

Inter-Agency Misconduct Disclosure Scheme (MDS)



Preamble

The purpose of this scheme is to establish a minimum standard for humanitarian, development and other civil society organisations to share information as part of their recruitment process about people who have been found to have committed “Misconduct”, meaning sexual harassment, sexual abuse or sexual exploitation, during employment. It complements the work that organisations are already doing as part of their recruitment processes.

This scheme ensures that all organisations who sign up to it work to a common minimum exchange of relevant sensitive information, while respecting applicable legal and regulatory requirements. By so doing it contributes to organisations’ work to prevent and address the consequences of sexual harassment and sexual exploitation and abuse in the humanitarian and development sector.

Organisations committed to this scheme hope that it can be a good start and the basis from which to explore further collaborative approaches.

Inter-Agency Misconduct Disclosure Scheme

Inter-Agency Scheme for the Disclosure of Safeguarding-related Misconduct in Recruitment Processes within the Humanitarian and Development Sector

1. Introduction

- 1.1 This Scheme has been developed by a group of humanitarian, development and other civil society organisations to describe their commitment to share relevant information about individuals who have been found to have committed sexual harassment, sexual exploitation or sexual abuse in the course of their employment or terms of their position.
- 1.2 This Scheme is premised on the belief that sharing relevant information in the recruitment process will allow employers to be more confident that individuals they recruit are fit to participate in development and humanitarian activities and/or other relevant activities, which will help mitigate the pressing safeguarding concerns within the Sector.
- 1.3 This Scheme is intended to be consistent with and support implementation of the Core Humanitarian Standard on Quality and Accountability (CHS).
- 1.4 For further information on the development of this Scheme or interpretation of its provisions please see the Explanatory Notes.

2. Purpose

- 2.1 The safeguarding and related obligations of humanitarian, development and civil society organisations require them, individually and collectively, to take appropriate measures to prevent harm from occurring to the people that these organisations interact with and those who work for these organisations. These obligations require organisations to apply high standards in their recruitment process, which requires that they have access to reliable information to be able to form an accurate picture of whether a candidate may pose a safeguarding risk to their beneficiaries, staff and those of partner organisations.
- 2.2 This Scheme facilitates Participating Organisations disclosure and receipt of relevant information about individuals found to have committed misconduct relating to sexual exploitation, sexual abuse or sexual harassment, for the primary purpose of making informed recruitment decisions.
- 2.3 The Scheme is designed to offer a proportionate approach to sharing of such information. The Scheme relies on the legitimate interests of Participating Organisations and the public interest of the Sector in accessing and disclosing such information while ensuring appropriate safeguards are in place that duly take into consideration the interests of Candidates for whom the disclosure of Misconduct History may have significant consequences.
- 2.4 Participating Organisations will implement this Scheme to the full extent possible having regard to applicable legal and regulatory requirements. Participating Organisations will be transparent about any difficulties they encounter in applying this Scheme.

3. Definitions

When used in this document:

“Authorised Personnel” refers to the individual(s) within the Participating Organisation who is/are authorised to access a Candidate’s Misconduct History, and who are responsible for managing and processing Statements of Conduct.

“Candidate” refers to an individual who works, or has worked, for a Participating Organisation as an employee, or in a governing position (i.e. as a member of a Participating Organisation’s corporate bodies, such as Trustee / Board Director, etc. unless prohibited by the Participating Organisation’s constitutional documents).

“Disciplinary Measure” means the sanction applied by a Participating Organisation to a Candidate who is found to have committed a Misconduct as a result of an Investigation Process, or the sanction that would have been applied in circumstances where an Investigation Process concluded with a finding of Misconduct after the Candidate has left the Participating Organisation

“Investigation Process” for the purposes of this Scheme refers to each Participating Organisation’s internal investigation process, including any subsequent disciplinary process, to determine whether a Candidate has committed Misconduct.

“Misconduct” for the purposes of this Scheme covers each of sexual exploitation, sexual abuse and sexual harassment, as defined by each Participating Organisation. As part of a Statement of Conduct, Participating Organisations shall make clear how they define these three terms, or whether they adopt the United Nations definitions of these terms¹ For the purposes of this Scheme, sexual harassment shall be considered Misconduct if it poses or may potentially pose a serious safeguarding risk. This threshold of materiality aims to leave a degree of discretion to the Responding Organisation to refrain from disclosing a finding of misconduct that amounts to sexual harassment but the nature of which, according to the Responding Organisation, does not pose a risk that is commensurate with the impact that its disclosure would have on the Candidate. Sexual harassment resulting in dismissal is always considered Misconduct.

“Misconduct History” means the following information relating to a Candidate held by a Participating Organisation:

- Whether the Candidate was found to have committed Misconduct during the period of employment with the Responding Organisation;
- the nature of the Misconduct (sexual exploitation, sexual abuse or sexual harassment);
- the Disciplinary Measure imposed for the Misconduct; and
- the date of the Disciplinary Measure.

“Participating Organisations” refers to the humanitarian, development and other civil society organisations who have committed to implement this Scheme (see external web link).

“Recruitment Process” means the process by which Participating Organisations assess the suitability of a Candidate for a position, to decide whether to hire the Candidate.

“Requesting Organisation” means the Participating Organisation requesting a Statement of Conduct about a Candidate.

“Responding Organisation” means the Participating Organisation providing a Statement of Conduct about a Candidate.

¹ Sexual harassment is defined in the UNSG's bulletin ST/SGB/2008/5 Sexual exploitation and abuse is defined in the 5 Oct 2016 UN Glossary on Sexual Exploitation and Abuse.

“**Scheme**” shall mean the Inter-Agency Scheme for the Disclosure of Safeguarding-related Misconduct in Recruitment Processes within the Humanitarian and Development Sector.

“**Sector**” shall mean the humanitarian, development and civil society sector.

“**Statement of Conduct**” means a statement from the Responding Organisation substantially in the form and substance set out in Appendix 1, or a version of this form tailored by a Participating Organisation but which as a minimum contains Misconduct History about the Candidate²

4. Scope

- 4.1 This Scheme sets out the principles and processes according to which Participating Organisations will share a Candidate’s Statement of Conduct as part of the Recruitment Process.
- 4.2 This Scheme is complementary to and separate from any other forms of due diligence that Participating Organisations may carry out as part of the Recruitment Process for the purposes of assessing a Candidate’s suitability for a position, such as provision of references and background checks or other vetting and screening mechanisms. In this context, it is within the discretion of each Participating Organisation to request or provide further information than the minimum required within the Statement of Conduct.
- 4.3 The Scheme is also complementary to and separate from other forms of information sharing which may or may not be part of the Recruitment Process, for instance providing certificates of employment, updates to employee record books, and confirmations of employment for administrative purposes, to the extent that these do not conflict with the Scheme.
- 4.4 This Scheme does not apply to vetting and screening measures concerning consultants, as the contractual processes for engaging consultants are different from those that apply to employees or those in governing positions. Participating Organisations endeavour to work together to achieve appropriate information sharing for consultants, so as to appropriately mitigate safeguarding-related risks.

5. Common Principles

- 5.1 Each Participating Organisation will ensure that the provision of, and the request for, a Statement of Conduct is a mandatory part of the Recruitment Process.
- 5.2 Each Participating Organisation will ensure that Statements of Conduct are only provided by Authorised Personnel within the Participating Organisation and used for the primary purpose of assessing the suitability of a Candidate for a position as part of the Recruitment Process.
- 5.3 Participating Organisations will endeavour to ensure that: 5.3.1 Allegations of Misconduct are followed up and acted upon appropriately, including through

² If a Participating Organisation chooses to adapt the Statement of Conduct they should ensure that any amendments do not directly or indirectly reveal the identity of the victim of a Misconduct.

conducting and concluding a robust, fair and reliable Investigation Process, even if the subject's employment or position ends before the commencement or conclusion of the Investigation Process.

Participating Organisations agree that they will cooperate in the context of the Recruitment Process in accordance with the following common principles:

5.3.2 Disciplinary Measures are appropriate to the Misconduct and documented so as to ensure that a Candidate's Misconduct History is accurate and reliable.

5.3.3 A Candidate's Misconduct History is processed internally by Participating Organisations in accordance with applicable data protection legislation, regulations and internal policies. Participating Organisations will ensure that a Candidate's Misconduct History is accessible to the Candidate as required by applicable law or policy and to Authorised Personnel, and that appropriate measures are taken to protect a Candidate's Misconduct History from deletion, alteration and unauthorised access.

- 5.4 Participating Organisations will adopt and implement the Scheme in a spirit of transparency and cooperation. If a Participating Organisation in a particular case is not able to request or provide the information contemplated within the Statement of Conduct for reasons owing to compliance with applicable legal and regulatory requirements, or an investigation, inquiry, or decision from a competent authority or judicial body, the Participating Organisation should be transparent about the reasons for this, including by documenting these reasons within the Statement of Conduct. More generally, Participating Organisations are encouraged to communicate with each other about any challenges in implementing this Scheme within the countries in which they operate.
- 5.5 Participating Organisations will inform Candidates about this Scheme, during the Recruitment Process and as relevant, during their time as employees.
- 5.6 Participating Organisations will endeavour to raise awareness of this Scheme within the Sector more broadly, with a view to increasing the number of Participating Organisations and the effectiveness of the Scheme, and to strengthen public trust in Sector safeguarding and related procedures.
- 5.7 Each Participating Organisation is encouraged to adopt a policy and/or procedure as may be necessary to ensure effective implementation of this Scheme.

6. Providing a Statement of Conduct

- 6.1 Authorised Personnel within the Responding Organisation will, on request, provide a Statement of Conduct in respect of Candidates who are currently employed by the Responding Organisation or who have left the Responding Organisation within five years prior to the request, and who are undergoing a Recruitment Process for a position with the Requesting Organisation.

- 6.2 If an Investigation Process is commenced or concluded only after a Statement of Conduct has been provided, and the Investigation Process concludes with a finding that Misconduct has been committed by a Candidate, the Responding Organisation will provide an updated Statement of Conduct for that Candidate to the Requesting Organisation.
- 6.3 Participating Organisations may at their discretion choose to disclose the fact of an on-going Investigation Process within a Statement of Conduct. An option for this is provided at Section 3.2 of the Template Statement of Conduct, at Appendix 1.
- 6.4 Responding Organisations are encouraged to take necessary measures to ensure that the Candidate is informed of the content and provision of the Statement of Conduct, including the possibility for it to be amended pursuant to section 6.2 above. To that end, and as referred to in section 5.3.3 above, Participating Organisations will ensure that a Candidate's Misconduct History is accessible to the Candidate, upon request, as required by applicable law or policy, so as to ensure transparency for the Candidate on the content of a Statement of Conduct. Where required by applicable law or policy, Participating Organisations should provide Candidates with a reasonable opportunity to comment on the Statement of Conduct.
- 6.5 Participating Organisations should retain copies of Statements of Conduct in line with applicable data protection legislation, regulations and internal policies.

7. Requesting a Statement of Conduct

- 7.1 Authorised Personnel within Requesting Organisations will request a Statement of Conduct from a Candidate's current or most recent employers to cover a period of at least the five years preceding the request.
- 7.2 Requesting Organisations will inform Candidates about their request for Statements of Conduct as part of the Recruitment Process.
- 7.3 Subject to Section 8 below, Requesting Organisations will make offers of employment or other position, or the commencement of employment or position, contingent on receipt of Statements of Conduct. In this context, Requesting Organisations are encouraged to make the request for a Statement of Conduct at the last stage before making an offer of employment, or other similarly late stage of the Recruitment Process, so as to minimize the amount of information processed.

8. Recruiting Candidates from non-Participating Organisations

- 8.1 When a Candidate has not been previously employed by a Participating Organisation, Participating Organisations will, as part of the Recruitment Process, endeavour to seek information from the Candidate's previous employers within the spirit of this Scheme.
- 8.2 If a Requesting Organisation does not receive the information requested as part of a Statement of Conduct, for instance if the Candidate has not been previously employed by, or held a position with, a Participating Organisation; if the previous employer is not in a position to provide the information requested; or if the Candidate has had a period of unemployment, the Requesting Organisation will take reasonable

steps to procure satisfactory answers to the questions posed as part of the Statement of Conduct request, including by: 8.2.1 Ensuring that self-declaration of a Candidate's Misconduct History forms part of the Recruitment Process.

8.2.2 Seeking Statements of Conduct on the Candidate from other, potentially older, sources.

9. Adoption, implementation and revision of the Scheme

- 9.1 This Scheme is applicable as from 1 January 2019.
- 9.2 Participating Organisations will endeavour to review this Scheme annually together to ensure it remains up to date and implementation challenges are identified and addressed.