuse-young-philipino-children>

<sup>117</sup> Jones (Robert) 13 February 2019 166/7-11

<sup>118</sup> Skeer 14 February 2019 44/2-6

<sup>119</sup> Jephson 14 February 2019 68-70; OHY006935; OHY007090

<sup>120</sup> Forber 14 February 2019 60-61; OHY006964

<sup>121</sup> Brain 14 February 2019 71; OHY006951

Prosecution Service but the case did not proceed. The officers were advised that section 72 could not be used because the accused had not been a UK national or resident at the time the offence was committed.<sup>122</sup>

**11.5.** Staffordshire Police stated that data extraction on the use of section 72 was not possible, and no anecdotal information was available.<sup>123</sup>

**11.6.** Lancashire Constabulary is not currently able to retrieve information on the use of section 72, but it manually checked 6,700 crime records and found that none resulted in a charge under section 72.<sup>124</sup>

### *Unsuccessful section 72 cases*

**12.** Patrick Matthews was prosecuted at Bristol Crown Court in 2010 for alleged child sexual abuse offences in India. As a result of delays in making formal requests for witnesses to give evidence via video-link, the trial could not proceed and the trial judge was critical of the conduct of the prosecution. Following an internal review, the Crown Prosecution Service acknowledged that mistakes had been made with respect to a lack of case progression and its understanding of the difficulties of mounting a complex prosecution involving victims and witnesses from abroad without specialist assistance from its Complex Casework Unit. Further national and local guidance was given to prosecutors as a result of the review.<sup>125</sup>

**13.** The case of Douglas Slade was also cited to us as an example of the failure to prosecute in the UK for crimes committed in the Philippines. In the 1970s, Slade's association with groups such as the Paedophile Information Exchange (considered in our investigation concerning allegations of child sexual abuse committed by persons of public prominence associated with Westminster<sup>126</sup>) led to him being named in the press. Father Shay Cullen of the People's Recovery, Empowerment and Development Assistance (PREDA) Foundation, based in the Philippines, became aware of him in the 1990s after Slade took up residence in the Philippines and was accused of sexually abusing boys. Following a trial in the Philippines, he was acquitted of alleged sexual offences against children between 1995 and 2004, although he was caught on film in 2014 admitting to escaping conviction by bribery. Father Cullen emphasised that, despite Slade being well known to the British authorities, no attempts were made to notify the Philippine authorities of the risk he posed. He also suggested that the UK authorities' attempt to extradite Slade was unsuccessful in the absence of an extradition treaty with the Philippines. Slade returned voluntarily to the UK and was arrested at Heathrow Airport, then convicted in 2016 of sexual offences against children in the UK between 1965 and 1980.<sup>127</sup>

### **Difficulties with section 72**

**14.** A number of difficulties with section 72 and its effectiveness have been identified by non-governmental organisations (NGOs) and our investigation.

<sup>122</sup> Southern 14 February 2019 52-54; OHY006936

<sup>123</sup> Barnett 14 February 2019 67-68; OHY006977

<sup>124</sup> Edwards 14 February 2019 65-66; OHY006954

<sup>125</sup> McGill 14 February 2019 105-106; Beddoe 11 February 2019 174/6-19; INQ003740\_005 para 11; CPS004668

<sup>126</sup> IICSA investigation concerning allegations of Child Sexual Abuse linked to Westminster

<sup>127</sup> Cullen 12 February 2019 77-78; Beddoe 11 February 2019 170-174; INQ003740\_004 para 10

### *The extent of its use and comparison with other jurisdictions*

**15.** ECPAT (Every Child Protected Against Trafficking), Child Redress International (CRI) and Glen Hulley of Project Karma expressed concern that section 72 is used less frequently in England and Wales than comparable powers in other countries.<sup>128</sup>

**16.** The NCA does not consider that there is under-utilisation of section 72. The NCA says that section 72 is just one of a range of interventions that can be used to manage the risk of child sexual abuse overseas. In every case, its focus is first on trying to safeguard the victim and then on considering a range of tactical options to bring the suspect to justice and mitigate the risk that they pose.<sup>129</sup>

**17.** The above data suggest that between 1997 and 2018 there were seven concluded prosecutions under section 72 in England and Wales, a rate of 0.33 prosecutions per year.<sup>130</sup>

**18.** We were able to carry out some comparison between the use of section 72 in England and Wales and the use of extra-territoriality provisions in two other jurisdictions.

**19.** Between 2003 and June 2018, federal prosecutors in the USA brought at least 68 prosecutions for child sexual abuse overseas under its extra-territoriality provisions.<sup>131</sup> This suggests an extraterritorial prosecution rate in the USA of around 4.5 prosecutions per year, over 10 times higher than the rate in England and Wales. However, the population in the USA is 5.7 times larger than that of England and Wales,<sup>132</sup> so the disparity in the use of extra-territorial powers in the USA is not as great as the numbers suggest. The levels of resources also differ.

**20.** Between 1994 and 2006, Australian authorities convicted 14 individuals under their extra-territorial powers and charged an additional 24 people.<sup>133</sup> Given that the population of Australia is smaller than England and Wales,<sup>134</sup> this suggests a proportionately greater use of the powers by the Australian authorities. The reasons for this are not clear.

### *The 'first country first' principle*

**21.** According to the 'first country first' principle, prosecution should first be considered in the country where the offending takes place. Local prosecutions can minimise distress to children and avoid their having to give evidence in foreign courts. They also ensure that abuse is highlighted in the country in which it takes place.

**22.** While this may be an appropriate principle, there are several factors which may make it ineffective in practice in relation to UK nationals or residents who have abused children.

**22.1.** The act in question may not be a criminal offence in the country in which it occurs. In such cases, a section 72 prosecution could fill an important gap.<sup>135</sup>

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<sup>128</sup> Patel 11 February 2019 84/1-8; 111/8-9; Binford 12 February 2019 126/24-25; 127/1; 129/18-25; Hulley 13 February 2019 24/5-10

<sup>129</sup> Jones (Robert) 13 February 2019 167/10-23

<sup>130</sup> This figure includes the six successful NCA prosecutions and the case of Patrick Matthews which did not result in conviction. None of the six police forces approached by the Inquiry reported any section 72 prosecutions, but other forces in the country may have used it. Accordingly, seven may be an underestimate.

<sup>131</sup> CRS000018\_003

<sup>132</sup> The current population of the USA is around 330 million people, compared to the combined population of England and Wales of around 58 million.

<sup>133</sup> ECP000003\_20

<sup>134</sup> As at 2006, the population of Australia was around 20.7 million people, compared to the combined population of England and Wales in 2006 of around 55 million.

<sup>135</sup> Samleang 12 February 2019 31/11-32/14

**22.2.** It has been said that law enforcement is at different stages of development around the world. For example, in some countries police officers do not have the skills and experience or resources compared to UK police forces.<sup>136</sup>

**22.3.** Investigations may be complicated by victims being unwilling to speak out due to the fear of social stigma or being pressurised to keep quiet. Threats may also be made to prosecutors and judges in some jurisdictions.<sup>137</sup>

**22.4.** Bribery and corruption may reduce the chances of a prosecution. Local officials may encourage families and victims to accept out-of-court settlements.<sup>138</sup>

### *An approach of 'last resort'?*

**23.** In recent years, an understanding has developed that section 72 is only to be used as a 'last resort'.<sup>139</sup>

**24.** The relevant agencies denied the existence of such an understanding.<sup>140</sup> However, this approach is clear from the NCA's February 2018 guidance to its ILOs, which states:

*"Encourage the host country to initiate their own investigations and prosecution against British nationals who commit CSEA<sup>141</sup> offences in their host country. Section 72 allows UK individuals who offend overseas to be prosecuted in the UK. However, this should be seen as the last resort or in extremis option due to the complex and resource-intensive nature of these operations."*<sup>142</sup>

The Foreign and Commonwealth Office (FCO) pre-2019 guidance to its staff was also discouraging, stating that prosecutions under section 72 are "rare" due to logistical and diplomatic issues.<sup>143</sup>

### *Complex and resource-intensive investigations*

**25.** Although section 72 is a relatively straightforward jurisdictional provision, investigations abroad are usually complex. Planning, resources and time are required, as well as collaboration between British and local law enforcement agencies. Factors that limit the effectiveness of the 'first country first' principle also often apply.

**26.** In successful section 72 prosecutions, the investigative support provided by the NCA to overseas law enforcement agencies has been high.

**26.1.** In Operation Shoran (which led to the prosecution of Keith Morris), the NCA used over 25 officers and staff, including investigators and child protection advisers working in Kenya and the UK, to facilitate the investigation and trial.<sup>144</sup>

<sup>136</sup> Samleang 12 February 2019 26/7-12; INQ003685\_013; Lemineur 12 February 2019 68/16-22

<sup>137</sup> Lemineur 12 February 2019 72/16-73/4; INQ003949 paras 2-3; Jones (Robert) 13 February 2019 158/16-24

<sup>138</sup> Cullen 12 February 2019 83-84

<sup>139</sup> Patel 11 February 2019 112/15-25, 113/1-6; Beddoe 11 February 2019 161/1-25; 163/21-25; 164/1-2 and 17

<sup>140</sup> Jones (Robert) 13 February 2019 161/11-24; Jones (Peter) 14 February 2019 140-141; McGill 14 February 2019 88/19-23; Skeer 14 February 2019 44/22-25

<sup>141</sup> CSEA is the acronym used by the NCA to refer to child sexual exploitation and abuse.

<sup>142</sup> NCA000305. Section 72, as originally enacted, allowed for such prosecutions in England and Wales and Northern Ireland; currently, it allows for such prosecutions in England and Wales only.

<sup>143</sup> FCO000146

<sup>144</sup> Jones (Robert) 13 February 2019 154/4-18



**26.2.** For Operation Carapax (which led to the prosecution of Mark Frost), an operational team of specialist NCA officers, child protection officers and a Crown Prosecution Service prosecutor travelled to Thailand to assist the Thai authorities.<sup>145</sup>

**26.3.** Operation Acrostic (which led to the prosecution of David Graham) was an investigation involving the NCA's Child Exploitation and Online Protection Command (NCA-CEOP), the Serious Organised Crime Agency, the Cambodian national police and the NGO Action Pour Les Enfants (APLE).<sup>146</sup>

### *The number of 'boots on the ground'*

**27.** The UK's investigative capacity overseas is largely made up of the NCA's network of 140 ILOs located in countries such as Thailand, the Philippines,<sup>147</sup> Hong Kong, India, Vietnam and Australia. ILOs are given extensive training, including on local law enforcement, before they are deployed. Where there are gaps in the UK's coverage on the ground, the NCA is assisted by others in the 'Five Eyes' partnership,<sup>148</sup> which involves intelligence-sharing between the UK, USA, Australia, Canada and New Zealand.<sup>149</sup>

**28.** However, the Inquiry heard evidence from a range of witnesses to the effect that the UK does not have enough "boots on the ground"<sup>150</sup> to support effective investigations and prosecutions. The UK is perceived by some to offer less support to local law enforcement than other countries, such as the USA. The practical benefits of "in country" support were also emphasised.<sup>151</sup> It was also suggested that UK representatives overseas were slower to respond to allegations of child sexual abuse than, for example, their Norwegian, Belgian or German counterparts.<sup>152</sup>

**29.** The NCA keeps its network of ILOs under review, based on the intelligence it receives. The number of ILOs needs to be proportionate to requirements, and the NCA's view was that increasing the number of ILOs alone would not deal with the complexity of the issues.<sup>153</sup>

### *Joint working and the overall UK 'presence' overseas*

**30.** UK law enforcement agencies cannot act as a police force in another country. As a result, effective international cooperation through intelligence-sharing and/or the building of strong relationships with local law enforcement agencies are necessary.<sup>154</sup>

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<sup>145</sup> NCA000298 paras 6–14

<sup>146</sup> Jones (Robert) 13 February 2019 173/17-25

<sup>147</sup> Jones (Robert) 13 February 2019 163/4-164/5. See NCA000343 for further details of the NCA's work in the Philippines, including its assistance with the establishment of the International Justice Mission's Philippine Internet Crimes Against Children Centre and the signing by the Director General of the NCA of a Memorandum of Understanding with the Head of the Philippines National Police.

<sup>148</sup> Jones (Robert) 13 February 2019 165/1-5; 163/13-20

<sup>149</sup> Jones (Robert) 13 February 2019 163/21-25

<sup>150</sup> Beddoe 11 February 2019 187/1-18; Patel 11 February 2019 99/13-22; Binford 12 February 2019 99/6-13

<sup>151</sup> Patel 11 February 2019 99-100; 115/12-15; 116/1-5; Binford 12 February 2019 99/6-25; 98/18-21; 100/1-2; 111/1-8; 133/9-24; Beddoe 11 February 2019 187/4-11; Hulley 13 February 2019 28/16-21; Samleang 12 February 2019 13/13-17; 17/1-11; 21/1-25; 22/1-7; Cullen 12 February 2019 87-89

<sup>152</sup> OU-X1 14 February 2019 181/20-25; Cullen 12 February 2019 87/18; Binford 12 February 2019 132/12-20

<sup>153</sup> Jones (Robert) 13 February 2019 159/10-22; 164/1-17; 165/9-228. By way of example, after the hearing the Inquiry received further evidence of recent investment in an initiative in Kenya which has led to the opening of a cyber-centre that allows the Kenyan authorities, for the first time, to investigate and prosecute internet-based child abuse (HOM003221\_013 and HOM003246).

<sup>154</sup> Patel 11 February 2019 98/18-99/1-4; 114/17-24; 115/17-20; 121/18-20; Beddoe 11 February 2019 166/8-18



- 31.** The Inquiry heard some examples of good practice. Specific bilateral agreements have led to positive joint working between the USA authorities and those in the Philippines. Similarly, there are collaborative relationships between the USA and Australian authorities and various other local law enforcement agencies.<sup>155</sup>
- 32.** Christine Beddoe considered that the UK does not “*have a particularly well-framed approach to investigating and prosecuting this crime of British nationals who travel abroad*”. By contrast, she considered that the Swedish, American, Australian and Canadian models were “*more well defined and therefore potentially more successful at being able to bring prosecutions under their extra-territorial powers*”.<sup>156</sup>
- 33.** However, Robert Jones of the NCA disagreed with Ms Beddoe’s assessment. He considered that the UK played a very visible role in relation to law enforcement leadership overseas. He noted that in the recent *Out of the Shadows* report, prepared by The Economist Intelligence Unit, with support from several child-focussed organisations, the UK was recently placed first out of 40 developed countries in terms of its global efforts in relation to child sexual abuse.<sup>157</sup>

### *Knowledge within police forces of section 72*

- 34.** The NPCC considered that there was awareness of the use and operation of section 72 within police forces, particularly within specialist management of sexual and violent offenders teams.<sup>158</sup>
- 35.** However, of the six police forces from which the Inquiry obtained evidence, only two considered that there was an appropriate level of understanding within their forces of section 72.<sup>159</sup> The remaining four considered that awareness was limited, and some acknowledged that improvements to training were needed.<sup>160</sup>

### *Coordinated leadership*

- 36.** Several witnesses considered that there was a lack of coordinated leadership around section 72 prosecutions.

**36.1.** Professor Warren Binford, a Trustee of CRI, said there was a “*crisis of leadership*” and that a number of institutions (by which we assume she meant the Home Office, the NCA, the Crown Prosecution Service and the Ministry of Justice) did not consider themselves as having direct responsibility for section 72, but rather being in a support role.<sup>161</sup>

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<sup>155</sup> Cullen 12 February 2019 85-87; Hulley 13 February 2019 27-28. There can be some reluctance to cooperate with law enforcement agencies in countries that have the death penalty in place for certain offences. Glen Hulley indicated that the Australian Federal Police cannot be seen to assist a local force to convict or prosecute an Australian national where the death penalty applies (Hulley 13 February 2019 25-26).

<sup>156</sup> Beddoe 11 February 2019 164/21-165/18

<sup>157</sup> Jones (Robert) 13 February 2019 172/12-20; NCA000341; NCA000342

<sup>158</sup> Skeer 14 February 2019 42/23-25, 43/23-25

<sup>159</sup> This was the view of West Midlands Police (Southern 14 February 2019 52-54; OHY006936) and Staffordshire Police (Barnett 14 February 2019 67-68; OHY006977).

<sup>160</sup> South Yorkshire Police considers that the use and knowledge of section 72 is very limited, although staff do have some awareness (Forber 14 February 2019 60-61; OHY006964). Lancashire Constabulary acknowledged that awareness of section 72 may be low due to its limited use and confirmed that there is no specific training currently given to staff on section 72 but that this would now be considered (Edwards 14 February 2019 65-66; OHY006954). Following the Inquiry’s request, Hertfordshire Constabulary has undertaken a review of section 72 to be satisfied that appropriate training is given to staff (Jephson 14 February 2019 68-70; OHY006935; OHY007090). Gwent Police does not provide specific training on the provision (Brain 14 February 2019 71; OHY006951).

<sup>161</sup> Binford 12 February 2019 136/22-24, 137/2-7

**36.2.** Bharti Patel, Chief Executive Officer of ECPAT UK, shared the concern that no one was accepting overall responsibility for what are “*interconnected extra-territorial offences*”. She felt that, as a result, issues were “*falling between the cracks*”.<sup>162</sup> She argued in favour of more progressive and stronger leadership at ministerial level.<sup>163</sup>

**36.3.** Ms Beddoe understood that, in the 2000s, the Home Office had taken over matters regarding extra-territoriality from the FCO. She considered that this led to a loss of focus and a “*downgrading [of] the implementation of the UK’s international obligations on the rights of children*”.<sup>164</sup>

**37.** However, the Home Office’s position is that there has been and there is strong leadership on this issue. It referred to recent policy statements and commitments given by the Home Secretary.<sup>165</sup> Mr Peter Jones, Chief Operating Officer of the FCO, did not agree that the FCO had historically been the lead agency in this field. The drugs and international crime department in the FCO, which dealt with some of these issues, no longer exists.<sup>166</sup>

## C.4: Reform

**38.** It is clear that section 72 is relatively rarely used. There are various reasons for this.

**39.** One reason for section 72 not being used is the ‘first country first’ principle. While in principle prosecutions ought to take place in the country in which the offence occurred, there are numerous instances where a prosecution in England and Wales can and should take place.

**40.** Another concern has been the suggestion that section 72 should only be used as a ‘last resort’. This should not be the case, given that the quality of local justice may be suspect in some countries. The Inquiry’s examination of the use of section 72 appears to have led directly to the NCA and FCO changing the ‘last resort’ elements of their guidance documents.

**40.1.** The NCA accepted that its ILO guidance was not well written.<sup>167</sup> As a result, the guidance was reviewed and the Inquiry was provided with an updated version in February 2019. The new guidance no longer refers to section 72 as being a last resort but states that ILOs should:

*“Engage the host country to initiate their own investigations to achieve best evidence and safeguard victims and secure prosecutions against British nationals who commit CSEA offences in their host-country. In most instances, this is the preferred option, as it is the best way of ensuring safeguarding of victims through local intervention, which is the priority in any CSEA investigation. However, consideration should also be given to the option of prosecuting under Section 72 Sexual Offences Act (2003), which allows UK individuals who offend overseas to be prosecuted in the UK. Where there are indicators*

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<sup>162</sup> Patel 11 February 2019 121/23-122/1

<sup>163</sup> Patel 11 February 2019 121/21-25, 122/1

<sup>164</sup> Beddoe 11 February 2019 167-168

<sup>165</sup> Home Office Closing Statement 15 February 2019 127/2-6

<sup>166</sup> Jones (Peter) 14 February 2019 157/11-19

<sup>167</sup> Jones (Robert) 13 February 2019 161/11-24

*of a lack of capability or capacity, or unwillingness to take a prosecution, or significant complications, such as human rights considerations, are developing in the case, a section 72 prosecution may be the optimal approach to take.*<sup>168</sup>

**40.2.** The FCO also accepted that the tone of its guidance was unhelpful in implying a last resort approach, and mentioning diplomatic issues when reference should have been made to jurisdictional issues. The FCO confirmed that, as a result of the Inquiry process, its guidance has also been reworded.<sup>169</sup>

**41.** Section 72 investigations are undoubtedly resource-intensive. There is a need to ensure effective cooperation between law enforcement agencies internationally. This requires an adequate number of ILOs able to work effectively with international partners in high-risk countries. The NCA is taking steps to ensure that this is the case, recognising that transnational child sexual abuse is only one aspect of their work.

**42.** The international work of the NCA sits within a wider context, including the following:

- The Home Office houses the secretariat for the WeProtect Global Alliance, made up of 84 countries, which is seeking to coordinate a model national response to online child sexual abuse, among other initiatives.<sup>170</sup>
- Project Soteria is a project sponsored by the Department for International Development (DFID) which will include a team of seven to nine specialists and investigators operating from both Africa and Asia to provide support to national crime agencies.<sup>171</sup>
- There is a new cross-government network of overseas policy specialists (SOCNET), jointly run by the Home Office, FCO and DFID. Its role will be to use political and diplomatic means to build on existing law enforcement capabilities in other countries.<sup>172</sup>

**43.** There is a need for increased awareness of section 72 by police forces in England and Wales, to be achieved through guidance and training. During her evidence, Chief Constable Skeer undertook to include further information about section 72 in the College of Policing's Authorised Professional Practice material, which is national guidance given to all police forces.<sup>173</sup> That process was taken forward after the hearing and a further training event has taken place.<sup>174</sup>

**44.** The difficulties in collating data for the Inquiry have also led to amendments to the data captured on the Violent and Sex Offender Register (ViSOR) database, so that each use of section 72 will be recorded and therefore be more easily retrievable in the future.<sup>175</sup> The NPCC has confirmed that this interim measure will become a permanent amendment to the ViSOR system from November 2019.

<sup>168</sup> Jones (Robert) 13 February 2019 161/11-15; NCA000339 p2

<sup>169</sup> Jones (Peter) 14 February 2019 140-141. The revised guidance provided to the Inquiry by the FCO following the public hearings states as follows in relation to extra-territorial jurisdiction for sexual offences: "For these offences, where there are indications at post of a lack of local capability, capacity or willingness to undertake a prosecution, or significant complications developing in the case (such as human rights considerations), law enforcement colleagues will want to consider whether it would be possible for the UK to exercise extra-territorial jurisdiction." The "two main reasons why it may be difficult or inappropriate to prosecute extra-territorial offences in the UK" are described as jurisdictional and logistical reasons.

<sup>170</sup> Jones (Robert) 13 February 2019 170-171; NCA000296 paras 69-73

<sup>171</sup> Jones (Robert) 13 February 2019 182/9-183/2; Price 13 February 2019 196/1-4; INQ0003798 para 12

<sup>172</sup> French 13 February 2019 80/18-25, 81/1-2

<sup>173</sup> Skeer 14 February 2019 44

<sup>174</sup> OHY007094\_002 para 12

<sup>175</sup> OHY007094\_002 para 11



## Part D

# Disclosure and barring

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# Disclosure and barring

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## D.1: Introduction

1. Disclosure and barring regimes assist employers in making safer recruitment decisions. In the context of child sexual abuse, they seek to prevent those who pose a risk of such abuse to children from working with them. These regimes can be particularly important in countries and regions where abusers are otherwise “*more likely to enjoy impunity*”.<sup>176</sup>
2. Abusers can and do obtain work with children overseas after they have been identified as posing a risk to children. For example:
  - 2.1. Nicholas Rabet was barred from working with children in England and Wales but was able to travel to Thailand and abuse around 300 boys, having advertised his home as a place where children could play video games.<sup>177</sup>
  - 2.2. Peter Walbran, a dual Australian/New Zealand national, worked at British and Australian international schools in Indonesia in the 1990s. He was convicted of abusing children and sentenced to three years’ imprisonment in Indonesia. On his release, he was deported to Australia but travelled on his New Zealand passport to Thailand. He worked in a school in Thailand with 4,000 students, teaching children of the same age as those he had abused in Indonesia, before being arrested by Australian and local police.<sup>178</sup>
3. In 2011, the National Crime Agency’s Child Exploitation and Online Protection Command (NCA-CEOP) reported 33 cases of British nationals abusing children overseas in an 18-month period, 23 of whom had previous convictions for offences involving children.<sup>179</sup> A review of 145 convicted sex offenders in Cambodia conducted by Action Pour Les Enfants (APLE) indicated that 27.6 percent had previous convictions. However, for around 70 percent of those offenders, full background information was not available. When those cases were removed from the analysis, the percentage who had previous convictions rose to 90.9 percent.<sup>180</sup>
4. Some offenders deliberately target institutions in countries with less developed processes for vetting staff, or set up their own charities, schools and orphanages to provide access to children for themselves and others. For example:
  - Simon Harris set up a charity arranging teaching placements in Kenyan schools for British gap-year students, from which position he groomed and sexually exploited children for years.<sup>181</sup>

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<sup>176</sup> Binford 12 February 2019 149/21-150/5

<sup>177</sup> Patel 11 February 2019 122/13-123/9; ECP000007 para 68; *The end of the line for child exploitation*, ECPAT UK, 2016 (ECP000003\_019)

<sup>178</sup> INQ003648 paras 13.ii and 37

<sup>179</sup> ECP000007 para 72; *Off the Radar: Protecting Children from British Sex Offenders who Travel*, ECPAT UK, 2011 (ECP000006\_015)

<sup>180</sup> Samleang 12 February 2019 5/17-6/20; INQ003685\_012

<sup>181</sup> Patel 11 February 2019 122/21-123/2; ECP000007 para 71

- In 2008, DB, a man from Edinburgh who had founded an orphanage in Albania, was sentenced to 20 years' imprisonment for sexually abusing children.<sup>182</sup>
- APLE told us about three perpetrators (from Australia, the USA and the UK) arrested in Cambodia in 2013 who had been working with children. One had founded his own orphanage and another was a director of a shelter. Two of the three had previous convictions and one was wanted in his home country for sexual offences against children.<sup>183</sup>

5. If an institution's operations are based in England and Wales and the employment decision is made here, the Disclosure and Barring Service (DBS) regime applies.<sup>184</sup> For this reason, institutions such as the Foreign and Commonwealth Office (FCO), the British Council and aid agencies based in England and Wales can and do conduct DBS checks on staff they are posting overseas who are engaged in certain activities with children, as they would for staff based in England and Wales.<sup>185</sup>

6. However, where institutions are based overseas, there is no requirement that comparable checks are carried out on UK nationals or residents before they can work with children.

## D.2: The legal framework

### The Disclosure and Barring Service

7. The DBS is a non-departmental public body created in 2012. It operates disclosure functions for England, Wales, Jersey, Guernsey and the Isle of Man, and barring functions for England, Wales and Northern Ireland, pursuant to a complex statutory framework.<sup>186</sup>

8. The DBS issues a number of certificates.

- Basic disclosure certificates: These are available for any position or purpose. They include details of convictions and conditional cautions which are considered to be unspent under the terms of the Rehabilitation of Offenders Act 1974.
- Standard disclosure certificates: These are available for those working in certain roles specified in legislation<sup>187</sup> as a 'regulated activity' (for example, those involving the teaching, training, care or supervision of children) and include unspent and spent convictions, cautions, reprimands and warnings.

<sup>182</sup> *Off the Radar: Protecting Children from British Sex Offenders who Travel*, EPCAT UK, 2011 (ECP000006), p13

<sup>183</sup> Samleang 12 February 2019 32/16-33/2; INQ003720 para 37; *Investigating Travelling Child Sex Offenders*, APLE, 2014 (INQ003685), p12

<sup>184</sup> French 13 February 2019 92/24-93/10; HOM003000 para 36

<sup>185</sup> Jones (Peter) 14 February 2019 154/18-155/23; FCO0000143 paras 7.1-7.2; Taylor 14 February 2019 168/17-25; DFI000002 para 3.1; Greer 15 February 2019 18/9-21/1; 24/22-25/8; 25/22-26/10; BRC000352 paras 18-23

<sup>186</sup> Downey 13 February 2019 191/2-5; DBS000024 paras 2.1-2.2; DBS000026 para 1. The DBS's disclosure functions are provided for, respectively, in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 and the Police Act 1997 (as amended). Its barring functions are provided for in the Safeguarding Vulnerable Groups Act 2006. For the history of the disclosure and barring regime, see DBS000024 paras 1.1-1.20. A similar service is provided in Scotland by Disclosure Scotland, while AccessNI deals with disclosures in Northern Ireland. The Inquiry's remit is limited to England and Wales.

<sup>187</sup> Namely the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

- Enhanced disclosure certificates: These certificates involve the highest level of check and are available for anyone working with vulnerable groups and in other positions involving a high degree of trust. They include the same information as standard certificates but also information that the local police force reasonably believes is relevant and ought to be disclosed.<sup>188</sup>

9. If an employer, having applied for an enhanced DBS check, later withdraws permission for the employee to work with children for safeguarding reasons, the employer must report this to the DBS.<sup>189</sup>

10. If the role is one in 'regulated activity', an enhanced certificate will also include details of whether a person is included on the barred lists. These are lists of individuals barred from working in regulated activity with children or adults. The DBS decides whether an individual should be added to the relevant list. A conviction or caution for a specified 'automatic barring' criminal offence will result in automatic inclusion on the relevant list. In other cases, the DBS will have to consider whether the individual has harmed a child or vulnerable adult, put them at risk of harm, or would put them at risk of harm if the behaviour being considered was repeated, and whether barring is proportionate. The DBS also decides whether an individual should be removed from the list, and enables checks of the list to be made by others, subject to certain qualifying criteria. It is an offence to work in regulated activity when barred from doing so, or to employ someone in such work who is barred.<sup>190</sup>

11. The DBS application form requires the applicant's five-year address history. If the applicant has lived or travelled abroad in the preceding five years, details of the relevant countries and dates must be provided.<sup>191</sup>

## The International Child Protection Certificate

12. The International Child Protection Certificate (ICPC) scheme, introduced by NCA-CEOP in 2012, is non-statutory and sits outside the DBS framework. It is aimed at individuals and organisations based outside England and Wales, such as overseas schools, who could not obtain a DBS check.<sup>192</sup> The ICPC is promoted by the NCA through its network of international liaison officers (ILOs). To date, applications have been made for 55,709 ICPCs from 128 countries.<sup>193</sup>

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<sup>188</sup> DBS000024 paras 3.1–3.4, 4.6–4.7, 5.1–5.5 and 7.1–7.8.2; Greer 15 February 2019 20/16-21/22; BC0000352 paras 19 and 20; Downey 13 February 2019 192/10-2; DBS000026 para 13

<sup>189</sup> DBS000026 para 6

<sup>190</sup> HOM003000 paras 42–43; DBS000024 paras 9.1–12.2; DBS000026 para 11

<sup>191</sup> Greer 15 February 2019 21/2-25

<sup>192</sup> Such checks only being available if an institution's operations are based in England and Wales and the employment decision is made here (French 13 February 2019 92/24-93/10).

<sup>193</sup> French 13 February 2019 83/10-84/24; HOM003000 para 37; Jones (Robert) 13 February 2019 179/1-181/13; NCA000296 para 64; NCA000336 paras 20–23; NCA000303; Price 13 February 2019 194/5-195/13; INQ0003798 paras 3, 7, 10 and 11. For the ACPO guidance on the ICPC, see Greer 15 February 2019 46/21-47/12 and BRC000002. For the guidance that the Council of British International Schools (COBIS) provides its members on recruitment, including on the ICPC and obtaining criminal records from overseas, see Bell 15 February 2019 56/1-23 and INQ003785 paras 5.3–5.9. The British Council primarily uses the ICPC when recruiting for English Language Assistants on behalf of schools and higher education institutions abroad. It is a requirement of the programme that applicants obtain an ICPC in order to be eligible to be placed with an overseas organisation (Greer 15 February 2019 26/11-27/10; BRC000352 paras 25–27).



**13.** An ICPC is in two parts.

- Part 1 is provided by the Association of Chief Police Officers Criminal Records Office (ACRO). It includes known convictions, reprimands or warnings, as well as spent and unspent convictions and relevant offenders' register entries, from the Police National Computer (PNC). It also contains information about offences committed in other countries, where it has been disclosed to the UK authorities.
- Part 2 is provided by NCA-CEOP. It includes additional information or intelligence assessed as indicating that the applicant poses a potential risk to children.

**14.** The ICPC has generated significant interest because no other country operates such a scheme. The funds it generates from applications are invested in capacity-building programmes aimed at further improving the safeguarding of children overseas.<sup>194</sup>

### Obtaining overseas criminal records

**15.** The Home Office provides guidance to employers based in England and Wales on how to obtain police records from particular countries.<sup>195</sup>

**16.** However, the labour laws of some countries prevent employers seeking criminal record vetting of their nationals. To address this, the British Council (as an example of a major British employer of individuals to work overseas) requires any individual engaged in a regulated activity anywhere in the organisation to sign a form declaring that he or she has no child protection concerns (including criminal convictions) in their background. In addition, it seeks to verify a person's character and employment history using references.<sup>196</sup>

### The inter-relationship between the schemes

**17.** Employer feedback to the DBS is that they find the disclosure and barring landscape complex. They find it difficult to establish which level of check can be sought, to which organisation to apply (the DBS, ACRO, Access Northern Ireland, Disclosure Scotland or overseas criminal records agencies directly), and what information can be disclosed on a certificate.<sup>197</sup> There is also confusion as to whether the enhanced DBS check or the ICPC are what was described to the Inquiry as representing the "gold standard".<sup>198</sup>

## D.3: The regime in practice

### DBS and ICPC checks include no or limited information about overseas offending

**18.** Information about overseas offending comes from other countries to ACRO under EU law and international protocols. ACRO will then update the PNC. Once an individual comes to the attention of the police, a foreign conviction can also be added to the PNC if it is for an

<sup>194</sup> Jones (Robert) 13 February 2019 180/14-181/12; Price 13 February 2019 195/21-196/1; INQ0003798 para 12

<sup>195</sup> French 13 February 2019 85/1-87/17; HOM003000 para 39; HOM002854. The British Council has developed further internal guidance on applying for police checks from particular countries (Greer 15 February 2019 21/23-24/21; BRC000352 para 23; BRC000357). MOD Schools carries out these checks in appropriate cases (MOD000001 para 12).

<sup>196</sup> Greer 15 February 2019 22/5-23/16; BRC000352 para 24

<sup>197</sup> Downey 13 February 2019 193/5-8; DBS000024 para 13.3; DBS000026 para 14; Greer 15 February 2019 10/22-11/1

<sup>198</sup> Larsson 15 February 2019 57/1-58/2; 64/14-65/4; INQ0003866 para 5

offence on the Home Office’s Serious Offence List. This process relies on the willingness and ability of other countries to comply with information-sharing protocols, as well as on there being the resources needed to update the PNC.

**19.** Depending on the criminal records infrastructure of the country in question, the PNC may contain detailed information. However, it appears that this happens in only a “small” number of cases. The DBS has no other means of accessing information about criminal convictions or investigations abroad. The implications of the withdrawal of the UK from the EU for the sharing of criminal records information between the UK and EU member states remain unclear.<sup>199</sup>

**20.** It therefore remains the case that a DBS check “*may not provide a complete picture of an individual’s criminal record if the individual has a criminal record outside the UK*”.<sup>200</sup> This inevitably raises doubt about the comprehensiveness of the scheme.

**21.** Some witnesses considered that this issue renders the DBS scheme inadequate. Father Shay Cullen, founder of the People’s Recovery, Empowerment and Development Assistance (PREDA) Foundation based in the Philippines, described the DBS’s inability to search overseas convictions as a “*glaringly obvious shortfall*”, as those convictions could be “*significant and pertain directly to the dangerousness of [the individual] working with children*”.<sup>201</sup> Mike Cooper of the Ministry of Defence Schools agreed that this limits the effectiveness of the DBS scheme.<sup>202</sup> Robert Price of ACRO considered that the disclosure and barring regime is, overall, “*ineffective*” when dealing with foreign nationals (and by extension UK nationals convicted abroad), due to the inability to access foreign police information.<sup>203</sup>

**22.** The inability of DBS checks to include overseas offending consistently is a significant concern which poses clear risks to the safety of children in the UK and abroad. For example, a person with previous convictions involving children abroad obtained an enhanced DBS certificate and worked in England as a driver for school children, in which capacity he sexually abused a 10-year-old boy with special needs.<sup>204</sup> Although this example relates to a child within the UK and not one overseas, it illustrates how the current system could place children in the UK and abroad at risk.

**23.** The Council of International Schools told us that the information about overseas convictions provided on an ICPC is “*limited*”, so employers will generally still need to conduct criminal checks in the country in question.<sup>205</sup> It therefore appears that the ICPC may suffer from the same defect as the DBS system as far as overseas offending is concerned.

## DBS checks cannot be obtained by employers based overseas

**24.** Applications for DBS certificates cannot be made where the prospective employer is based abroad and no employment decision is being made in England and Wales.<sup>206</sup>

<sup>199</sup> Downey 13 February 2019 190/9-18; DBS000024 paras 6.1–6.2; DBS000026 para 9; INQ0003798 paras 9 and 14; French 13 February 2019 83/5-10; HOM003000 para 37; Greer 15 February 2019 21/23-22/8; Taylor 14 February 2019 169/1-23; DFI000002 para 3.2; Price 13 February 2019 197/18-21; INQ0003798 para 15

<sup>200</sup> Downey 13 February 2019 190/9-18; DBS000024 para 6.3

<sup>201</sup> INQ003532 paras 37–38

<sup>202</sup> Cooper 15 February 2019 49/7-11; MOD000001 para 12

<sup>203</sup> Price 13 February 2019 196/12-25; INQ0003798 para 15

<sup>204</sup> ECP000007 para 75; *Off the Radar: Protecting Children from British Sex Offenders who Travel*, EPCAT UK, 2011 (ECP000006\_011), p9

<sup>205</sup> Larsson 15 February 2019 64/14-65/4; INQ0003866 para 5

<sup>206</sup> French 13 February 2019 82/24-84/24; HOM003000 paras 35–36 DBS000026 para 4; Taylor 14 February 2019 168/17-25; DFI000002 para 3.1

**25.** This means that an organisation overseas cannot conduct the checks that would be expected as standard in England and Wales, even if the person involved is a British national or resident. They must use the ICPC scheme or conduct other country-specific checks. In practice, this may facilitate those barred from working with children in England and Wales to seek employment overseas, which creates a risk for children abroad. Child Redress International regards this as a key reason why the disclosure and barring regime is not adequate and robust enough.<sup>207</sup>

**26.** In the summer of 2018, the Home Office indicated that the Council of British International Schools (COBIS) would no longer be able to access standard or enhanced DBS checks, unless the recruitment decision was being made in either England or Wales. This was a controversial decision. The Home Office's position is that, correctly applying the legislative framework, COBIS was not entitled to conduct the checks as the overseas schools were ultimately making the suitability decision themselves.<sup>208</sup> COBIS had conducted thousands of these checks on behalf of member and non-member schools in the international sector over 15 years. COBIS expressed their severe disappointment at this decision, given their staunch advocacy of safer recruitment practices, safeguarding and child protection. They were supported in this position by their member schools, international schools and the International Task Force on Child Protection. COBIS lobbied unsuccessfully for the decision to be reconsidered. As a result, COBIS now only signposts members and non-members to the ICPC and country-specific background checks.<sup>209</sup> Although recognising the Home Office's position that COBIS should not have been able to make these checks under the current legislation, the effect of this change does appear to be a step backwards, making it harder for overseas organisations to carry out robust checks intended to protect children from the risk of sexual abuse or exploitation.

### The ICPC is optional and there has been limited uptake of it in some countries

**27.** Use of the ICPC is not mandatory, even for British nationals and residents working in regulated activities overseas.<sup>210</sup> Although the ICPC has been extensively marketed, in some countries 'take up' has been low. APLE has welcomed the ICPC as a step in the right direction, but it is understood that only one ICPC has been applied for from Cambodia, where APLE is based.<sup>211</sup> Glen Hulley of Project Karma, which is active throughout Southeast Asia, had not come across it.<sup>212</sup>

**28.** The cost of applying for an ICPC (currently £60) appears to act as a disincentive to individuals and smaller organisations overseas.<sup>213</sup>

### Differences between the DBS and ICPC schemes

**29.** An ICPC will not necessarily reveal if someone has been barred from working with children by the DBS (which an enhanced DBS check will do).<sup>214</sup> This appears to be a further key gap.

<sup>207</sup> Binford 12 February 2019 149/8-16; CRS000022 para 32

<sup>208</sup> French 13 February 2019 87/18-91/5; HOM003000 para 38

<sup>209</sup> Bell 15 February 2019 58/3-62/18; INQ003785 sections 6-7; INQ0003866 paras 4-5

<sup>210</sup> Patel 11 February 2019 123/9-124/12; ECP000007 para 76; Samleang 12 February 2019 34/14-35/25

<sup>211</sup> Patel 11 February 2019 123/24-124/12; ECP000007 para 76; Samleang 12 February 2019 33/15-19; *Investigating Travelling Child Sex Offenders*, APLE, 2014 (INQ003685\_013)

<sup>212</sup> Hulley 13 February 2019 33/14-23

<sup>213</sup> Patel 11 February 2019 123/9-124/12; ECP000007 para 76; Samleang 12 February 2019 34/14-24

<sup>214</sup> Downey 13 February 2019 192/16-17; DBS000026 para 13; Larsson 15 February 2019 64/14-65/4; INQ0003866 para 5

**30.** Prior to January 2018, “soft” information (for example, concerns that fall below the criminal standard, or that meet the criminal threshold but for other reasons did not lead to arrest) were included on an enhanced DBS check but not on an ICPC. NCA-CEOP now includes this information on an ICPC where it is deemed necessary to protect children.<sup>215</sup> Disclosure processes under the ICPC are in accordance with the DBS Quality Assurance Framework, based on the Statutory Disclosure Guidance issued by the Home Office.

**31.** There are different filtering or ‘step down’ rules for an enhanced DBS check and an ICPC check. It is therefore not clear whether material would be removed from an ICPC check that would remain on an enhanced DBS check (or indeed vice versa).<sup>216</sup>

**32.** There are further differences between an enhanced DBS check and an ICPC check, which may cause problems in practice.

**32.1.** Legislation determines which level of DBS check can be sought but no such provisions apply to the ICPC, which can lead to a lack of clarity for employers.

**32.2.** Both certificates are issued directly to the applicant, but the security features enabling organisations to identify fraudulent documents are different.

**32.3.** The DBS offers an update service, which allows employers to check the status of the individual’s DBS directly online, avoiding the individual having to re-apply for a DBS check. This service is not available for the ICPC.<sup>217</sup>

### **Smaller organisations overseas can lack the resources to carry out full employment vetting**

**33.** Smaller, locally run charities or institutions overseas often lack the resources to do appropriate screening and background-checking.<sup>218</sup>

**34.** Adrian Greer of the British Council was sympathetic to this. He explained that the Council’s decision to adopt a global pre-appointment screening process had not been easy because of the enormous costs and resources involved. The British Council is a very large organisation, with a £1.2 billion turnover, and this initiative cost £1–1.5 million.<sup>219</sup>

### **Charity Commission guidance to overseas institutions cannot be enforced**

**35.** The Charity Commission has issued recruitment guidelines for charities working internationally, stating that charities should make eligibility and suitability checks on trustees, volunteers, employees and anyone connected with the charity who might have access to children.<sup>220</sup> It cannot, however, sanction charities based overseas for non-compliance with its guidelines.<sup>221</sup>

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<sup>215</sup> Larsson 15 February 2019 64/14-65/4; INQ0003866 para 5

<sup>216</sup> Downey 13 February 2019 192/18-21; DBS000026 para 13; INQ0003798 para 13; Larsson 15 February 2019 64/14-65/4; INQ0003866 para 5

<sup>217</sup> Larsson 15 February 2019 56/1-58/2; 64/14-65/4; INQ0003866 para 5

<sup>218</sup> Patel 11 February 2019 123/5-11; ECP000007 para 76

<sup>219</sup> Greer 15 February 2019 35/5-14

<sup>220</sup> Patel 11 February 2019 123/3-9; 124/25-125/9; ECP000007 paras 71 and 77; *Charities Working Internationally, Charity Commission guidance* (ECP000008), p14

<sup>221</sup> Patel 11 February 2019 124/25-125/9; ECP000007 para 78

## Reliance on other countries' disclosure and barring regimes

**36.** The countries to which offenders travel may not operate robust vetting systems. Even in such countries where vetting systems are in place, obtaining full disclosure that presents a full picture of previous offences can be problematic.

**37.** In many countries in Southeast Asia, the vetting of staff, volunteers and visitors at institutions caring for children is poor. For example, in Cambodia, people applying for a job in a non-governmental organisation (NGO) or a school are rarely asked to provide a police clearance certificate, and take up of the ICPC has been low. There is a particular lack of awareness within the private sector of the need to vet staff, and the high demand for British teachers can mean institutions are keen to recruit individuals quickly and do so without conducting proper checks.<sup>222</sup> OU-X1 told us of a similar difficulty with unregistered orphanages in the Philippines, where staff and volunteers are not vetted.<sup>223</sup> In Southeast Asia, there are extremely limited systems for registration, licensing and supervision, and audits of these institutions are often non-existent.<sup>224</sup>

**38.** When institutions do try to conduct background checks, they can face practical problems. Agencies involved in recruiting English teachers in Southeast Asia often find that universities refuse to provide proof of an applicant's degree or qualifications on privacy grounds, and overseas criminal justice agencies refuse to provide the results of checks of their databases. Recruiters often therefore have to rely on web search engines or other open source information to check an applicant's background.<sup>225</sup>

**39.** In some countries, the difficulties are compounded by a lack of official birth certificates or other legal documents, poor public administration governance and infrastructures, as well as high levels of corruption.<sup>226</sup>

## D.4: Reform

**40.** The limits on the application of disclosure and barring regimes to individuals from England and Wales who travel overseas, described in this part of our report, are not merely technical failings. They allow those with predatory tendencies to exploit the system and sexually abuse children abroad. The Inquiry is clear that this patchwork regime needs to be reformed in order to become more effective.

**41.** The following emerged during our investigation as key proposals for reform in this area:

- strengthening of the ability of the DBS to access overseas convictions and intelligence information from overseas;<sup>227</sup>
- the reinstatement of COBIS's permission to conduct enhanced DBS checks;<sup>228</sup>

<sup>222</sup> Hulley 13 February 2019 7/11-17; INQ003648 para 8; Samleang 12 February 2019 33/7-35/13; INQ003720 para 38

<sup>223</sup> OU-X1 14 February 2019 188/10-15; INQ003949 para 32

<sup>224</sup> Hulley 13 February 2019 31/19-32/12; INQ003648 para 8; Samleang 12 February 2019 33/7-34/2; INQ003720 para 38

<sup>225</sup> Hulley 13 February 2019 30/22-31/18; INQ003648 para 38

<sup>226</sup> Spreckley 11 February 2019 152/21-153/5; INQ003616 para 84

<sup>227</sup> INQ003866 para 6; Cooper 15 February 2019 49/7-12; MOD000001 para 13

<sup>228</sup> Bell 15 February 2019 72/10-14; Larsson 15 February 2019 73/3-4; Greer 15 February 2019 29/22-30/1

- improvements to the ICPC scheme, including placing it on a statutory footing and making it mandatory;<sup>229</sup>
- greater promotion of the ICPC regime in different countries abroad;<sup>230</sup>
- the merger of the DBS and ICPC regimes;<sup>231</sup> and
- the creation of a centralised international system.<sup>232</sup>

**42.** These proposals for reform have to be seen in the context of other ongoing initiatives in this area.

**43.** The International Task Force on Child Protection has undertaken extensive multidisciplinary work to devise its international protocol on managing allegations of child abuse by educators and other adults and develop its recommendations for teaching establishments about giving references.<sup>233</sup>

**44.** In 2018, the Secretary of State for the Department for International Development (DFID) wrote to 179 of DFID's major partners (UK charities working overseas) requesting that they provide a statement of assurance on four key points which are essential to effective safeguarding.<sup>234</sup>

**45.** DFID subsequently launched new due diligence standards for its funding, which help gauge a partner's ability to apply safeguarding of children and adults in their work. The standards cover six areas: safeguarding, whistleblowing, human resources, risk management, codes of conduct and governance. This includes, in human resources, a focus on a partner's vetting and recruitment processes, and questions about what processes the partner follows, albeit that neither the DBS nor ICPC process is mandated.<sup>235</sup> The FCO's programme team carries out diligence assessments of potential partners, through which they assess the adequacy of the policies, processes and practices evidenced by the potential partner. Its contractual terms and conditions for suppliers requires that DBS, Department for Education and criminal record checks are carried out.<sup>236</sup>

**46.** DFID also announced the following initiatives in October 2018, aimed specifically at improving vetting across the international aid sector:

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<sup>229</sup> Patel 11 February 2019 123/17-124/12; ECP000007 para 86g; Binford 12 February 2019 149/17-151/18; CRS000022 paras 33-34; INQ003866 para 6; Samleang 12 February 2019 35/14-25; INQ003720 para 41; Jones (Robert) 13 February 2019 181/13-183/2; NCA000336 para 25; Skeer 14 February 2019 47/18-48/9; Greer 15 February 2019 30/2-24. For similar reasons, the British Council would not consider it feasible to conduct checks on all those who attend as students on its teaching courses (Greer 15 February 2019 42/17-43/1).

<sup>230</sup> Patel 11 February 2019 124/4-6; ECP000007 para 68; Samleang 12 February 2019 34/8-13; Hulley 13 February 2019 34/22-35/3

<sup>231</sup> Downey 13 February 2019 193/14-19; DBS000026 para 15

<sup>232</sup> Binford 12 February 2019 150/15-20; CRS000022 paras 34; Greer 15 February 2019 47/13-48/6; Samleang 12 February 2019 36/8-10; INQ003720 para 41; Cooper 15 February 2019 49/11-12; MOD000001 para 13; Larsson 15 February 2019 63/10-64/13; 65/5-66/8; INQ003866 para 6; French 13 February 2019 94/12-21; British Council Closing Statement 15 February 2019 107/12-13

<sup>233</sup> Larsson 15 February 2019 66/9-70/1; INQ003866 para 6; Binford 12 February 2019 154/8-16

<sup>234</sup> These were (i) that they provide a safe and trusted environment which safeguards anyone with whom their organisation has contact, including beneficiaries, staff and volunteers; (ii) that they set an organisational culture that prioritises safeguarding so that it is safe for those affected to come forward and report incidents and concerns with the assurance that they will be handled sensitively and properly; (iii) that they have adequate safeguarding policies, procedures and measures to protect people and that these are shared and understood; and (iv) that they have absolute clarity as to how incidents and allegations will be handled should they arise, including reporting to the relevant authorities, such as the Commission, and to funding partners, such as DFID. The Secretary of State also asked them to confirm that they have referred any and all concerns their organisation may have on specific cases and individuals to the relevant authorities. See further Taylor 14 February 2019 165/3-24; DFI000001; DFI000003

<sup>235</sup> Taylor 14 February 2019 166/21-168/1; DFI000004

<sup>236</sup> FCO000152\_004; FCO000153-3



- a new pilot scheme run by Interpol to improve background checks on aid-sector staff, provide advice to employers on international vetting and identify high-risk individuals;
- the testing by UK NGOs of a new 'passport' for aid workers to prove an individual's identity and provide background information on their previous employment and vetting status; and
- a new disclosure of misconduct scheme across the aid sector, to which 15 organisations had signed up by 18 October 2018.<sup>237</sup>

**47.** The first of these initiatives will be implemented through Project Soteria. This is a five-year project, commencing in early 2019, in which Interpol, ACRO, DFID and Save the Children are involved. There will be a pilot of an online platform to strengthen background checks on staff across the aid sector globally and to improve information-sharing between law enforcement agencies about individuals of interest. The project will also involve a team of seven to nine specialists and investigators operating from both Africa and Asia to provide support to national crime agencies and strengthen their criminal records systems and information-sharing capabilities. The project is looking at the feasibility of creating an international regime.<sup>238</sup>

**48.** As set out in Part F, reform is needed to simplify these processes and make them more robust.

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<sup>237</sup> Taylor 14 February 2019 169/24-170/22; DFI000002 para 3.3

<sup>238</sup> Jones (Robert) 13 February 2019 182/9-183/2; Price 13 February 2019 196/1-4; INQ0003798 para 12





## Part E

# Further work in this investigation

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# Further work in this investigation

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1. Since the conclusion of the Inquiry's hearings on this second phase, we have considered whether there should be a further phase in the Protection of Children Outside the United Kingdom investigation. Its purpose would be to consider whether organisations based in England and Wales (for example, the armed forces, government departments, public authorities, private or charitable institutions) have taken:

- sufficient care to ensure that their employees do not pose a risk to children living abroad and
- appropriate steps in response to allegations that their employees were involved in the sexual abuse of children abroad.<sup>239</sup>

2. In this second phase, the Inquiry considered evidence from the Foreign and Commonwealth Office, the Department for International Development, the British Council, Ministry of Defence Schools, the Council of British International Schools and others on the wider 'sufficiency of care' issue.<sup>240</sup> As a result, we now have a fuller picture of the ways in which the risk posed by employees travelling abroad can be addressed. These measures go beyond the civil orders and disclosure and barring regimes, which are only two ways in which the risk posed by employees travelling abroad can be addressed.

3. In terms of how organisations respond to allegations of abuse, we heard evidence about how the British Council has responded to allegations that those who worked for them were involved in the sexual abuse of children abroad.<sup>241</sup> We have had the benefit of reading the Charity Commission's June 2019 report into Oxfam.<sup>242</sup> We also heard about the two-year project conducted by the International Task Force on Child Protection, which resulted in a detailed international protocol for schools giving guidance on how to respond to allegations of abuse by educators and other adults.<sup>243</sup>

4. In light of this wider evidence, a further phase of the Protection of Children Outside the United Kingdom investigation focussed on either of these broad issues is not necessary.

5. However, the Inquiry is carrying out some targeted investigative work involving the armed forces, which is intended to be incorporated into the Inquiry's final report.

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<sup>239</sup> As set out in para 2.2 of the definition of the scope of this investigation (<https://www.iicsa.org.uk/investigations/the-protection-of-children-overseas?tab=scope>)

<sup>240</sup> See, for example, Jones (Peter) 14 February 2019 130/23-133/13 (FCO); Taylor 14 February 2019 164/24-172/23 (DFID); Greer 15 February 2019 18/9-40/1; BRC000152\_002-011; BRC000225; BRC000153 (the British Council); Cooper 15 February 2019 48/16-49/24 (Ministry of Defence Schools); Bell 15 February 2019 53/15-56/24, 61/19-62/1 (COBIS); Larsson 15 February 2019 63/10-70/1 (CIS). See also the following evidence on recruitment processes generally: French 13 February 2019 83/23-91/2; HOM002854; HOM002856; HOM003000\_011; Home Office Guidance on Criminal records checks for overseas applicants

<sup>241</sup> Greer 15 February 2019 41/15-46/20

<sup>242</sup> <https://www.gov.uk/government/publications/charity-inquiry-oxfam-gb>

<sup>243</sup> Larsson 15 February 2019 66/9-17/16; INQ003841

Part F

# Conclusions and recommendations

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# Conclusions and recommendations

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## F.1: Conclusions

1. Large numbers of adults around the world travel overseas and sexually abuse and exploit vulnerable children. This includes significant numbers of UK nationals and residents. Each of the three legislative frameworks examined in this phase of our investigation has the potential to reduce the risk of sexual abuse and exploitation of children overseas by nationals and residents of England and Wales. Yet it is clear that the effectiveness of each has limits in practice.
2. In 2001, at the time of the Yokohama Conference, the UK drew up a national action plan to prevent the commercial sexual exploitation of children overseas which has not subsequently been revisited or revised.<sup>244</sup>
3. While the Inquiry heard extensive evidence of the range of initiatives being adopted by different government departments, these would benefit from being more integrated. The UK Government has strategies in place to tackle issues such as child sexual exploitation within the UK, human trafficking and terrorism.<sup>245</sup> The risks posed by UK nationals and residents of England and Wales engaging in child sexual abuse and exploitation overseas should be similarly addressed. A national action plan would help ensure a coordinated response on the issue and also raise public awareness.

### Conclusions in relation to civil orders

4. The number of orders restricting the foreign travel of sex offenders made under the Sexual Offences Act 2003 appears low every year. Of the 5,551 sexual harm prevention orders imposed in England and Wales in 2017/18, foreign travel restrictions were imposed in just 11 cases. Based on the available data, only around 0.2 percent of registered sex offenders typically have their travel restricted under a civil order.
5. Given the significant disparity between the high number of registered sex offenders and the low number of orders made, it is a reasonable inference that there are more registered sex offenders whose travel could properly be restricted.
6. Concerns about the proportionality of restricting an offender's travel appear to be a key reason why the number of orders made is as low as it is.
7. There is ample scope for greater use of foreign travel restriction orders.
8. Adopting the civil standard of proof or permitting reliance on closed evidence would be unlikely to lead to a substantial increase in the number of orders being made, even if concerns about the cost and procedural fairness of closed hearings could be justified.

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<sup>244</sup> 11 February 2019 131/16-132/16

<sup>245</sup> ECPAT closing submissions 14 February 2019 77/15-78/20.

**9.** More radical measures must therefore be taken to increase the number of foreign travel restriction orders made, while recognising the human rights of all concerned.

**10.** The European Commission maintains lists of countries that pose a significant risk in terms of money laundering. Companies and other entities are required to undertake enhanced checks on financial dealings with customers and financial institutions from the listed high-risk countries.<sup>246</sup> A similar approach could be taken in this context. If a list of countries where children face a significant risk of sexual abuse from overseas offenders were maintained, this could be used to further reduce the risk they face.

## Conclusions in relation to section 72

**11.** Section 72 of the Sexual Offences Act 2003 (which allows individuals to be prosecuted in the UK for offences overseas) is also relatively rarely used. The Inquiry heard evidence of only seven concluded prosecutions under section 72 in England and Wales between 1997 and 2018, which equates to one prosecution every three years.<sup>247</sup>

**12.** There are various reasons for the low numbers of section 72 prosecutions. One is the ‘first country first’ principle. While in theory prosecutions ought to take place in the country in which the offence occurred, there are numerous instances where a prosecution in England and Wales can and should take place. Another concern has been the suggestion that section 72 should only be used as a ‘last resort’. While previous policy guidance suggesting a ‘last resort’ approach may have contributed to a misleading impression of the approach to section 72, in reality there is no last resort policy in operation. There should not be such an approach. Section 72 prosecutions should be initiated in appropriate cases, particularly where the quality of local justice may be suspect.

**13.** Section 72 investigations are undoubtedly resource-intensive. There is a need to ensure effective cooperation between law enforcement agencies internationally. This requires an adequate number of international liaison officers able to work effectively with international partners in high-risk countries. The NCA is taking steps to ensure that this is the case.

**14.** There is a need for increased awareness of section 72 by police forces in England and Wales, to be achieved through guidance and training. Chief Constable Michelle Skeer committed to include further information about section 72 in the College of Policing’s Authorised Professional Practice material, which is national guidance given to all police forces.<sup>248</sup> That process was commenced following our hearing and we are aware that a further training event has taken place.<sup>249</sup>

## Conclusions in relation to disclosure and barring

**15.** The Disclosure and Barring Service (DBS) scheme applies if an institution’s operations are based in England and Wales, and if the employment decision is made in England and Wales. However, DBS checks include no or limited information about overseas offending. This means they cannot be fully relied upon for those who have regularly worked with children abroad. The same applies to International Child Protection Certificate (ICPC) checks.

<sup>246</sup> ‘The European Commission adopts new list of third countries with weak anti-money laundering and terrorist financing regimes’, Press release 13 February 2019 ([https://europa.eu/rapid/press-release\\_IP-19-781\\_en.htm](https://europa.eu/rapid/press-release_IP-19-781_en.htm)).

<sup>247</sup> This figure includes the eight successful NCA prosecutions and the case of Patrick Matthews which did not result in conviction. None of the six police forces approached by the Inquiry reported any section 72 prosecutions, but other forces in England and Wales may have used it. Accordingly, nine may be an underestimate.

<sup>248</sup> Skeer 14 February 2019 44

<sup>249</sup> OHY007094\_002 para 12

This creates a clear risk to children overseas as it means that pre-employment checks are not being conducted with all the relevant information to hand. It means that someone with a conviction overseas for sexual abuse of a child could obtain work in the future with access to children.

**16.** There are various inconsistencies between the ICPC and DBS schemes. This creates a lack of clarity for employers. Smaller organisations overseas can lack the resources to carry out full employment vetting. Charity Commission guidance to overseas institutions cannot be enforced. Reliance cannot be placed on other countries' disclosure and barring regimes to fill these gaps.

**17.** DBS checks cannot be obtained by institutions based in England and Wales when they make recruitment decisions overseas, or by employers based overseas. They may choose to ensure compliance with the ICPC scheme but at present this is entirely voluntary.

**18.** The combined effect of these limitations in the system has damaging consequences. It permits offenders to exploit the system and sexually abuse children overseas. The system should be simplified and made more robust, including by extending the geographical reach of the existing Disclosure and Barring Service scheme and making it mandatory in certain circumstances.

## F.2: Recommendations

The Chair and Panel make the following recommendations, which arise directly from this investigation.

Those mentioned in these recommendations should publish their response to each recommendation, including the timetable involved, within six months of the publication of this report.

### Recommendation 1: National plan of action

The Home Office should coordinate the development of a national plan of action addressing child sexual abuse and exploitation overseas by UK nationals and residents of England and Wales, involving input from all lead governmental agencies in the field.

### Recommendation 2: Civil orders – list of countries

The Home Office should bring forward legislation providing for the establishment and maintenance by the National Crime Agency of a list of countries where children are considered to be at high risk of sexual abuse and exploitation from overseas offenders. This list should be kept under regular review.

The list of countries should be made available to the police, and used routinely to help identify whether a person who has been charged with sexual offences against a child poses a risk to children overseas based on their travel history and/or plans. If the person is considered to pose a risk of sexual harm to children overseas, the police should submit an application for a foreign travel restriction order under the Sexual Offences Act 2003.

The list of countries should be admissible in court, and used when considering whether a foreign travel restriction order should be made under the Sexual Offences Act 2003 and if so, to which countries it should apply.

### **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.

### **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.

### **Recommendation 5: Disclosure and barring – guidance**

The Home Office should ensure explanatory guidance is issued, providing clarity to recruiting organisations and individuals concerning the use of the Disclosure and Barring Service scheme for work and volunteering outside the UK.





# Annexes

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# Annex 1

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## Overview of process and evidence obtained by the Inquiry

### 1. Definition of scope

The Protection of Children Outside the United Kingdom investigation is an inquiry into the extent to which institutions and organisations based in England and Wales have taken seriously their responsibilities to protect children outside the United Kingdom from sexual abuse.

The scope of this investigation is as follows:

- “1. The Inquiry will investigate the extent to which institutions and organisations based in England and Wales have taken seriously their responsibilities to protect children outside of the United Kingdom from sexual abuse. The investigation will incorporate case specific investigations, a review of information available from published and unpublished reports and reviews, court cases, and investigations.*
- 2. In investigating the extent to which institutions have taken seriously their duty to protect children abroad, the Inquiry will consider, in particular:*
  - 2.1. whether government departments, public authorities, private and/or charitable institutions based in England and Wales have taken sufficient care to protect those children they may have sent or placed abroad;*
  - 2.2. whether the armed forces, government departments, public authorities, private and/or charitable institutions based in England and Wales have taken sufficient care to ensure that their employees do not pose a risk to children living abroad and/or whether they have taken appropriate steps in response to allegations that their employees were involved in the sexual abuse of children abroad;*
  - 2.3. whether the responses of government departments based in England and Wales to reports of institutional failures to protect children from sexual abuse in overseas territories and crown dependencies have been appropriate;*
  - 2.4. whether law enforcement agencies, the criminal justice system, and any other public authorities have been effective in preventing foreign travel by, or notifying foreign authorities of, individuals known to the UK authorities as posing a risk to children.*
- 3. The inquiry will consider the appropriateness of the statutory and regulatory framework relevant to child sexual abuse abroad, including in relation to:*
  - 3.1. the operation of the statutory vetting and barring regime by organisations recruiting individuals to work abroad;*
  - 3.2. monitoring of child sexual abusers by the criminal justice and law enforcement agencies in England and Wales;*

- 3.3. *civil orders, including sexual offences prevention orders, foreign travel orders and risk of sexual harm orders provided by the Sexual Offences Act 2003; and sexual harm prevention orders and sexual risk orders provided by the Sexual Offences Act 2003, as amended by the Anti-social Behaviour, Crime and Policing Act 2014.*
4. *In light of the investigations set out above, the Inquiry will publish a report setting out its findings, lessons learned, and recommendations to improve the protection of children outside of the United Kingdom for whom institutions in England and Wales may have some responsibilities.*<sup>250</sup>

The first phase of this investigation was a case study on the Child Migration Programmes. The Inquiry published its report on this phase on 1 March 2018.<sup>251</sup>

In March 2018, the Inquiry published an update note announcing that the second phase of this investigation would investigate:

*“the adequacy of the civil framework for the prevention of, and notification to foreign authorities of, foreign travel by individuals known to the UK authorities as posing a risk to children”.*<sup>252</sup>

In August 2018, the Inquiry published a decision on scope expanding the scope of the second phase of the investigation to include:

*“issues related to the statutory vetting and barring regime, and issues related to the use and efficacy of section 72 of the Sexual Offences Act 2003”.*<sup>253</sup>

This phase of the Protection of Children Outside the UK investigation therefore considered three broad issues:

- the framework of civil orders for the prevention of foreign travel by individuals known to the UK authorities as posing a risk to children;<sup>254</sup>
- the use of section 72 of the Sexual Offences Act 2003, which creates extra-territorial jurisdiction in respect of child sexual abuse; and
- the operation of the disclosure and barring regimes by organisations recruiting individuals to work abroad.

## 2. Core participants and legal representatives

### Counsel to this investigation:

Henrietta Hill QC

Julia Faure Walker

Antonia Benfield

<sup>250</sup> <https://www.iicsa.org.uk/investigations/the-protection-of-children-overseas?tab=scope>

<sup>251</sup> IICSA Child Migration Programmes Investigation Report (March 2018)

<sup>252</sup> <https://www.iicsa.org.uk/key-documents/4413/view/cotu-investigation-march-2018-update-note.pdf>

<sup>253</sup> <https://www.iicsa.org.uk/key-documents/6396/view/2018-08-02-couk-civil-orders-case-study-decision-scope.pdf>

<sup>254</sup> Consideration was also given to the related issue of notification to foreign authorities of foreign travel by such individuals.

**Independent core participants:**

<b>Every Child Protected Against Trafficking UK (ECPAT UK)</b>	
Counsel	Caoilfhionn Gallagher QC and Keina Yoshida
Solicitor	Zubier Yazdani, Deighton Pierce Glynn
<b>Child Redress International (CRI)</b>	
Counsel	Caoilfhionn Gallagher QC and Keina Yoshida
Solicitor	Silvia Nicolaou Garcia, Simpson Millar

**Institutional core participants:**

<b>Home Office</b>	
Counsel	Nick Griffin QC and Amelia Walker
Solicitor	Daniel Rapport, Government Legal Department for the Treasury Solicitor
<b>National Crime Agency</b>	
Counsel	Neil Sheldon QC
Solicitor	Sarah Pritchard and Hilary Dyer, NCA Legal Department
<b>National Police Chiefs' Council</b>	
Counsel	Stephen Morley
Solicitor	Craig Sutherland and Matthew Greene, East Midlands Police Legal Services
<b>Crown Prosecution Service</b>	
Counsel	Zoe Johnson QC
Solicitor	Laura Tams, CPS Inquiries team
<b>British Council</b>	
Counsel	Aswini Weeraratne QC
Solicitor	Alison Gale, British Council Senior Legal Advisor

**3. Evidence received by the Inquiry**

<b>Number of witness statements obtained:</b>
56
<b>Organisations and individuals to which requests for documentation or witness statements were sent:</b>
Action Pour Les Enfants
Association of Chief Police Officers Criminal Records Office
British Council
Catherine Spreckley (former Trustee and Chair of KISS)
Child Redress International
Child Wise
Christine Beddoe (freelance consultant and former Director of ECPAT UK)

College of Policing
Council of British International Schools
Council of International Schools
Crown Prosecution Service
Department for International Development
Disclosure and Barring Service
ECPAT International
ECPAT UK
ECPAT USA
Educational Collaborative for International Schools
Equations
Father Shay Cullen (founder and President of PREDA Foundation)
Foreign and Commonwealth Office
Gwent Police
Hertfordshire Constabulary
Home Office
International Taskforce on Child Protection
Lancashire Constabulary
Ministry of Defence
Ministry of Justice
National Crime Agency
National Police Chiefs' Council
OU-A1
OU-A2
OU-A3
OU-A4
OU-A5
OU-A6
OU-X1
Project Karma
South Yorkshire Police
Staffordshire Police
Voice of the Free
West Midlands Police

4. Disclosure of documents

**Total number of pages disclosed: 8,551**

5. Public hearings including preliminary hearings

Preliminary hearings	
1	6 June 2018
2	31 October 2018
Public hearings	
Days 1-5	11-15 February 2019

6. List of witnesses

Surname	Forename	Title	Called, read, summarised or adduced	Hearing day
OU-A1			Summarised	1
OU-A2			Summarised	1
OU-A3			Summarised	1
OU-A5			Summarised	1
Patel	Bharti	Ms	Called	1
Loseño	Sherryl	Ms	Read	1
Spreckley	Catherine	Ms	Summarised	1
Beddoe	Christine	Ms	Called	1
Samleang	Seila	Mr	Called	2
Smolenski	Carol	Ms	Read	2
Lemineur	Marie-Laure	Ms	Called	2
Cullen	Shay	Father	Summarised	2
Binford	W Warren H	Professor	Called	2
Hulley	Glen	Mr	Called	3
French	Cecilia	Ms	Called	3
Ray	Joyatri	Ms	Summarised	3
Jones	Robert	Mr	Called	3
Downey	Adele	Ms	Summarised	3
Price	Robert	Mr	Summarised	3
Skeer	Michelle	Chief Constable	Called	4
Cherry	Gillian	Police Sergeant	Summarised	4
Southern	Susan	Assistant Chief Constable	Summarised	4
Forber	Tim	Assistant Chief Constable	Summarised	4

Edwards	Joanne	Assistant Chief Constable	Summarised	4
Barnett	Emma	Assistant Chief Constable	Summarised	4
Jephson	William	Assistant Chief Constable	Summarised	4
Brain	Nicola	Detective Superintendent	Summarised	4
McGill	Gregor	Mr	Called	4
Davison	Gordon	Mr	Summarised	4
Gould	Matthew	Mr	Summarised	4
Reeve	Robert	Mr	Summarised	4
Jones	Peter	Mr	Called	4
Taylor	Peter	Mr	Read	4
OU-X1			Read	4
Greer	Adrian	Mr	Called	5
Cooper	Mike	Mr	Summarised	5
Larsson	Jane	Ms	Called	5
Bell	Colin	Mr	Called	5

## 7. Restriction orders

On 7 February 2019, the Chair issued a restriction order under section 19 of the Inquiries Act 2005 granting anonymity to the witness known as OU-X1. The order covered (i) any information that identifies or tends to identify OU-X1 and (ii) any information that identifies or tends to identify the nature or details of work currently undertaken by OU-X1. The order prohibited the publication and disclosure to core participants, other than the National Crime Agency, the National Police Chiefs' Council, the Crown Prosecution Service, the Home Office and the British Council, of the information covered by the order.<sup>255</sup>

On 1 April 2019, the Chair issued a restriction order under section 19 of the Inquiries Act 2005 to prohibit the disclosure or publication of the name of any individual whose identity has been redacted and/or ciphered by the Inquiry, and any information redacted as irrelevant and sensitive, in connection with phase two of the Protection of Children Outside the United Kingdom investigation and referred to during the course of evidence adduced during the Inquiry's proceedings.<sup>256</sup>

## 8. Broadcasting

The Chair directed that the proceedings would be broadcast, as has occurred in respect of public hearings in other investigations.

## 9. Redactions and ciphering

The material obtained for this phase of the investigation was redacted and, where appropriate, ciphers were applied, in accordance with the Inquiry's Protocol on the Redaction of Documents (the Protocol).<sup>257</sup> This meant that (in accordance with Annex A of the Protocol), for example, absent specific consent to the contrary, the identities of

<sup>255</sup> <https://www.iicsa.org.uk/key-documents/9300/view/2019-02-07-restriction-order-ou-x1.pdf>

<sup>256</sup> <https://www.iicsa.org.uk/key-documents/10581/view/2019-04-01-restriction-order-coukp2-published-documents.pdf>

<sup>257</sup> <https://www.iicsa.org.uk/key-documents/322/view/2018-07-25-inquiry-protocol-redaction-documents-version-3.pdf>

complainants and victims and survivors of child sexual abuse and other children were redacted; and if the Inquiry considered that their identity appeared to be sufficiently relevant to the investigation, a cipher was applied.

Pursuant to the Protocol, the identities of individuals convicted of child sexual abuse (including those who have accepted a police caution for offences related to child sexual abuse) were not generally redacted unless the naming of the individual would risk the identification of their victim, in which case a cipher would be applied.

The Protocol also addresses the position in respect of individuals accused, but not convicted, of child sexual or other physical abuse against a child and provides that their identities should be redacted and a cipher applied. However, where the allegations against an individual are so widely known that redaction would serve no meaningful purpose (for example where the individual's name has been published in the regulated media in connection with allegations of abuse), the Protocol provides that the Inquiry may decide not to redact their identity.

The Protocol recognises that, while the Inquiry will not distinguish as a matter of course between individuals who are known or believed to be deceased and those who are or are believed to be alive, the Inquiry may take the fact that an individual is deceased into account when considering whether or not to apply redactions in a particular instance.

The Protocol anticipates that it may be necessary for core participants to be aware of the identity of individuals whose identity has been redacted and in respect of whom a cipher has been applied, if the same is relevant to their interest in the investigation.

## 10. Warning letters

Rule 13 of the Inquiry Rules 2006 provides:

- “(1) The chairman may send a warning letter to any person –*
- a. he considers may be, or who has been, subject to criticism in the inquiry proceedings; or*
  - b. about whom criticism may be inferred from evidence that has been given during the inquiry proceedings; or*
  - c. who may be subject to criticism in the report, or any interim report.*
- (2) The recipient of a warning letter may disclose it to his recognised legal representative.*
- (3) The inquiry panel must not include any explicit or significant criticism of a person in the report, or in any interim report, unless –*
- a. the chairman has sent that person a warning letter; and*
  - b. the person has been given a reasonable opportunity to respond to the warning letter.”*

In accordance with rule 13, warning letters were sent as appropriate to those who were covered by the provisions of rule 13, and the Chair and Panel considered the responses to those letters before finalising the report.



# Annex 2

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## Acronyms

ACPO	Association of Chief Police Officers
ACRO	Association of Chief Police Officers Criminal Records Office
APLE	Action Pour Les Enfants
APP	Authorised Professional Practice
CEOP	Child Exploitation and Online Protection Command
CIS	Council of International Schools
COBIS	Council of British International Schools
COUK	Children Outside the UK (IICSA investigation)
CRI	Child Redress International
DBS	Disclosure and Barring Service
DFID	Department for International Development
ECPAT	Every Child Protected Against Trafficking
FCO	Foreign and Commonwealth Office
FTO	foreign travel order
HMPPS	Her Majesty's Prison and Probation Service
HOSOL	Home Office's Serious Offence List
ICPC	International Child Protection Certificate
ILO	international liaison officer
KISS	Kiddies Support Scheme
MAPPA	Multi-Agency Public Protection Arrangements
MoJ	Ministry of Justice
MOSOVO	Managing Sexual Offenders and Violent Offenders
NCA	National Crime Agency
NCA-CEOP	National Crime Agency's Child Exploitation and Online Protection Command
NGO	non-governmental organisation
NPCC	National Police Chiefs' Council
PNC	Police National Computer
PREDA	People's Recovery, Empowerment and Development Assistance Foundation
RMP	Royal Military Police
ROA	Rehabilitation of Offenders Act 1974
RSHO	risk of sexual harm order

RSO	registered sex offender
SHPO	sexual harm prevention order
SOA	Sexual Offences Act 2003
SOPO	sexual offences prevention order
SRO	sexual risk order
TCSO	transnational child sex offender
UNCRC	United Nations Convention on the Rights of the Child
UNICEF	United Nations Children's Fund
ViSOR	Violent and Sex Offender Register

