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Date: 29 July 2004

Department for International Development  
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Dear

**Duty of care document**

Thank you for your recent emails. We have now considered the draft guidance document for DFID on duty of care responsibilities in Iraq.

The first thing to say is that the draft document appears to set out matters of policy. We are unable to advise on such matters, and are only able to comment on general legal considerations which you may decide to take into account when formulating your security guidance. This means that we are able to comment in any detail on only the first paragraph.

With regard to the duty of care owed by DFID staff, we agree that the general principles as set out are correct, namely that DFID has a duty to take reasonable care for the safety of its employees. However, we would advise you to amend the final sentence of the first paragraph, to make it clear that the employee be prepared to take reasonable care for his or her own safety: DFID cannot divest itself of all responsibility and still also has a duty itself to take to reasonable care.

We are unable to comment on the detail of the security arrangements which you propose putting in place. We suggest that you take expert advice in this regard, to ensure that DFID meets the standard of reasonable care towards its employees in the particular circumstances.

**Consultants and Consultancy Organisations**

DFID does not owe the same duty of care to consultants and consultancy organisations as it does for its own employees. It is prudent that DFID should provide support and guidance to these individuals and organisations, and that they should be advised to follow the same rules and procedures as outlined for DFID staff. However, DFID should make it clear that these individuals and organisations are responsible for their own security arrangements. Failure to do so could lead to an allegation later on that DFID had assumed a duty of care. You should note that we are advising here on the common law duty of care, and not on individual contractual arrangements which may be in place.

**Non-Governmental Organisations**

With regard to NGOs, it is not clear who is to give the advice on security arrangements, and we note that DFID is prepared to assist with the cost of these arrangements, to enable NGOs to provide the same level of security as DFID does for its own staff. The only



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comment we have here is that, if DFID's level of security is found to be lacking, this might lead to DFID being liable in a potential claim by the NGO. Care therefore needs to be taken as to who provides the initial security advice to the NGO (as well as to DFID). The point to make is that, if DFID provides the initial advice, it needs to ensure that it is reliable and correct.

With regard to DFID updating NGOs about new or amended risks, it seems to us that DFID would be assuming a duty of care here towards NGOs. DFID should therefore consider the implications of this carefully. In addition, we would suggest that DFID puts in place a procedure for obtaining relevant security advice from other authorities, rather than simply waiting for the information to be passed on. A procedure for assessing the relevance and importance of the information should also be considered. In this way, DFID would be able to show that they had sets procedures in place, should any claim arise in the future.

On a more general point, DFID should consider carrying out formal, periodic risk assessments as a further safeguard, and amending advice and procedures as a result of any relevant risks identified.

We trust that this assists on the legal points to consider; however, please do contact us if you need any further assistance.

Yours sincerely

For the Treasury Solicitor

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