

INDEPENDENCE PANEL

Panel on the Independence of the Voluntary Sector

INDEPENDENCE UNDERVALUED: THE VOLUNTARY SECTOR IN 2014

The Panel's third annual assessment

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Foreword

The independence of the voluntary sector is undervalued and under threat and it is time to put this right.

The last few months have shown what can be achieved when voluntary organisations work together to oppose threats to their independence. The Commission on Civil Society and Democratic Engagement created a united voice to oppose restrictions to the independent voice of the voluntary sector in the Lobbying Bill. The Government was eventually forced to make a succession of significant concessions. Yet it still remains far from clear why the Government has been seeking to restrict legitimate campaigning in this way or why it failed to consult before it put legislation forward.

Sadly, there have been many other examples during 2013 that demonstrate that voluntary sector independence is undervalued. The ability of voluntary organisations to challenge government decisions in the courts is under increasing threat. Many government consultations fail to give enough time for voluntary organisations to consider policy proposals and express a view. The safeguards and organisations that protect independence remain weak.

The state needs to recognize and reward the independence that enables voluntary sector bodies to deliver specialist services with wide community support and speak with authority in democratic debate. However, the public, private and voluntary sectors are being treated as identical in the delivery of public services and increasingly seen as mere delivery arms of the state. Moreover, the future of many smaller, specialist voluntary organisations is looking increasingly at risk because it is hard for them to access state support in a system that tends to value economy of scale over value for money and social return. Yet many, particularly those working with disadvantaged groups, currently rely on it.

We are on a slippery slope, where it is becoming increasingly common to hear the view that voluntary organisations should deliver services but not challenge the status quo, especially if they receive government funding. We are already seeing a 'chilling effect,' with increasing evidence of self-censorship by voluntary organisations.

2014 must be a year in which there is Government and voluntary sector leadership to reverse this trend and establish clearly why independence is important and should be valued. In this report, we make suggestions about how this can be achieved. We will also be talking to voluntary sector leaders and others in 2014 about how best to generate a debate on what is distinctive about an independent sector.



Roger Singleton

Sir Roger Singleton CBE

Chair of the Panel

January 2014

About the Panel

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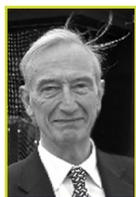
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Nick Wilkie

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The Panel on the Independence of the Voluntary Sector was established by the Baring Foundation in June 2011 to ensure that independence is seen as a top priority by the voluntary sector and those with whom it works and to make recommendations to ensure that it is not lost. This report is the third of four annual assessments.

Dame Anne Owers stepped down as a Panel member in October to enable her to devote more time to her role as Chair of the Independent Police Complaints Commission. Matthew Smerdon was the Adviser to the Panel until October 2013, when he became Chief Executive of the Legal Education Foundation.

Civil Exchange provides its secretariat, in partnership with DHA, with research by Ruth Davies and communications and other support delivered through a team from DHA.

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Executive summary

The Panel's third report concludes that the independence of the voluntary sector is being undervalued and is under serious threat.

Why independence is important

Voluntary sector organisations are widely valued and trusted because of their independence. Independence gives people confidence that charities and other voluntary organisations are pursuing a mission that is not state sponsored or driven by private gain but is furthering the public good.

Independence especially important now

A compassionate, healthy democracy needs an independent voluntary sector, and ever more so now. The independent voice of the sector has become far more central to political debate, as trust and engagement in traditional politics has dramatically declined. As the state cuts back, voluntary organisations are also having to step in to meet rising demand, but with reduced income, including from the state itself.

Threats to independence come from many sources but the voluntary sector's relationship with the state is particularly important. The state sets the statutory framework for the whole of the voluntary sector; and state funding, which goes to a significant proportion, is now almost as large as income from individual donations. Organisations that rely heavily on state support often work with disadvantaged people, often in disadvantaged areas.

Challenges to independence

Independence has three dimensions – independence of voice, purpose and action. In 2013, the Panel identified six major challenges to independence against the criteria set out in its Barometer of Independence. We had serious concerns then and these remain in all areas, with a marked deterioration in two.

Threats to independence of voice

Our verdict: increased concerns compared to last year

In 2013, the Panel raised concerns with the Government about guidance issued by the Department of Communities and Local Government that spoke of 'fake charities' that 'lobby and call for more state regulation and more state funding.' We also complained about so-called 'gagging clauses' used in the Work Programme that restricted independence of voice. No changes resulted. Indeed, it is becoming increasingly common for charities to be criticized by politicians if they do not stick to a service role or speak out against government policy.

During 2013, the Government introduced a number of agreed and proposed changes that would reduce the ability of voluntary organisations and others to challenge its decisions in the courts. It claims that many court cases taken by charities and NGOs on behalf of individuals are politically motivated; but charities are not allowed to be political and many individuals cannot take on the state without support.

The Government eventually made changes to the Lobbying Bill but only in the face of fierce Parliamentary opposition. Some concerns remain that the provisions will still restrict legitimate campaigning in the run up to elections and the process was marred by a puzzling failure to consult.

A broader 'chilling effect' was evident over the last year. Many individual voluntary organisations reported self-censorship, citing fear of the loss of state contracts, concerns about appearing 'too political' or gagging clauses in state contracts.

Lack of consultation over vital funding and policy issues: Our verdict: deteriorating since last year

The Panel were told that more effective consultation would result when the Government removed the 12-week minimum period for its consultations in 2012. However, in 2013, there have been numerous important consultations allowing insufficient time for the voluntary sector to respond and this minimum period must be restored.

Loss of identity and respect for independence Our verdict: our concerns unchanged since last year

The distinctive role of an independent voluntary sector is being steadily eroded and this is undermining respect for independence. The public, private and voluntary sectors are increasingly being regarded as interchangeable delivery agents of the state and treated as identical in procurement and contract terms. The Chair of the Charity Commission has suggested distinguishing between voluntary organisations whose income comes mostly from donations from those that deliver state services. However, the Panel believes it is independence, not the source of funding, that is important and that a debate is needed about the value of an independent voluntary sector.

Statutory Funding and contracting arrangements Our verdict: our concerns remain the same as last year

Over successive governments, markets, not mission, have become the driving force in the financial relationship of the state and the voluntary sector and the type of financial support needed to support a fully independent, diverse sector has been diminishing. A focus on price, efficiencies of scale and payment by results is leading to a loss of public funding for many small, specialist, often locally based voluntary organisations, despite the social benefits they bring. We are starting to see very real damage to this 'eco-system' of independent support in communities. Competition between large and small voluntary organisations is one part of the problem. The Government has introduced some changes, for example, the Public Services (Social Value) Act 2012, but needs to take a deeper look at how best to support vital local services.

Ineffective safeguards and regulation

Our verdict: some changes but overall concerns remain the same as last year

The Compact – the high level agreement between the voluntary sector and government - is not being followed in many cases. The Cabinet Office has announced a stronger role in policing central government abuse but the Panel think more is needed.

The Charity Commission is struggling to carry out its full role in the face of diminished resources and is under pressure to focus on regulatory casework alone. That work is vital but the Panel thinks the Commission should be equipped to monitor and promote independence as well in order to meet its first statutory objective to increase public trust and confidence in charities.

Greater protection for independent governance

Our verdict: our concerns are the same as last year

The state is interfering in the independence of some charities, for example by appointing Board Members or controlling salaries. Some safeguards against this are in place in Scotland and should also be applied in England and Wales.

Recommendations

The Panel hopes that 2014 will see a step change in how independence is valued and protected.

A 'new settlement' is required between the voluntary sector and key partners, particularly the state, but this needs to be underpinned by a shared understanding of the distinctive contribution of an independent voluntary sector, including in the context of a potentially smaller state. We will be discussing with others during 2014 how to achieve this.

The Government must demonstrate that the sector's independence is truly valued and rebuild damaged trust, as well as remedy many of the problems outlined in this report, including ensuring that funding and commissioning processes support independence; 'Compact proofing' new policies; and equipping the Charity Commission to monitor and promote independence.

Voluntary organisations themselves also have a key role to assert their voice and surface and resolve issues, sometimes individually, often working together.

1 Our assessment and recommendations

The independence of the voluntary sector is currently undervalued and, as a consequence, the critical qualities that underpin public trust in charities and other voluntary organisations are at risk – an independent purpose pursued for public and no other benefit, independent action that does not deviate from that mission, and an independent and sometimes challenging voice.

A year ago, the Panel concluded that the independence of the voluntary sector was under serious threat. A year later, the challenge to that independence continues to grow, with an increasing number of attacks on the policy and campaigning activities of the sector over the last 12 months, with government action compounded by lack of consultation; funding arrangements that continue to put the future of an independent sector at risk; and regulatory safeguards to protect independence that remain weak.

It is encouraging to see that parts of the sector have pushed back strongly against some of these changes, and with some success. Nonetheless, the Panel remains concerned that the independence of vital services and support for relatively powerless people in our society are under threat – and our society may end up less compassionate and democratic as a result.

The responsibility for safeguarding voluntary sector independence does not lie just with those powerful public and corporate interests that sometimes fund the sector. Voluntary organisations themselves and those who regulate them must actively defend and exercise their independence. If independence is undervalued, it will be lost.

Attacks on the sector's voice

During 2013, the Government put forward proposals that would restrict the ability of voluntary organisations to campaign 12 months before elections and challenge government decisions through judicial review.

This took place against a growing climate of hostility toward the campaigning activities of the voluntary sector, and is contributing to a 'chilling effect' in which self-censorship by many voluntary organisations is common.

These proposals were all the more surprising given the assurances we had received during 2013 from the Minister for Civil Society and the Justice Secretary about their commitment to a strong, independent voluntary sector.

In a healthy democracy, the voluntary sector plays an important role in providing checks and balances on the power of the state and other powerful interests, particularly on behalf of the most vulnerable. In emerging democracies, it is often civil society that takes the lead in promoting democratic change and, across the world, charities are often the first to identify a social need and ensure that it is met. That is why we are especially concerned by proposals published by the Ministry of Justice in September 2013 that would fundamentally restrict the ability of the voluntary sector to take judicial review cases or to intervene with expert knowledge in court cases. In July, the Government also reduced the time limit to 30 days for judicial review challenges to procurement decisions, making it harder for any organisation, including charities, to seek redress when errors are made.

The stated rationale for the judicial review changes proposed in September seems to be that voluntary organisations taking such cases are politically motivated and have no legitimacy to stand up on behalf of individuals.

However, longstanding legislation already prohibits charities from taking action that is politically motivated and we fear the effect that these changes may have on the ability of relatively powerless individuals to access the support they need to seek redress against the state. Charities are already seeing an increase in the number of people they cannot help, because of wider restrictions to legal aid on housing, benefit cases, debt and immigration; and the Government has also restricted legal aid funding in certain judicial review cases.

2013 also saw the introduction of statutory provisions in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (otherwise known as the Lobbying Bill). These were widely criticised for running the risk of restricting the legitimate campaigning and policy work of voluntary organisations in the year before elections. The Government eventually made significant concessions in the face of concerted opposition from the voluntary sector and amendments and challenges in both the Commons and then the Lords. Most but not all of the recommendations of the Commission on Civil Society and Democratic Engagement, which brought together a wide coalition of interests, were eventually met.¹

However, some concerns about the impact still remain, the justification for the proposals in the Lobbying Bill was never clearly made and the process also created considerable unease: the provisions were originally introduced without any consultation, then taken through Parliament at breakneck speed and when a 'pause' for consultation was eventually allowed it was considered far too short by the Commission.

More generally, even where initial consultation does occur, it is far from clear that the Government is interested in listening. Last year, the Government removed the minimum 12-week Government consultation period enshrined in the Compact² - which sets out agreed ground rules for how the state and the voluntary sector will work together. We were assured by the Minister for Civil Society, Nick Hurd, that this was part of a series of changes designed overall to lead to better consultation. Since then, there has been a succession of instances of very short consultation periods, including on fundamental changes to judicial review, demonstrating no real understanding of the practical difficulties for voluntary bodies governed by committees of volunteers and often with few if any paid staff to respond in shorter time frames.

Muted voices

Over the last few years, the Panel has heard about the problem of self-censorship by voluntary organisations and we believe the developments outlined above will make this worse. The picture is mixed. On the one hand, strong, concerted voices have been raised against the Lobbying Bill and other challenges to the independence of the voluntary sector, including from infrastructure bodies – and they have had some effect. Some campaigning organisations have been highly vocal in opposing government policies in recent years, from the selling off of forests to fracking.

At the same time, survey evidence demonstrates how many individual voluntary organisations fear the loss of state contracts and funding if they speak up, or are concerned about appearing ‘too political’ or feel bound by gagging clauses in state contracts.³

This is not just a potential issue in relation to loss of public funding but also corporate funding, as recently alleged in a Panorama programme which claimed that one major charity was modifying its campaigns to avoid offending corporate donors – allegations the charity has strongly denied.⁴

Particularly where funding critical to organisational survival is believed to be at stake, self censorship may be an understandable temptation, but it is the clear responsibility of trustees to ensure that the charity pursues its mission with self confidence.

The changing context

Political criticism of the sector is not new and should never be resisted or prevented: all sectors need to be open to scrutiny, review and clarity. Yet the context has changed in a way that makes these attacks more dangerous.

The voice of the sector has become far more central to political debate, as trust and engagement in traditional politics has dramatically declined.

Moreover, certain highly independent organisations have, in recent years, been very effective in gathering and expressing public opinion quickly using the social media, click petitions and applying pressure through emails from their supporters on Ministers and MPs around single issues, pushing the Government to defend its policies, as it tries to take through its agenda.

The financial relationship between the state and the voluntary sector is now also closer. The proportion of state funding received by parts of the voluntary sector has grown hugely over the last decade or so to some £14 billion; the majority of which is for contracts for services (compared to donations of £16.5 billion from individuals and £1.7 billion from the private sector).⁵

Recent and ongoing cuts in state funding make competition for funding all the greater and many organisations across the country face rising demand for services, falling income and diminishing reserves.

Markets, not mission, becoming the driving force

The role of the voluntary sector has been changing too. Under the last few governments, the trend has been for state bodies to manage relationships with the voluntary sector through market forces. Competition can be a valuable force for efficiency. Competition between charities and with the private sector can also prevent voluntary organisations from becoming complacent about the quality of services they provide.

However, poorly designed commissioning and procurement can lead to an undervaluing of features strongly associated with the voluntary sector that might in the past have been regarded as assets – the provision of locally based services, a specialist focus, depth of experience, and the ability to speak up on behalf of underprivileged groups to shape state services and policy.

For example, the Work Programme has been criticised by many studies for the way in which support for people needing specialist help, largely provided by the voluntary sector, has been squeezed out by a poorly designed contracting process.⁶

We know that the Cabinet Office recognises that there is a problem with commissioning and procurement and has initiatives in place intended to make it easier for the voluntary sector to work with the state, for example, the Public Services (Social Value) Act 2012.⁷ However, government policy over many years has been toward the delivery of services at scale and this can threaten the survival of established specialist services delivered on a small scale within or to small communities. We have heard that one of the greatest concerns of many community based voluntary organisations is competition from large national voluntary organisations, apparently tendering for their work as a loss leader.

Only a part of the voluntary sector is providing public services under contract – between a quarter and a third depending on how it is defined – but the increasing tendency to see the voluntary sector as only a deliverer of services is seeping into a wider view that charities should be seen but not heard.

Vulnerable groups often the most affected

Threats to the independence of specialist voluntary organisations may ultimately leave the most vulnerable in society without effective support.

The people who rely on this assistance – for example, disabled people, including those with mental health needs, the homeless and socially excluded groups – are often those who are being hit hardest by cuts in public services and changes to the welfare state. They may also be most in need of independent advice, support and strong champions who can speak freely on their behalf and challenge poor decisions that affect them, if necessary through judicial review. Yet it is those very voluntary organisations that support them that often most rely on state funding and may be most at risk.

We are starting to see signs of very real damage to an important eco-system of social support that the voluntary sector has developed over many years and which – if it did not exist – the state would have to provide itself.

Weak safeguards

An effective regulatory environment is key.

The Compact is important but is neither effectively enforced nor followed in spirit by the different arms of government.

In August, the Cabinet Office announced that it would investigate national breaches of the Compact with Compact Voice. Although welcome, we note it came just a few weeks after the Cabinet Office itself appeared to breach the Compact by launching its proposals to restrict charity campaigning in the Lobbying Bill. Prevention would be much better than cure.

The Charity Commission's purpose is to maintain public trust in charities, which it should do by preventing and addressing specific cases of abuse, and through strategic guidance and monitoring, ensuring that independence is valued and protected. The National Audit Office has found that the Commission's funding is insufficient to deliver its task and that it is struggling to enforce its rules even in individual cases.⁸ Some are arguing for a sharp focus on that regulatory role alone⁹ or for its

duties to transfer to HMRC, given limited funds.¹⁰ An independent regulator cannot be effective, in our view, unless it has both the resources and expertise to carry out both its strategic advisory and monitoring role as well as individual casework.

The Chairman of the Commission, William Shawcross, has called for a public debate about whether there should be a distinction drawn between charities that are 'truly voluntary' and those that 'achieve their charitable purpose by delivering government services,' citing public confusion about what constitutes a charity.¹¹

However, in our view, it is independence of purpose, voice and action that matters, not the source of funding; and, in any case, potential challenges to independence do not come from state funding alone.

Nonetheless, we share William Shawcross's concerns about the way in which the voluntary sector is increasingly being seen as interchangeable with both the private and voluntary sectors; and there are also some charities subject to levels of state control, such as museums and Academies, that might call into question their independence. Lord Hodgson has also called for a debate to build greater understanding of the role of charities in the modern world.¹²

Recommendations

Unless the independence of the voluntary sector is valued, action to safeguard this independence is unlikely to happen.

Understanding of the distinctive role of an independent voluntary sector is being steadily eroded, as the boundaries between the public, private and voluntary sectors are increasingly blurred, and active steps are now needed to foster it.

With this understanding, it would be clear that it is in everyone's interests to achieve a 'new settlement' between the voluntary sector and key stakeholders, particularly the public sector.

Building this understanding will require the active engagement of many different interests and must involve a genuine debate. There will be many views, even within the voluntary sector, which is highly diverse and engages and supports people in so many different ways. There are many wider stakeholders who will have different perspectives.

Over the coming year, the Panel will discuss with interested parties who needs to be involved and how this work can best be carried out. As well as surveying the current situation, it will also be important to consider the role of the voluntary sector in the face of what David Cameron has said will be a permanently smaller state.¹³ To contribute to this work, we are hoping that views about the future role of an independent voluntary sector can be gathered from a variety of practitioners and commentators and brought together in a collection of essays published in 2014.

During next year, the Panel also hopes to see both **visible leadership and practical demonstrations from the Government** that will start to rebuild trust between Government and the voluntary sector.

This should be a priority for a Prime Minister who launched the Big Society and signed the Compact when coming into power.

The Government should:

- Engage fully with the sector when the impact of the new provisions in the Lobbying Bill is reviewed after the election.
- Preserve the ability of charities to take judicial reviews.
- Outlaw gagging clauses.
- Restore the 12-week minimum consultation period.
- Revise funding and contracting arrangements to address the issues raised in this report.
- Introduce regulations to prevent state interference in the governance of charities.

The Government, infrastructure bodies and larger voluntary sector organisations should also look at how best to help safeguard the future of smaller, often specialist and valuable voluntary organisations that are currently at risk because of loss of public funding and which are experiencing genuine difficulties in accessing contracts to deliver services geared toward larger delivery agents.

New policies, commissioning plans and consultations should be **'Compact proofed'** by the Cabinet Office, where relevant, to ensure that they are compliant before they are launched. **Local Compacts** should be put in place, if they do not yet exist, and should include all public agencies including Health Trusts, with similar compact proofing arrangements.

The Charity Commission should be sufficiently equipped both to carry out its day-to day regulatory functions and its strategic role in promoting and safeguarding the independence of charities. For this, it needs sufficient resources and Board members who are independent of government and have the right expertise.

2013 was a challenging year for the independence of the voluntary sector. In 2014 we hope new foundations will be laid that will ensure that independence is more valued in the years ahead.

2 Independence – why it matters

The independence of the voluntary sector is vital to a healthy democracy and is an essential component in the success of the services, advice and support offered by voluntary organisations.

Those services are especially important to many of the most vulnerable in society and particularly as the Government cuts back on public services and the welfare state.

Independence allows voluntary organisations to think and work creatively – as innovators, risk takers and trail blazers, developing preventative services, investigating unpopular issues, identifying solutions and delivering services in new and often highly economical ways.

At the heart of a healthy democracy is the independent voice of the voluntary sector – pointing to things that are going wrong, identifying new needs, highlighting how services can be improved, pursuing neglected causes and giving voice to otherwise voiceless people.

Its voice helps ensure that policies and services remain responsive to different needs - even more important now, as engagement with political parties is at an all time low. In emerging democracies, civil society is actively encouraged as a positive force. In our own mature democracy, that role is in danger of being undervalued.

When the independence of the voluntary sector is lost it is often gradual and unnoticed but when it is gone we lose a great deal. In 2011, we consulted on a definition to help make it easier for everyone to monitor how independent their organisation is and ensure that independence is upheld. Some self-monitoring tools already exist, including sector specific ones, as illustrated below.

Case study: Maintaining independence

Voluntary organisations working abroad have to work closely with many different governments and maintain independence. Strong governance and measures to support accountability and legitimacy with those they help across the world and those who support them back in the UK are a key part of this. There are a number of tools which help. For example, the INGO (International Non-governmental Organisation) Charter codifies practices in universal principles: including independence; responsible advocacy; transparency and good governance. There is also a range of self-regulation tools, most of which emphasise user participation in feedback, communication and consultation.

The Barometer of Independence

Our generic **Barometer of Independence** identifies three dimensions of independence - purpose, voice and action. These are defined in the first column, with the organisational behaviours and environmental factors that support them alongside.

DEFINITION OR CHARACTERISTIC OF INDEPENDENCE	RELATED BEHAVIOURS IN INDIVIDUAL VOLUNTARY ORGANISATIONS	THE CLIMATE: ENVIRONMENTAL FACTORS
<p>Independence of Purpose</p> <ul style="list-style-type: none"> To set and review purpose to match the changing needs of the cause represented To maintain purpose, mission and values 	<p>How far is independence seen as important and upheld in everything they do by trustees, staff, volunteers and people and communities served?</p> <p>How aware of and compliant with best practice (eg national and local Compacts) are they in the overall management of relationships with funders?</p> <p>How independent are governing bodies, representing the interests of the people and communities served?</p> <p>How consistent with purpose are funding and other relationships?</p> <p>Are they trusted and seen as independent by volunteers, clients and the public?</p>	<p>These affect all three characteristics, the sector as a whole as well as individual organisations, and apply to all funders, not just the public sector</p> <p>Is independence seen as important and upheld by independent regulatory bodies, funders and partners?</p> <p>Are funders and partners aware of and compliant with best practice (eg national and local Compacts) and the law?</p> <p>Is the overall regime provided by Government supportive of independence eg:</p> <ul style="list-style-type: none"> Regulations and regulatory bodies that ensure independence in practice financial arrangements that enable the voluntary sector bodies to maintain their independence and which support independent infrastructure bodies a supportive tax regime.
<p>Independence of Voice</p> <ul style="list-style-type: none"> To protest, campaign and negotiate without fear of retribution To be assertive about independence, focusing on the cause represented 	<p>Is there capacity to campaign, engage and negotiate in the organisation or through infrastructure bodies?</p> <p>Is there unnecessary self-censorship?</p> <p>Is there legitimacy of voice - reflecting views and voices of people and communities served?</p> <p>Is there a clear mandate through strong evidence base?</p> <p>Do funding and other relationships support independence of voice?</p>	<p>Is the sector fully and genuinely consulted and involved by partners and funders in policy-making and relevant practices?</p> <p>Are there supportive commissioning, funding and contractual arrangements (with prime contractors and between prime contractors and subcontractors) which are compliant with the Compact and the Eight Principles of Good Commissioning and which:</p> <ul style="list-style-type: none"> respect independence of purpose, action and voice promote good outcomes for users
<p>Independence of Action</p> <ul style="list-style-type: none"> To design and deliver activities that meet needs effectively and efficiently To innovate, respond creatively to needs and take risks To use assets at the discretion of Trustees in order to fulfil purpose and mission 	<p>Is there engagement with people and communities served to ensure activities match needs?</p> <p>Do funding and other relationships support action to meet the needs of people and communities served?</p> <p>Is there good governance of funds and compliance with contract/ grant terms?</p>	<ul style="list-style-type: none"> ensure sector is supported and resourced in a reasonable and fair manner in delivery of joint objectives are transparent and accessible, without unfair entry barriers to all or parts of the voluntary sector are changed only after consultation and notice?

Independence of Purpose allows organisations to be freely established, shaped and run to meet changing needs. Accountability to those served is crucial, along with strong independent governance.

Independence of Voice ensures the ability to protest, campaign or negotiate without fear of retribution. This can be undermined when funding criteria are too narrowly drawn. An independent voice must also have legitimacy and a clear mandate. Independence of voice is not just about the capacity of voluntary organisations to raise challenging issues but also about the willingness of others to listen. Self-censorship may occur if organisations believe that they face retribution - whether losing influence or funding.

Independence of Action enables voluntary organisations to design and deliver effective activities, to innovate and take risks. It can be threatened when partners constrain freedom of action through unnecessary rules, under-funding, or tell them how to do their job. It is supported by good governance and feedback from the communities served.

These three aspects of independence make the voluntary sector, at its best, distinctive, trusted and successful and it is why so many benefactors support it financially and with their time. If the sector is no longer trusted by the public as independent, its very existence is under threat. If independence in its three dimensions is no longer valued, it is much more likely to be lost.

3 Context

The independence of the voluntary sector is especially important now, as austerity threatens some services to vulnerable people and many individuals look to voluntary sector groups to express their views, turning away from the mainstream political process.

Trust and engagement in politics declining

On the one hand, trust and engagement in politics is declining. 58 per cent of the public say they are 'not very' (32 per cent) or 'not at all' (26 per cent) interested in politics.¹⁴ People in lower socio-economic groups are significantly less interested in and engaged in political activities than higher socio-economic groups and are far less likely to vote or to take an interest in politics. In 2013, only 17 per cent of people in the DE socio-economic group agreed that the system of government is working 'extremely' or 'mainly' well, compared to 41 per cent of ABs.¹⁵ Membership of political parties is declining too: for example, membership of the Conservative party was 134,000 in September 2013 compared to 3 million in the 1950s¹⁶ and, in 2011, membership of the Labour Party stood at 193,000 compared to 666,000 in 1979.¹⁷

On the other hand, trust and engagement in voluntary organisations is high. 66 per cent of people trust charities 'quite a lot' or a 'great deal' compared to 8 per cent who trust politicians.¹⁸ Voluntary organisations connect with and engage with different communities of interests in a way that, increasingly, politicians cannot. For example, the campaigning organisation 38 degrees alone says it has 2 million members that it can mobilise on specific issues.¹⁹ However, this very strength also runs the risk of pushing politicians on to the defensive, with a growing tendency to see campaigning groups as a blocking rather than a democratic force, as explored further in Section 4.

The voice of the voluntary sector has always been important, and lies behind the creation of many aspects of life that we now take for granted. But, as interest in conventional politics declines, that voice is particularly important to democracy, engaging large numbers of people and adding diverse voices on a wide range of issues, some of which would otherwise not be heard in the mainstream debate.

Demand for the voluntary sector rising, as the state cuts back

These are testing times for those who rely on the support of the voluntary sector; and it is especially important that there are strong, independent voluntary organisations that can meet specialist needs and speak up on behalf of those served. But many such organisations are facing tough choices about how best to survive, whilst trying to protect independence of purpose, voice and action.

Demand in many areas is increasing, with striking increases in indicators of poverty such as hunger, homelessness and destitution caused by problems in the wider economy, reductions in welfare support and cuts in public services, including legal aid to challenge welfare and housing decisions.

Charities and other voluntary organisations are struggling to cope with a combination of rising demand and falling income.

The sector has a long history in both delivering services and shaping services offered by the state, with the state often taking on functions originally carried out by the voluntary sector and then, more recently, contracting some of these services back.

Now, as the state is cutting back on public services, it can be seen handing back to the voluntary sector the funding of welfare functions altogether that would in the past have been paid for by the taxpayer. In some cases, such as foodbanks, communities have been able to step in. In other areas, such as advice services, people may be left entirely without support. This Government's view appears to be that this reduction in the size of the state should be a permanent one.²⁰

An already bad situation looks set to get worse. Voluntary organisations are losing state funding for the support they provide on a grand scale. One conservative estimate is that the voluntary sector will be receiving £1.7 billion less each year by 2017-18 than in 2010-11 (using 2010-11 prices).²¹ Income from individuals to the voluntary sector appears to be falling dramatically too.²² Although quarterly returns from the Charity Commission suggest a more buoyant picture on the total income of the sector as a whole, this appears to be because more public sector organisations are being set up as charities, for example, Academy schools, or transferred to the sector, for example the Canal and River Trust.²³

Smaller organisations under particular threat

The overall figures on reduced state income only tell part of the story – the redistribution of income may be the most significant development, the National Council of Voluntary Organisations (NCVO) concluded in its 2013 report on cuts.²⁴

Typically, the NCVO says that it may be the smaller community organisations that receive funding from local authorities which experience disproportionate cuts, whereas some larger charities that can access new contracts may be less significantly affected or more capable of replacing lost income.

A survey by the Centre for Social Justice of 350 small, community based organisations fighting poverty found that 1 in 5 said that they were at risk of closing their doors. The same report also concluded that small community charities were losing out to larger voluntary sector organisations.²⁵

The picture across the country

As the Panel reported last year, research suggests that voluntary organisations rely more on state funding in certain parts of the country, especially where there are high concentrations of deprivation and the first round of cuts fell heavily in these areas. In 2012-13, the National Audit Office (NAO) concluded that the overall reduction in spending power as a result of cuts between local authorities ranged from 1.1 per cent to 8.8 per cent in cash terms.²⁶

The Panel has looked at how organisations are faring in different parts of the country – a surprisingly consistent picture emerges of rising demand, reducing funds and an unsustainable reliance on reserves.

This evidence is explored in the box below.

Experience across the country

Yorks and Humber: When we visited Leeds to talk with organisations in the Yorkshire and Humber region, we were told that what they called small to medium sized organisations (£100,000 -£500,000 turnover) were thought most at risk of closing, with the smallest organisations, ie with a turnover of less than £20,000, being quite resilient because of their community support, use of volunteers and low costs. There is a heavy reliance on state funding, and the region had lost all regeneration funding. There is now massive competition for the funding that remains and voluntary organisations are experiencing rising demand for services while funding was falling, we were told. The six national challenges identified by the Panel also existed in their area, they confirmed. The issues around voice, funding and influence particularly resonated.

The North East: A survey carried out early in 2013 amongst third sector organisations across the North East revealed that 59 per cent had seen a decrease in funding in the last 12 months. In the last 6 months alone, the 200 respondents had seen a combined loss of £3.5 million in funding. Over half (56 per cent) were using their reserves to top up their income, and almost a quarter (23 per cent) now had no reserves at all. Against this, 62 per cent reported an increase in demand for services, and 37 per cent increased the number of beneficiaries supported. When forecasting the next 12 months, 40 per cent anticipated making redundancies, 39 per cent expect to or are considering closing a service and 24 per cent will or may close the organisation altogether.²⁷

Nottingham: Nottingham Community Voluntary Service revealed in August 2013 that 80 per cent of third sector organisations across the city reported an increase in demand for their services over the last 12 months: 'What is important to note is that this increase in demand for services has come prior to further government welfare reforms. Universal Credit, the Benefit Cap, Legal Aid reform, Personal Independence Payments, long term implications of the 'Bedroom Tax' and Council Tax changes and much more are due in the next 12 months, which may see this figure increase even more.' 62 per cent of the organisations were running at a loss, or using reserves to prop up services. Looking at the next 12 months, 54 per cent of groups said they may have to close a service and 11 per cent may have to close altogether.²⁸

Box continues

Greater Manchester: Research carried out amongst voluntary and community organisations across Greater Manchester revealed that 'the sustainability of a significant number of organisations ... could be under threat'. The decline in the voluntary sector's income over the last 3 years represents the first long term economic contraction in the sector in at least 10 years. This trend seems likely to continue, as further large reductions in public sector spending are expected over the next few years. A significant number of organisations spent more money than they received in the past 12 months: 34 per cent provided an expenditure figure for 2011-12 that was greater than their income. 'This is likely to be in response to rising demand: many organisations will have drawn down financial reserves to maintain or increase levels of service provision rather than reduce their expenditure to match a decline in income.'²⁹

Birmingham: A similar picture emerges in Birmingham, this time from a council led review carried out between November 2012 – January 2013. The review found that organisations delivering services such as advice and support for complex needs had experienced increased demand in the last 2 to 3 years, as there are 'fewer doors for people to knock on.' The Digital by Default strategy, with its emphasis on moving face-to-face or telephone contact in the public sector to online enquiries, is also increasing in-person enquiries to voluntary organisations. They saw stresses on already stretched services escalating with further government cuts, particularly relating to welfare reform. There was a consensus that organisational reserves had been depleted to precarious levels. Birmingham Citizens Advice Bureau were using 20 per cent of their reserves to get through the financial year, further reducing their reserves below the Charity Commission's recommended level of 6 months, which was thought to be unsustainable. The possibilities for alternative income streams or diversification from the Open Public Services agenda are, for many organisations, thought to be limited.³⁰

South West – In October, the Panel held discussions with people working in and with voluntary groups in the South West. We heard similar concerns about organisations digging deep into reserves to maintain services - an increasingly unsustainable situation. We were told that the public sector's contracting process was not supporting a healthy voluntary sector eco-system, reducing access to specialist services or specialist groups often provided by small and local organisations.

4 Relations with the state and sources of power

There are many influences on independence and many different relationships that are maintained by the voluntary sector that could, potentially, affect this independence.

Some organisations rely on support, whether financial or otherwise, from powerful corporate sponsors and funders for example. A Panorama programme broadcast in late 2013³¹ alleged that Save the Children UK had exercised censorship to avoid embarrassment to its corporate donors. These allegations were strenuously denied by Save the Children. However, such accusations, even if unfounded, highlight the risks charities can run when donations are perceived as being inconsistent with their mission.

Voluntary organisations, particularly those working in international development, also have important relationships with more than one government.

In the resources and time available to us, we cannot do justice to all the challenges that exist across a full spectrum of these relationships. The Panel has chosen, instead, to focus primarily on the relationship between voluntary organisations and the UK Government and local authorities in England. At nearly £14 billion, statutory grant and contract income represents nearly 40 per cent of the total income of the voluntary sector. This compares with donations of £16.5 billion from individuals and £1.7 billion from the private sector.³²

Which organisations receive state funding?

It is true that only a proportion of voluntary organisations receive state funding – between a quarter and a third depending on the definition.³³ Many of these are medium to major sized organisations but 38 per cent of small voluntary organisations still receive state funding and it forms 21 per cent of their income overall.³⁴

The organisations that rely heavily on state support are those that would otherwise struggle to sustain themselves from private donations alone. As explored in the box below, they are often working with disadvantaged people, often living in disadvantaged areas.

Types of organisations relying heavily on state funding

Our previous reports noted that organisations working with certain client groups are more likely to rely on state funding: socially excluded/vulnerable people; offenders; people with mental health needs; parents and carers; people with substance abuse problems; lesbian, gay, bisexual or transgender people; people with learning difficulties; homeless people; victims of crime and their families; asylum seekers.³⁵

State funding is also particularly important in disadvantaged areas. Overall, less deprived local areas have more voluntary organisations than more deprived local areas, but certain kinds of organisations are more prevalent in more deprived areas, including those working in the field of economic well-being.³⁶ This reflects the presence of organisations which receive public funds and underlines the important role of government in ensuring resources are available in areas of particular need.

In Yorkshire and Humber, we heard that some types of voluntary organisations were more at risk than others because of their reliance on state funding historically – organisations working with disadvantaged and vulnerable groups, often in disadvantaged areas. BME groups in their region were particularly affected by loss of funding and many were afraid to speak out, we were told.

Moreover, the state is also extremely powerful, far more so than any individual corporation, and wields considerable influence not just as a funder but as a regulator and provider of public services and policies that affect every type of voluntary sector organisation and those they serve.

Sources of power

The Panel's last report identified three sources of power – financial, brand and knowledge – which affect the ability of organisations to maintain independence:

- **Financial power:** diversity of income makes it easier to walk away from funding that takes organisations away from mission, as does access to strong reserves. Private income, perhaps derived from sales from charity shops or individual donations, can be invaluable to fund unpopular causes or the capacity needed to maintain independence of voice.
- **Brand power:** many voluntary organisations have a powerful membership, volunteering and supporter base, which can give them a particular legitimacy and real muscle. Brand power can also be created or enhanced where influential individuals leading the organisation command wider public trust and respect.
- **Knowledge power:** derived from a real knowledge of the views and voices of those served; a clear mandate, gained from a strong evidence base; and a really profound and detailed knowledge of the service provided.

Access to these sources of power is not equal: financial and brand power will tend to be stronger for popular or long established organisations which enjoy either widespread or very dedicated public support. Relatively unpopular causes often tend to be most reliant on state support and sometimes have lower brand power. They may have least negotiating power over the terms on which they receive stand funding where this is so.

Which organisations are most heavily reliant on one source of funding?

The following information shows the proportion of organisations of different sizes that are heavily reliant on one source of funding.³⁷

Registered charities dependent on one main income stream (2009-10)

61% of all charities depend on one main income stream

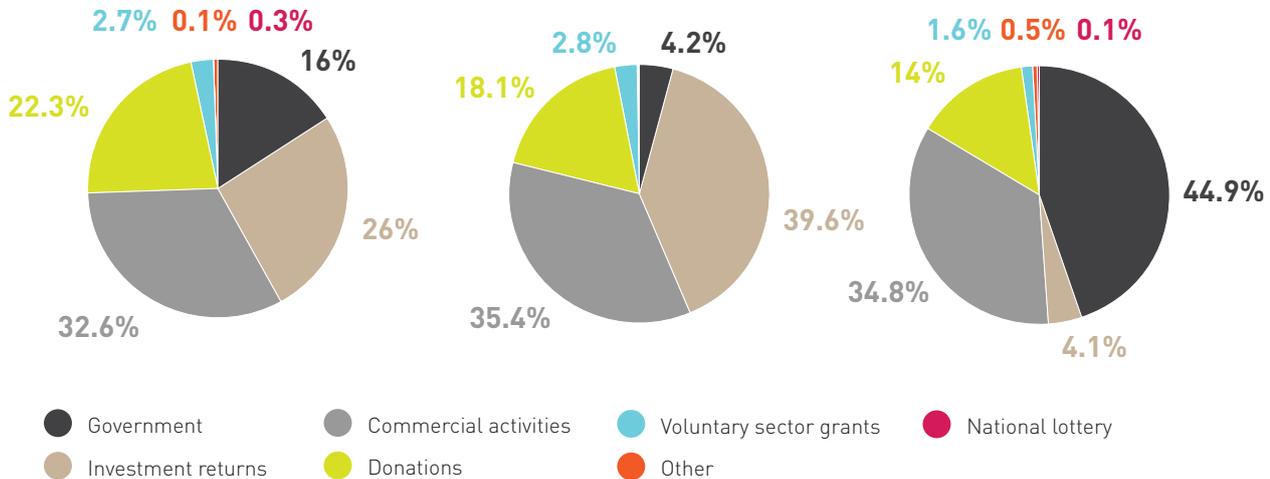
Source of income for **all charities** dependent on one main income stream

53% of small charities depend on one main income stream

Source of income for **small charities** dependent on one main income stream

80% of large charities depend on one main income stream

Source of income for **large charities** dependent on one main income stream



Notes

1. We have defined charities dependent on one main income stream as those which receive at least 75 per cent of their income from one source.
2. Small charities are those with an annual income of less than £10,000. Large charities are those with an annual income over £1 million.

Source: National Audit Office and National Council for Voluntary Organisations

It is perhaps particularly surprising that such a high proportion of large charities are dependent on one source and especially striking that the most common major funder is government. The situation is very different, on average, for smaller charities. But, here, the data obscures the reliance of a small but important proportion of smaller charities working with vulnerable groups in disadvantaged areas which may well be included in the 'larger charities' category, as 'small' here is defined as an income of £10,000 or less.

It is also worth noting that larger charities may be comparatively better able to take on financial risk than smaller ones because they have proportionally more assets to absorb any losses. In 2009-10, charities with an income less than £10,000 held on average only £48,000 worth of assets, broadly a 5:1 ratio. However, charities with a turnover over £1 million held over £20 million of assets, broadly a 20:1 ratio.³⁸

5 Review of challenges identified last year

Last year, reviewing the state of independence against the criteria set out in our Barometer, The Panel identified six challenges and made recommendations on each:

- Threats to independence of voice.
- Lack of consultation and involvement over vital funding and policy issues.
- A loss of identify and respect for independence, fuelled by the blurring and crossing of sector boundaries.
- Statutory funding and contracting arrangements that fail to support independence.
- Ineffective safeguards and regulation to protect independence.
- Threats to independent governance by central and local government.

The Panel raised these issues with Ministers then and this section reports on their reactions, the progress made and how things have changed since last year.

Threats to independence of voice

Our verdict: increased concerns, compared to last year

Last year, the Panel commented on specific threats to independence of voice, from gagging clauses and guidance from the Department of Communities and Local Government (DCLG), to self-censorship. It recommended that:

- Gagging clauses and controls on data should not be allowed.
- The rights of voluntary organisations to campaign should be defended by the Government and others.
- Infrastructure bodies should do more to articulate the needs of small organisations to Government, given the relative lack of power of these organisations and those working with disadvantaged groups to protect their independence.

In response to the report, Nick Hurd, the Minister for Civil Society, said that 'the Government is committed to the principles of the Compact and supports and respects the independent voice of the voluntary sector. I feel strongly that the role of the sector to be able to speak truth to power is part of their value to society and this is something I will work hard to protect.'

He also said that the Department of Work and Pensions (DWP) does not support gagging clauses but does support contracts that are 'are designed to ensure that DWP remains compliant with UK Statistics Authority guidelines, and therefore providers have an obligation not to make any public announcements that may bring the Department disrepute, or to release Management Information without permission.'

It is, of course, right that charities should only pursue campaigning or political activities in support of their charitable purposes, as current legislation already makes clear. But it is also important in that context to recognise that their ability to protest, campaign and to challenge government is a key expression of the independence of charities, a sign of a healthy democracy and a key part of the checks and balances of our constitution.

This role should therefore be welcomed by government. The Panel shares the view expressed to us by the Barrow Cadbury Trust that the provision of state financial support to organisations which campaign and lobby on state issues indicates a constructive relationship between government and civil society – and a willingness on the part of the state to engage in dialogue with organisations which have expertise in areas of social policy.

Ministerial attacks on the advocacy role of the voluntary sector and specific threats

The Panel was concerned by DCLG guidance issued in December 2012 which implied that charities that ‘were lobbying and calling for more state regulation and funding’ whilst receiving state funds were ‘fake charities,’ behaving politically and improperly.³⁹

We raised this with the Parliamentary Under Secretary of State at DCLG, Don Foster, who responded to the Panel by saying that the same guidance was positive about the role of the voluntary sector and that ‘the Government does believe that charities should be able to speak out on behalf of the communities they represent, but not that taxpayers’ money is spent inappropriately on political campaigning or lobbying.’

Likewise, the Panel approached the Minister for Civil Society, Nick Hurd, about gagging clauses used for some sub-contractors in the Work Programme to prevent them criticizing the programme or releasing potentially embarrassing data; but no change in practice has resulted.

Nick Hurd’s commitment to uphold the independence of the sector is certainly welcome but we are concerned by an escalation in attacks on the independence of voice of the sector since he wrote to us in these terms. There seems to be a curious disconnect between what Ministers say and what is happening.

Restrictions to judicial review

The Panel is particularly concerned about a series of agreed and proposed changes on judicial review which add up to a major threat to the ability of voluntary organisations to act independently to safeguard the interests of the relatively powerless against abuses by the state.

When we heard that Iain Duncan Smith had attacked the Child Poverty Action Group (CPAG) in 2011, we thought it might have been an aberration. He said that the CPAG’s legal challenge to housing benefit reforms was ‘ridiculous ... irresponsible behavior’ and said it was ‘a massive waste of taxpayers’ money and court time.’⁴⁰

Since then, Ministers have started to reduce the ability of the voluntary sector to turn to the courts in various ways.

The first change was the removal of legal aid to support individuals in relation to the vast majority of housing, debt, benefits and immigration cases.

The second change was the Government's decision in 2013 to alter the normal deadline from 3 months to 30 days for judicial reviews that challenge procurement decisions. This change will severely curtail the ability of voluntary organisations to ensure compliance with the Compact.

Thirdly, after a short consultation in 2013, detailed changes were confirmed in September 2013 to the funding of judicial review cases affecting individuals, many of whom take cases with the help of the voluntary sector. Some concessions to views expressed in the consultation were made - but important restrictions are likely to remain - and were recently criticised by the Joint Committee on Human Rights.⁴¹ This third round of changes are explained in more detail in the box below.

Restrictions to legal aid for individuals taking judicial review cases

After a short consultation, in June 2013 the Government confirmed that it intended to proceed with its plans that lawyers will not be paid for judicial review work, in cases where proceedings are issued, until and unless the case proceeds beyond the initial stage and is granted permission to continue.

However, many cases settle before reaching this permission decision stage because the government body challenged accepts that a mistake has been made and commits to putting it right. The Government said in September that it proposes to allow the Legal Aid Agency to pay these initial costs on a discretionary basis, as long as the lawyer has attempted to obtain the costs of the litigation from the government body concerned and that the case can be considered to have been worth running. This increased bureaucracy and level of risk may nonetheless have a significant chilling effect.

The Ministry of Justice also announced that it would press ahead with the withdrawal of legal aid for borderline cases, which can be important test cases.

The Government also intends to proceed with its plan to impose a 'residence test' for non-criminal legal aid eligibility, although it also announced a range of important concessions which should allow non-residents to challenge incarceration and deportation and will enable the victims of trafficking to still access legal aid. However, the residence test will still prevent many vulnerable people from challenging decisions to make them homeless; to refuse them community care support; to refuse to accept them as a child and support them as such; to refuse to accept them as a victim of trafficking (since the exception only applies once an individual has been recognised as such). The plans also fail to reflect that many vulnerable British individuals - and those lawfully resident here - may be unable to prove that they meet the residence test.

The Panel was told by Shelter, when they gave evidence to us in June, that the proposed changes would severely curtail their ability to use judicial review, as they often do now, from stopping families ending up on the street. The number of homeless and destitute people is already growing. These powers are equally important in many other areas, for example community care

Box continues

cases ensuring that disabled people can access vital services. This comes on top of cuts to legal aid. It was reported in March 2013 that cuts to legal aid are forcing the closure of almost a third of Shelter's housing advice centres. As a result of changes to welfare rules, demand is rising but is difficult to meet. For example, a survey in Manchester in October 2012,⁴² noted stiff demand for advice services, and the report found that the number of advice cases that involve welfare benefits appeals has risen sharply – a demand that is not being met presently.

We also heard from Shelter that these judicial review changes would curtail the ability of the voluntary sector to contribute to better policy making. Voluntary sector organisations draw on this casework to identify strategic problems, campaign for reform and, through expert interventions, use their expertise to help the courts make well informed decisions.

When the Panel wrote to the Justice Secretary in July about our concerns at that point, he assured us that the Government was committed to a strong and independent voluntary sector. We were therefore very surprised when, a few days later, he launched a consultation on a fourth round of even more worrying changes.

These new proposals would prevent voluntary organisations from taking judicial review cases unless they had a direct interest. Many individuals acting alone, especially those with the least power and resources, would be unable to pursue their own case without the support of charities. Furthermore, individuals would be unable to take cases that prevent unlawful actions affecting others more widely, leaving systemic problems unchecked. The Government also proposes to increase the financial costs for such organisations, erecting further barriers to judicial reviews or the giving of expert advice to the courts in cases taken by others.

The conclusion of the Public Law Project, which gave evidence to us in October, is that, 'taken together, the proposals represent a profound and constitutionally significant attack on the ability of individuals, charities and NGOs to access judicial review. Their effect will be to insulate executive action from judicial review, weakening the rule of law.'⁴³

The Panel was provided with an example of action that these proposals would block from Just for Kids Law in October: the successful judicial review taken by them in 2013 to challenge the treatment of 17 year olds at police stations as adults, denying them access to an appropriate adult. This practice resulted in 2 boys committing suicide and a judicial review became necessary to challenge the practice more widely when lobbying by the boys' parents and others failed to prevent it.

Earlier cuts to legal aid had been justified on the grounds of cost but these changes seem expressly designed to prevent campaigning groups from taking cases, as explained by the consultation document:

'The concern is based on the principle that Parliament and the elected Government are best placed to determine what is in the public interest. On that basis, judicial review should not be used to undermine this role by putting cases before the courts from individuals with no direct interest in the outcome. The Government considers that people who bring judicial reviews should have an interest in the case and consequently wishes to receive views on whether the test for standing should require a more direct and tangible interest in the matter to which the application for judicial review relates. That would exclude persons who had only a political or theoretical interest, such as campaigning groups.'⁴⁴

The Secretary of State for Justice, Chris Grayling, put his own, political spin on this in an article in the Daily Mail, extracts of which are given below.

Chris Grayling on charities and judicial review

'The professional campaigners of Britain are growing in number, taking over charities, dominating BBC programmes and swarming around Westminster.

'... While charities inundate Westminster with campaign material, they also target the legal system as a way of trying to get their policies accepted. One essential part of the campaigner's armoury is the judicial review, through which it is possible for them to challenge decisions of government and public bodies in the courts. As a result, they hire teams of lawyers who have turned such legal challenges into a lucrative industry. Judicial review has developed since the 1970s as a way for individuals to challenge decisions taken by the State. Then, there were just a few hundred cases a year. Now there are thousands. Indeed, many are no longer just an opportunity for an individual to challenge an official decision, but are used by campaign groups as a legal delaying tactic for something they oppose.

'... Campaign groups have taken it for granted that courts will expect the public body involved to pick up most of the costs. But I believe that it is time we put a stop to this. Of course, the judicial review system is an important way to right wrongs, but it is not a promotional tool for countless Left-wing campaigners. So that is why we are publishing our proposals for change. We will protect the parts of judicial review that are essential to justice, but stop the abuse. Britain cannot afford to allow a culture of Left-wing-dominated, single-issue activism to hold back our country from investing in infrastructure and new sources of energy and from bringing down the cost of our welfare state.'⁴⁵

Restrictions on campaigning originally proposed in Lobbying Bill

This proposed change to judicial review coincided with the promotion in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill (popularly known as the Lobbying Bill) of provisions which introduced new restrictions on campaigning in the run up to elections.

In October, the Panel heard first-hand from a wide range of organisations – the Countryside Alliance, the Society of Friends, the Royal Society for the Protection of Birds, 38 Degrees and the Association of Chief Executives of Voluntary Organisations (ACEVO) – which explained why they were all concerned about the negative impact these changes would have.

These organisations felt that no convincing argument had been put forward to justify the new legislation in the Lobbying Bill, which they said would prevent many individuals from engaging actively in our democracy.

Indeed, a very broad coalition of interests opposed these provisions, leading to the formation of a new Commission for Civil Society and Democratic Engagement which, after consulting widely, called for a pause in the legislation to allow for proper consultation – and 6 weeks for this was eventually granted by the Government under great pressure in the Lords. The Chair of the Commission, Lord Harries of Pentregarth, commented that:

‘... this report should not have had to be written, and this Commission should not have had to be formed. It is a mark of bad governance for legislation to be bounced on Parliament and those directly affected without any consultation. When matters of democracy are at stake it is a very grave error. There is no doubt, from the evidence that this Commission has gathered, that Part 2 of the Lobbying Bill risks profoundly undermining the very fabric of our democracy by significantly limiting the right of organisations – from charities and community groups to think tanks and blog sites – to speak out on some of the most important issues facing this country and the planet. Whether we agree with these organisations or not, their role is essential in order to have an informed, engaged electorate.’⁴⁶

The Lobbying Bill in detail

The draft legislation put forward in July 2013 made it a criminal offence to spend more than £390,000 on campaigns in the 12 months running up to national, local and European elections. Voluntary organisations argued that the definition of election campaigning was so wide-ranging that legitimate campaigning activities could be included. We heard that the existing legislative provisions were so unclear that they had already led to some organisations curtailing their activities in fear that they might inadvertently breach them. The Bill introduced a lower financial threshold for registration, which would involve many small organisations in bureaucratic reporting restrictions, including potentially faith based organisations such as the Quakers, with criminal sanctions for breaking the law. The amounts that could be spent locally and nationally were also reduced and the definition of qualifying expenditure was broadened. The result, the

Box continues

Panel heard from those giving evidence, would be even greater confusion about what was being controlled and a widespread chilling effect, as organisations sought to avoid registration or risk of prosecution.

Nonetheless, the Cabinet Office, including the Minister for Civil Society, Nick Hurd, maintained that the proposals would not prevent charities from supporting policies advocated by political parties, as long as they are not doing it for election purposes.⁴⁷

However, despite these assurances, the Bill was successfully opposed by a very broad coalition, including the TUC, the Taxpayers' Alliance, Conservative Home and well-established voluntary organisations such as Oxfam, as well as relatively new organisations using social media such as 38 Degrees. Strikingly, the Electoral Commission (which itself had not been consulted on the provisions) was prominent in pointing out in the initial stages of the Bill that the provisions were not workable.

A series of concessions were made during the course of the Bill – but only in the face of revolts in both Houses.

The first concession at Commons Report stage was to remove the contested definition of restricted activities and return it to the definition in the original legislation. During the passage of the Bill in the Lords, the Government finally agreed to a 6-week pause in the Bill to allow for consultation and to lower the financial threshold for registration with the Electoral Commission.

However, the Commission for Civil Society and Democratic Engagement, after using the 6 week pause for further consultation, remained very concerned that sufficient time had not been given and that the second concession did not go far enough. It called for wide-ranging amendments as a stop gap, pending a fundamental review of the existing as well as amended legislation after the election. It also commented on the 'severe damage to trust between Government and organised civil society as a result of this legislation and the way it has been rushed through Parliament without due consultation.'⁴⁸

In January, the Government agreed to amend the legislation to meet many but not all of these concerns, including committing to a post election review; but the Commission and others still felt that these concessions did not go far enough. The concessions did not stave off a Government defeat in the Lords on 15 January amidst significant concerns about the impact of what remained.

The Government's last minute concessions are to be welcomed but concerns still remain about the remaining legislation. The Panel are also concerned that the Government failed to recognise the value of independent campaigning by such organisations when the proposals were first put forward; that it closed its ears for so long to widely felt concerns about the Bill; and that it failed to allow enough time to consult even when it paused the Bill process, forcing a further review at a later point.

A growing, wider view that charities should deliver services, not campaign

It is becoming an increasingly commonly expressed view that charities that lobby should not receive government funding or even, in the eyes of some, charitable income.

The Panel observe a growing climate of negativity about the independent voice of voluntary organisations. There have been a number of criticisms of the campaigning role of charities reported in the media in 2013, as set out in the box below. A debate about the role of charities is of course an expression of a free, democratic society. What is of concern here is the view that seems to be taking hold that state, charitable trust or wider public funding for campaigning activities is inappropriate.

Examples of attacks on the advocacy role of the voluntary sector by MPs and others

The use of charitable funds by the Diana Princess of Wales Fund and Barrow Cadbury Trust to promote migration/refugee issues has been attacked by Frank Field MP and others. Frank Field is reported in the Daily Mail as saying that 'People who gave money to the Diana Fund would be very surprised to learn it has donated huge sums to a propaganda effort to change public opinion on immigration.'⁴⁹

The funding by the Equality and Human Rights Commission and the Foreign Office for the Advice on Individual Rights in Europe organisation, which was used to fund cases in the European Court of Human Rights, has also upset some commentators. Priti Patel MP, a member of the Public Administration Select Committee, is reported as saying 'It is outrageous that taxpayers' money is being used and abused in this way. It is particularly outrageous that money is being used to undermine benefit rules when the British public are crying out for benefit reform.'⁵⁰

Similarly, when a new alliance of voluntary organisations to promote the Human Rights Act was formed, Priti Patel MP is reported as saying 'Charities are using human rights laws to pursue political agendas against the Government in judicial review cases. Their support for current human rights laws is misplaced and they should get on with delivering frontline services rather than running political campaigns.'⁵¹

A Daily Telegraph editorial in June that said that 'Many [charities] take state funds which they then use to engage in political lobbying; effectively using taxpayers' money to subsidise a new Left-leaning lobby. One recent example was Cafod's support for 'climate justice.' The problem is also apparent in the opposition that some charities have put up against the Government welfare reform agenda. Not only does the Charities Act 2006 need fixing, but we also have to address the troubling growth of partisanship in a sector that ought to be concerned with giving.'⁵²

Box continues

The RSPCA has also come under attack, with media reports that the Archbishop of Canterbury had turned down an invitation to become vice-patron of the RSPCA because 'a series of court cases has led to claims that it has become too aggressive and politicised in pursuing farmers and vulnerable pet owners.'⁵³

Mainstream media commentators have been picking up these themes too. In an opinion piece by Libby Purves on 19 August, headed *Push too hard and we lose our faith in charity: People are becoming alienated by overpaid chiefs, overzealous interference and overemphasis on political lobbying*. She, too, referred to the RSPCA.⁵⁴

Similar views surfaced when Part 2 of the Lobbying Bill was put forward. Some MPs felt the original provisions did not go far enough. Conservative MP Jacob Rees-Mogg tabled, but later withdrew, his own amendment which would prevent third-parties that receive money from government organisations from campaigning in the 12 months before a general election and he said 'The NCVO received a lot of money directly from government, and they are now spending that government money lobbying the government. That seems a terrible waste of public funds. I hope the Bill will be amended in the Committee to prevent that waste of public money.'⁵⁵

Libby Purves in the Times commented 'Charities move in this direction [political lobbying] is rapid and emphatic. At the weekend came indignant outrage at a government proposal to limit what they can spend promoting their views during an election campaign. The Bill cuts the permitted amount to £390,000 and the fury at this reveals that some charities are, indeed, more like political parties than dispensers of benevolence.'⁵⁶

When the Barrow Cadbury Trust gave evidence to the Panel, it commented on the increasing use of the pejorative label 'political' for any work that seeks to influence public policy and opinion. It expressed concern that 'an impression of its illegitimacy (and even illegality) will eventually emerge, undermining the ability of foundations to effectively promote their agenda and ultimately threatening the success of the mission pursued.'

There is certainly evidence to support this view. For example, the Panel notes that the Public Administration Select Committee made the following recommendations when reporting on the Charities Act 2006:

'We recommend that the Charity Commission requires charities to declare in their annual returns how much of their spending has gone on political and communications work. We also recommend that the Charity Commission requires charities above the current registration threshold to declare on their annual returns how much of their income in the previous year was received from public or government sources in either i) grant income or ii) other forms of remuneration, and how much was received in the form of private donations.'

'We recommend that ministers should make a written statement to Parliament whenever a decision is made to provide government support by direct grant to a charity which is involved in political campaigning.'

In its response to these recommendations, the Charity Commission has said that it 'will carefully consider the best way to cover campaigning activities,' will take into account the proposals in the Lobbying Bill and development of the Annual Return for 2015 will 'also consider the recommendation to require charities, subject to relevant thresholds, to declare how much of their income was received from public or government sources and how much was received from private donations.'⁵⁷

Charity Commission and political campaigning

Greater transparency may be desirable, but there seems to be a mounting view that reporting on political campaigning is needed in order to constrain it; and there also appear to be mixed signals being sent about this type of campaigning by the Charity Commission.

The Charity Commission's guidance on political campaigning (CC9)⁵⁸ says that an organisation can engage in political activity so long as it is 'part of a wider range of activities aimed at furthering the organisation's charitable purposes.' It also allows campaigning to apply 'most, or all, of its resources on political activity for a period' so long as it does not become 'the reason for the charity's existence.' We were told by Sam Younger, the Chief Executive of the Charity Commission, in October that non-compliance with this guidance was not a major issue and that the Commission regarded the changing of public perceptions and influencing policy as central to the role of charities.

However, one of the new Charity Commission Board members, Gwythian Prins, has suggested in a Third Sector magazine interview that the improper use of campaigning is a significant issue on which the Commission needs to act and seems to imply that campaigning is not an integral part of the 'knitting' of charities:

'We will... take a view about charities keeping their campaigning within their charitable objects and purposes,' he says. 'Problems arise when charities push the envelope, and some have recently been in the public eye because of this. If a charity campaigns about matters that appear to be outside its objects, then naturally we will look at it ... The weather has changed on this front. The public expects charities to stick to their knitting, to use an old-fashioned phrase.'⁵⁹

Moreover, according to Rosamund McCarthy, a partner at the law firm Bates Wells Braithwaite, new Charity Commission guidance⁶⁰ on charitable purposes contains more restrictive rules about when charities are able to campaign.⁶¹ It says that the Commission will look at whether a charity is political where any political campaigning is 'integral to the organisation's work,' or 'at least part of the reason for the organisation's existence,' or 'the sole, or continuing, activity of the organisation.' However, we were told by Sam Younger, the Charity Commission's Chief Executive, that there was no contradiction between this and the main guidance, as the new material related to pre-registration questions.

What is happening to the voice of the sector?

In a Today Programme interview on the subject of the Panel's 2013 report, the Minister for Civil Society, Nick Hurd said that he saw plenty of evidence of a strong voluntary sector voice⁶² and he repeated this point to the Panel in discussion in October.

Certainly, since the Panel's last report, there have been some encouraging examples of infrastructure organisations speaking out to defend the importance of the voice of the sector, of which campaigning against the Lobbying Bill is one instance. Others are given in the box overleaf.

Promoting independence of voice

Sir Stuart Etherington, the Chief Executive of NCVO, said in March that his organisation was 'ready to push back against any attack on campaigning,' commenting that 'as soon as they speak out about cuts, voluntary organisations are immediately accused of being political or scaremongering.' He said that charities must campaign strongly against unjust welfare changes.⁶³

In response to a negative leading article by the Telegraph, Sir Stephen Bubb wrote to the paper saying, 'Political campaigning by charitable organisations has been a force for good in our country for centuries, from the Society for the Abolition of the Slave Trade's petition to parliament in 1787, to the establishment of societies for the prevention of cruelty to children and animals in the Victorian era. Political advocacy by charities arose from the desire of like-minded people to do all they can for the beneficiaries, communities and causes to which they dedicate themselves. There can be no justification for restricting this ability. Any restriction on charities' right to campaign would represent an assault on the principle of freedom of speech. It would also reduce the level of political representation of many vulnerable and under-represented groups in society. Last but not least, it would undermine one of the fundamental freedoms of British political life: the right of ordinary people to join together in order to seek political change for the public good.'⁶⁴

Sir Stephen Bubb, in response to the Budget in March, took an assertive line about the need for stronger dialogue with charities: 'The further cuts will hurt, and it is essential that the government works with charities to deliver services differently rather than attempting to do the same with less. Our sector must be a participant, not an audience, to the upcoming spending review and the big decisions on welfare and spending.'⁶⁵

Although criticism of the Work Programme has largely come from infrastructure bodies in the past, which do not have direct contractual arrangements with DWP, more recently three major charities have spoken up about lack of support for marginalized people in the initiative.⁶⁶

Furthermore, following the attack last year on Save the Children for its anti-poverty campaign, a 70-strong consortium of charities, including Crisis, the Citizens Advice Bureau, Age UK, the Disability Rights Alliance and the Child Poverty Action Group, has been formed to monitor the growth in UK food poverty, with a view to the possibility of triggering a formal UN investigation.

Self-censorship and a muted voice

However, it is one thing for strong, well-known organisations enjoying considerable public support to demonstrate their independence.

The Panel remain concerned about self-censorship in the sector as a whole amongst all organisations, large and small, receiving statutory funding or seeking to maintain good relations with the public sector. Much of this problem by its very nature remains invisible but we can point to concrete evidence that this is widespread and is likely to be deepening.

For example, the Panel heard from NAVCA in June that: 'Whilst there is overwhelming support for local Compacts and they work well in many areas, a growing number of local voluntary and community sector bodies are concerned about their relationship with their own local authority. This no doubt reflects the strain from continuing funding cuts. We do still see many local groups who are fearful that if they speak up against an action taken by the local authority, their funding will be withdrawn. The shift from grants to contracts is also sometimes seen as a way of local authorities exerting more control.'

This fear of the consequences of speaking out may well extend beyond individual organisations to infrastructure bodies: the Panel has heard of at least one local infrastructure organisation that has lost its local authority funding because it failed to be sufficiently constructive about funding cuts.

Direct survey evidence of self-censorship is also available from Involve Yorks and Humber and from Nottingham– see below.

Independence of voice

In Yorks and Humber, a survey found:

- 32 per cent said yes, 50 per cent no, 6.3 per cent don't know and 11.5 per cent not applicable to the question: 'In the last 12 months has your organisation felt the need to 'self-censor' (ie chosen not to speak out or take action even though you would like to because of concern about the possible consequences.)'
- When asked the reasons, more people responded than said yes to the first question and 68 per cent identified concern about loss of funding, 55 per cent identified concern about being 'too political,' 13 per cent identified a confidentiality or other clause in a contract and 37 per cent said it was lack of resources.⁶⁷

When the Panel talked with organisations in the region, we were also told that policy and influencing capacity had been decimated in both individual organisations and infrastructure bodies – a decline recorded by their quarterly surveys. Similarly capacity in local authorities had also been cut, making dialogue more difficult.

In Nottingham a similar picture emerges. 34 per cent of organisations surveyed indicated discomfort about campaigning against/speaking up against a funder or its processes (for example, against unfair deadlines for tenders or unfair requirements) and 26 per cent said they would have severe reservations. In other words 60 per cent of groups were concerned that by challenging a funder they risk future funding.⁶⁸

Self-censorship may also be a problem in relation to corporate sponsorship, although there is no survey evidence available to quantify the problem and, as noted in Section 4, evidence recently put forward by a Panorama programme in one case has been strenuously denied by the charity concerned.

Recommendations

The Panel believes there is a need for the voluntary sector itself to challenge some of the negative views about its policy and campaigning role and build a better understanding about the importance of its distinctive role.

Infrastructure bodies in particular should be even more active in addressing misconceptions, including rebutting perceptions about a mono-political make-up of staff working in the third sector; with greater education about what charities are and why they undertake advocacy work, as well as why such activity is legitimate.

Greater transparency may also help. NCVO has set up a group to develop high-level principles for good practice in campaigning and lobbying by March 2014, involving the Barrow Cadbury Trust that gave evidence to the Panel in June. The guidance is expected to cover conflicts of interest, transparency, accountability and political neutrality.

One reason for the relatively muted voice of the sector is lack of funding. NAVCA commented to the Panel that cuts in state funding had fallen disproportionately on the functions of voice and advocacy.

New funding is needed for advocacy work, and the building of alliances and communities of interest should be part of that. Transparency will be important.

Where the state withdraws funding, the burden of ensuring a 'level playing field' of voices with a stake in policy issues is increasingly falling upon charitable trusts. Barrow Cadbury said that such funding was being misrepresented as 'politicisation' by some newspapers, whereas it would be more accurately characterised as simply meeting the need to ensure that voices of communities and individuals are heard in debates relevant to their future. It said that growing numbers of trusts and foundations are adopting this more structural approach towards social change and funding such voices. However, it said that this needed to be done in an evidence based way and added that one of the best defences was to ensure transparency about what it was doing, especially when working alongside other charitable trusts.

Finally, individual organisations need to be more courageous in exercising their independence of voice.

Lack of consultation and involvement

Our verdict: deteriorating since last year

Last year, the Panel noted widespread non-compliance with consultation requirements in the Compact (which were then withdrawn) and evidence that the Government was not listening to the voluntary sector. We recommended that:

- Infrastructure bodies hold discussions collectively about how to strengthen the voluntary sector's influence and put a strategy in place for doing so.
- Communities of interest within the voluntary sector could be further supported by charitable trusts in order to strengthen their policy making and influencing capacity.

In his response, Nick Hurd said that the Government continues to be committed to 'thorough and appropriate' consultation with the voluntary sector, and having a range of timescales rather than a 12-week period was one of a number of 'measures to improve consultations,' including other changes such as 'digital by default.'

Consultation

In our 2013 report, the Panel was dismayed by the Government's decision to remove the minimum 12-week notice period for consultation in the face of widespread non-compliance. When the Panel raised this with the Minister, Nick Hurd, we were given assurances that appropriate and thorough consultation would continue to take place and that the change would lead to improvements.

Some confusion still exists about whether the minimum period applies or not. In its evidence to the Panel in June, Compact Voice expressed the view that the 12-week minimum period was still in place within the Compact, since Ministers had not actually changed that text. However, when it challenged the Ministry of Justice about a 6-week consultation on judicial review, which included the Christmas period, the Ministry pointed to the fact that the minimum period was no longer in place.

Compact Voice also queried the Department of Health's 8-week timeframe allowed for consultation into charging migrants and overseas visitors to use the NHS services.⁶⁹ The consultation was introduced before an audit to assess the scale of the problem had been completed. The Department's response was: 'We realise that the timing of the consultation is not ideal. We were constrained in this by the fact that some of the proposals in the consultation, specifically the health levy, would need to be enacted through the forthcoming Immigration Bill ...' However to facilitate the consultation process, the Department said that it had arranged to meet the key stakeholders directly to discuss the proposals and answer immediate questions.⁷⁰

In June, Sir Stuart Etherington commented that: 'I am especially concerned by the government's approach to consultation – either rushing things through without engaging those that know the most, or the blatant indifference of some ministers to the very reasonable concerns of the sector ... Charities need every opportunity to comment when such significant changes are proposed, such as curtailing legal aid, equalities duties and judicial review.' He said the consultation on reforms to the judicial review process was a 'particular low point.' 'Not only was it only 6 weeks long but, more importantly, charities raised real concerns about the proposals,' said Etherington. 'Yet the secretary of state has dismissed their concerns. Open policy-making this is not.' He urged government departments to listen to the expertise of the voluntary sector, 'not for the sake of process, but for the sake of better policy-making.'⁷¹

Despite these warnings, there was no prior consultation at all on the provisions in the Lobbying Bill restricting charity campaigning in the run up to elections. These were introduced a few days before summer recess with the second reading occurring almost immediately after Parliament returned.

Also during this period, the proposals to remove voluntary organisations' ability to take judicial reviews and intervene as experts in court were only allowed 8 weeks consultation by the Ministry of Justice.

The Chair of Compact Voice wrote on 17 December 2013 to the Minister of State at the Cabinet Office, Francis Maude to express his concerns about lack of consultation and the failure to call regular meetings of the Independent Advisory Panel for the Government's Review of Consultation Principles. As well as citing the short consultation periods for recent judicial review changes, the letter mentioned a 4 week consultation on procurement for small and medium size enterprises which could have a significant impact for voluntary and community sector organisations and 2 week consultations in late November and December for 12 papers on some important changes to EU procurement regulations.

There seems to be no understanding of the difficulties for many charities in responding to these timescales. They often have no dedicated policy staff, and all rely in their governance on volunteers who meet infrequently. The Panel therefore remains concerned about the strength of the Government's underlying commitment to effective consultation with the voluntary sector.

New alliances to strengthen voice

There are some signs that the sector is beginning to organise itself into new alliances to increase its influence. In addition to the concerted campaign on the Lobbying Bill and the anti-poverty campaign mentioned earlier, other examples include:

- In June, the Social Economy Alliance was created to help influence the way that politicians and opinion-formers think about the economy and how they formulate economic and social policy.
- In August, Equally Ours was launched to build support for human rights, consisting of a coalition of charities funded by charitable trusts, including Mind, Age UK, and the Runnymede Trust, and led by the Equality and Diversity Forum.

Evidence of good practice

We have also heard that practice in engaging the voluntary sector well varies across the country, with some local authorities demonstrating a more positive commitment to dialogue, and efforts to build sector alliances are being fruitful – see the box overleaf.

Evidence of Good Practice

NAVCA have drawn to our attention many instances where Compact arrangements underpin a very good and constructive relationship between statutory partners and the local voluntary and community sector.

For example, under the **Merton Compact** the independent voice of the sector on behalf of the wider community is recognised as of great value and the sector is automatically offered places at the table of high level decision making bodies such as the main Merton Partnership, the Health and Well Being Board and the Children's Trust. The Community Engagement Network (facilitated by Merton Voluntary and Social Council) continues to be funded and is where public bodies go to identify community representatives – there are both election and selection processes in place and representatives are clear they are accountable and must represent wider views, not just those of their own organisation or specific interest.

In **Greater Manchester**, some really excellent examples of good practice have been reported over the development of community budgets and public service reform, where the Greater Manchester Centre for Voluntary Organisations and a range of frontline organisations were involved and actually listened to.

In **Kensington and Chelsea**, a number of forums exist where voluntary and community sector representatives meet with statutory partners to discuss the issues faced by mutual beneficiaries. This has brought more weight to arguments, and voluntary sector representatives feel they have seen real change as a result of the points raised. This has included the commencement of work on a child poverty strategy, the creation of a community asset register and the incorporation of the principles of social value into commissioning. The local voluntary and community sector has also been able to establish PovertyWatch locally, to provide sound evidence of poverty including the human impact of public spending cuts and welfare changes.

In **Leeds**, the Panel also heard that a broad third sector alliance has been formed, including housing associations, which have considerable assets. The diversity of this alliance is a strength and it has also been building wider partnerships, for example with the Leeds universities. The Bishop of Leeds and Ripon had spoken out on its behalf. This work was not without its problems, we were told, but it had been able to influence the local authority to appoint senior people responsible for liaising with it; had got the local authority to speak out against the removal of equality impact assessments by the Government and had been involved in the design of commissioning and procurement arrangements.

In the **South West**, the Panel also heard of a mediation service offered by a local Council for Voluntary Service in Cornwall to help bring parties together and find a constructive way forward when the Compact is breached and raise awareness of the value of dialogue.

NAVCA have stressed to the Panel that it is vital that both voluntary and community organisations and statutory authorities ensure they stay true to their sense of their own purpose while acknowledging the inter-reliance of our relationships and their needs. They also say that clear aims and terms of reference are essential, as are good communication, trust and openness, although the Compact and other formal arrangements can assist the process. However, above all, a good relationship must be underpinned by a living, breathing partnership based on trust and engagement.

Nonetheless, the Panel cannot but agree with the comment made by Sir Stephen Bubb in the summer of 2013 that the voluntary sector is perceived as marginal to the political debate by politicians.

Recommendations

The voluntary sector itself should do more to make the high level case for greater dialogue between the sector and statutory organisations because it will lead to better services and better government. It should also actively challenge instances of poor consultation. One area for a much higher quality of dialogue would be in the specification of what services are commissioned and how, which might help to avoid some of the procurement problems explored later in this section.

It is vital that the Government reinstates the 12-week minimum consultation period – and polices it effectively.

In our earlier report, the Panel also suggested that charitable trusts had a particular role in creating new communities of interest and this was accepted by Barrow Cadbury Trust when they gave evidence to us. The Panel thinks this is important and will be exploring this issue further.

Loss of identity and respect for independence

Our verdict: concerns unchanged since last year

Last year the Panel noted that the voluntary sector was increasingly being treated in funding, contracting and regulatory arrangements as interchangeable with other sectors, potentially a mere arm of the state and delivery agent without an independent voice. The Panel called for:

- A debate to be led by the voluntary sector to identify and articulate what makes the sector distinctive and independent and build a consensus about what would best protect it.
- Sector wide bodies to articulate the distinctive value of the voluntary sector in delivering public services and the importance of independence.

The Minister for Civil Society, Nick Hurd, welcomed the call for a debate in his response to the Panel's report.

Blurring and crossing of boundaries remains a key issue. Some cross-fertilisation is positive but problems arise when there is a loss of a distinctive identity for the sector and, particularly, of respect for its independence.

The public, private and voluntary sectors can closely resemble each other – all, for example, can have a strong sense of mission and values and a sharp focus on the needs of those they serve and voluntary bodies can and do make money. But what sets the voluntary sector apart from the public sector is its independence from government and, from the private sector, and the fact that mission must always have primacy over a profit-making activity.

Blurring is partly occurring as new public sector charities are spawned. There are an increasing number of bodies classified as charities that are funded almost entirely by government and subject to their controls. Academy schools are an example – and numbers continue to grow dramatically.

The Ormiston Trust, which receives £107 million government funding to finance Academies, is now one of Britain's largest charities. Museums are also charities but are still largely subject to the same Government constraints in areas like pay and recruitment as non-departmental public bodies.

Spin outs from the public sector to charitable status also continue: it was announced in June, for example, that English Heritage would become a charity in 2015, joining the Canal and River Trust which became a charity in 2012.

There is an increasingly active debate about whether charities that receive state funding are truly charities, with the Charity Commission taking part, as illustrated by the speech below.

William Shawcross' speech at NCVO Gala Dinner, December 2012:

'Partnerships with government enable many charities to stay in the mainstream of policy and to improve their services. But charities should not become the junior partner in the welfare state; whether or not they provide services funded by government or indeed receive grants from government, they must remain independent and focused on their mission. My **personal** view is that some charities have become dependent on the state. And I think that most members of the public, when asked, would say a charity is an organisation funded from private donations, not public funds. Sam Younger recently questioned whether the concept of charity is being diluted, and whether, in future, the register of charities should make clearer exactly what charities do, and how they are funded. For example, whether they fundraise. My instinct is that this is something that deserves further debate and discussion.'

When Sam Younger gave evidence to us in October, he also said that maintaining the distinctiveness of the sector was of concern in an increasingly complex environment. Voluntary organisations might lose public support if they were perceived to be too close to either the private or public sectors, he said, and thought it would be good to have a wider discussion about this.

In the following month, William Shawcross called for a debate on whether new definitions for a charity were needed to highlight the differences between various types of charitable organisations. He suggested the online register might 'distinguish between organisations that are truly voluntary, those that rely on public donations of time or money to support their work and those that achieve their charitable purpose by delivering government services?'⁷²

It is the Panel's view that it is independence of purpose, voice and action that matters, not the source of funding. Direct interference by the state in a way that compromises the independence of a charity, for example by controlling Board appointments or determining terms and conditions of staff, does raise questions about the appropriateness of charitable status.

Some witnesses to the Panel (Andy Benson of the National Coalition of Independent Action and Les Huckfield, a former MP and now an independent consultant) have emphasised that, in their view, the voluntary sector is increasingly being seen by governments only as 'a procurement vehicle,' a process that began under the previous government and which had not in their view been sufficiently challenged by the sector itself. In their view the distinctive role of the voluntary sector was not understood by politicians and it was almost too late to remedy it. The policy debate about the voluntary sector was now almost entirely about service provision. However, they said that there was a vibrant and very active sector unfunded by the state in which dissent could still be seen.

The Panel's view is that, under the last few governments, the trend has been for state bodies to manage relationships with the voluntary sector through markets. Current procurement and contract practices lead the government to treat the sectors as interchangeable because they are in competition. As explored later, some qualities that set the sector apart – such as an independent campaigning and policy role – are discouraged or even outlawed. Others – such as connections to local communities and the provision of specialist support – are no longer regarded as assets, compared to the economies of scale often created by large, broad based providers of services.

Recommendations

The voluntary sector itself needs to build a new consensus about the distinctive value of its contribution, not just in relation to its independence of voice but also in relation to independence of purpose and action. This in turn might help to underpin a 'new settlement' between the voluntary sector and the state and with the public.

Statutory funding and contracting arrangements

Our verdict: our concerns remain the same as last year

Last year, the Panel commented that the survival of many smaller organisations working with disadvantaged groups was in doubt because of Government failure to tackle funding barriers quickly enough or to provide for sufficient funding either from the state or elsewhere to support vital services for disadvantaged groups. We called for:

- The new Public Services (Social Value Act) 2012 to result in quality and other social value being considered alongside price in determining value.
- Stronger safeguards to protect sub-contractors in consortia delivering public services in the Work Programme and elsewhere.
- A debate within government and the sector about which funding models will enable the voluntary sector to operate effectively, recognising differences between sectors and diversity within the voluntary sector.

In response, the Minister for Civil Society said the Government is committed to making it easier to work with the state to deliver public services, mentioning the Social Value Act, the Commissioning Academy and Civil Society Crown Representative.

The Panel's concerns remain the same as last year, though we also note that the difficult and deepening financial challenges described in Section 2 make the challenge of maintaining independence even more arduous.

The funding eco-system is not supporting independence

The Panel's overall concern is that the funding 'eco-system' is not supporting a strong, diverse sector. In order to be independent, voluntary organisations need access to sufficient funding that supports their mission and purpose and allows them freedom of voice and action. An important source of power to help maintain independence is diversity of funding, with independent income from donations or commercial activities being especially valuable.

Over many years, the type of financial support needed to support a fully independent, diverse sector has been diminishing.

Changes in that 'funding eco-system' are largely invisible to the public. However, the Panel concluded in our 2013 report that these are starting to have a profound effect on the independence of the sector and said that it was time for everyone who cares about the future of the sector to take note and consider how it could be best protected.

As noted in Section 4, organisations working with certain beneficiaries are being particularly badly hit and the ability of the sector to deliver specialist services tailored to the needs of a very diverse range of often vulnerable people is being reduced.

For example, the Institute for Government found in its research on commissioning public services that providers who offered cost-effective services for users with multiple needs were often overlooked by commissioners who focused on a narrow set of departmental objectives, rather than overall outcomes and value for government. The same report also noted that commissioning organisations do not do enough to encourage coordination between providers of related services, as in health and social care, and too often fail to encourage the development of innovative services that meet the needs of multiple users. Service providers too overlooked the needs of vulnerable people. In the case of the Work Programme, 'easy-to-help' claimants have more regular and intensive contact with advisers, while those with multiple barriers who could be helped cost-effectively into work are often parked with little or no likelihood of referral to specialist support'.⁷³

Indeed, some commentators are noting a strong bias toward public contracts with large, sometimes multi-national private companies, whilst the future of local, specialist organisations that have in the past received statutory funding looks increasingly at risk; and they are calling for a new model of public sector reform which draws on the different strengths of each sector.⁷⁴

Some see this as part of an inevitable evolution resulting from a dramatic move away from a post-war model of increase in state spending. For example, in his evidence to the Panel, the deputy Chief Executive at Locality, Steve Clare, saw a major restructuring of the voluntary and community sector, together with a blurring of lines between sector, as a broader picture against which organisations could either adapt or fail, with successful organisations adopting a more commercial and collaborative approach. In his view, these changes would not impact on the independence of the sector necessarily but did require a new attitude toward it. That said, he did feel that the view that large was good should be challenged, believing that many services could be better provided at community level.

Indeed, when we visited the South West, the Panel heard that many small voluntary organisations see large charities as one of their greatest threats as they were tendering for contracts at unrealistic prices that would undercut them and which threaten their survival.

Problems with contracting, including payment by results

Commissioning and procurement practices are not in themselves a threat to independence although, as noted earlier, they do reinforce a tendency to treat private and voluntary organisations interchangeably because of competition rules, leading to a disregard for important differences such as independence of voice.

However, poorly designed practices are a significant part of the problem and can lead to threats to independence of action, purpose and voice.

Payment by results

Payment by results contracts are increasingly being used by the public sector and the Panel has been closely monitoring their impact on independence. The Work Programme has been criticised heavily, including by the Panel – with more evidence emerging over this year of the negative impact on clients with specialist needs and voluntary and community organisations that tend to support them, as set out in more detail below.

The Work Programme

The main issues are:

- **Insufficient specialist support, for example for homeless people and people with mental health problems, provided largely by the voluntary sector.** According to DWP's own evaluation: 'Few Tier Two subcontractors had guaranteed referral volumes and these providers commonly reported receiving few, if any, referrals. As a result, many Tier Two providers received very little income from the Work Programme. In some cases, lower than expected referrals had led to staff being laid off or kept on zero hours contracts. Many of these organisations were from the voluntary and community sector.'⁷⁵
- **Cash flow problems for the voluntary sector.** Prime contractors were meant to bear the cash flow risk of payment by results but DWP's evaluation also noted 'The risk in outcome based commissioning is therefore, to a large extent, being passed down and shared by Tier One subcontractors.' These include many voluntary organisations badly placed to take that risk.⁷⁶
- **Pricing not reflecting the cost of specialist needs.** DWP's own evaluation said: 'There was little evidence that primes had used differential pricing in live delivery, to target different types of support to different payment groups.'⁷⁷

Box continues

- **Poor regulation.** According to the Commons Select Committee on Work and Pensions: 'The welfare-to-work sector lacks effective regulation. There remains a suspicion that many smaller, specialist organisations with experience of supporting jobseekers with the severest barriers, were used by the primes as 'bid candy' – to make their bids more appealing to DWP—and then subsequently not used in service delivery. A number of subcontractors also complain that primes have imposed unfair financial terms.'⁷⁸

Part of the problem was the existence of entry barriers for smaller, mostly voluntary providers to becoming prime contractors arising from minimum turnover requirements and the need to have significant working capital. This was compounded by DWP's light touch regulatory regime for the relationship of prime and sub-contractors in the form of the Merlin Standard. In practice, this meant that the DWP could not intervene in commercial decisions and had limited influence on the terms of the relationship between prime contractors and the largely voluntary sector sub-contractors. It also advised sub-contractors to first raise complaints directly with their prime and resolve any disputes through dialogue. But research revealed that the 'gagging clauses' many sub-contractors were subject to – which the Panel reported on in our last report - effectively constrained their ability to raise complaints. No dispute had been brought to the Merlin mediation service.⁷⁹

Contracts constrained both freedom of voice and freedom of action.

In June, Kirsty Palmer, the Chief Executive of Volunteer Centre in Kensington and Chelsea, reported to us how her organisation had withdrawn from the Work Programme altogether because their concerns had not been listened to by the prime contractor. The key issue was not financial viability but that the contract prevented them from working with the clients in the way they thought worked best – constraining independence of action. Whilst contractually bound, they had felt constrained by the gagging clauses from voicing their concerns but they now felt free to do so.

The Payment by Results model is being extended to the Probation Services and there are some signs of lessons being learnt from the Work Programme as a result of input into the design by practitioners. However, there remain concerns that the size of prime contracts will largely exclude the voluntary sector, despite some adjustments. Although the payment by results element is significantly smaller than under the Work Programme, many commentators believe it will still create cash flow problems and social finance will not be able to fill the gap. ACEVO has, however, launched a programme that provides access to £150,000 of support for charities hoping to win contracts. Also, there are still questions over whether there is enough protection for smaller charities in contracts and subcontracts.⁸⁰

Ways of promoting local, diverse services

Commissioning practices that favour economies of scale and price without taking into account quality and social value do push the voluntary sector toward homogeneity and large ‘Tesco-style’ providers (as some people have styled them) but this isn’t inevitable.

We have heard of other practices that can promote local, diverse provision better matched to a diversity of needs.

In his evidence to the Panel, Jake Ferguson, Chief Executive of Hackney Council for Voluntary Services (CVS), emphasised the importance of diverse provision in a borough where 100 languages are spoken. Yet the council wanted to let a single contract for luncheon clubs, where 20 providers existed. In many areas of the country, a single contract would have been let but the CVS was able to argue successfully for a ‘special purpose vehicle,’ based on a model in Manchester. This involved establishing an individual body with a steering group, which had 37 member organisations and diverse ways of delivering services.

During a visit to Leeds, the Panel heard of another example of commissioning that worked well for smaller organisations. Voluntary Action Rotherham received NHS funding to reduce the number of emergency admissions to hospitals, administering a budget that was used to pay a range of small voluntary organisations by contract or on a call off basis. This reduced bureaucracy and played to the strengths of smaller organisations. This model could be adapted to different circumstances: for example, large charities, not just infrastructure bodies, could run similar funds or bid for contracts. It was recognised that some large national charities did have initiatives to support smaller charities and this model could also be developed.

In June, the Panel heard from Mike Richardson, Chief Executive of Cornwall Voluntary Sector Forum, that national contracting and the creation of prime contractors was a problem beyond the Work Programme, but in Cornwall they had tried to establish a dialogue and set up a Voluntary and Community Sector Commissioning Board across a wide range of local public bodies, including health and the police. This was looking not just at how services should be procured but also at what the local needs were and what would work best.

Positive developments by the Government

In his response to us, the Minister for Civil Society highlighted the importance of government initiatives designed to increase access for the voluntary sector to government contracts.

The Commissioning Academy has developed a masterclass programme to strengthen the commercial skills of third sector organisations bidding for public service delivery contracts. Under the programme, which is being developed in partnership with the voluntary sector, the private sector will provide pro-bono commercial expertise and share its experiences in tendering for large government contracts.

The Public Services (Social Value) Act 2012, effective from January 2013, requires public bodies to demonstrate how the services they commission might improve the economic, social and environmental well-being of the area. The guidance issued by the Cabinet Office on the Act stresses that the voluntary sector should be included in discussions around service design for social value.

Commissioners are required to factor social value in at the pre-procurement phase, the aim being to embed social value in the design of the service from the outset. However, there is no statutory obligation for a commissioning authority to engage the voluntary sector and the Act only applies to larger public service contracts.

The voluntary and community sector response to the legislation has been mixed. In reply to a survey carried out by Compact Voice, just under two thirds (64 per cent) of voluntary and community sector respondents felt that the Act will improve chances for the sector to win contracts from public bodies, whilst just over a third (36 per cent) disagreed.

Almost 90 per cent of respondents agreed that ‘despite the Social Value Act, public bodies will still focus on lower cost rather than social value when funding.’⁸¹

Example of the use of social value in practice: Birmingham City Council

In April 2013, Birmingham City Council approved its Social Value Policy, aimed at maximising the social and economic value it derives from its £1 billion a year procurement spend. The policy sets out the principles that the council will adhere to and establishes the framework for its continuing development of social value-based procurement. It defines social value as ‘improvement of wellbeing’ and provides the following examples of social value policies: create local employment, buy locally when commissioning and contracting, act as partners in communities especially in areas of greatest need, be a good employer and adopt the Birmingham Living Wage, commitment to protecting the environment, and ethical procurement. The Policy goes beyond the requirements of the Act in that social value will be applied to contracts of all sizes and to goods and services.

Approaches to securing additional social value outcomes in public purchasing are also being tested at the small, community-led end of the spectrum too. For example, a recent Adults and Communities contract for the provision of community-based luncheon club services for older residents was let to the voluntary sector development body, the Digbeth Trust. Under the terms of this contract, the Digbeth Trust is supporting a consortium of predominantly small church-based luncheon clubs which would otherwise probably be too small to bid for local authority contracts. As well as providing centralised contract management to the consortium, the Digbeth Trust is also providing members with capacity-building to help improve their long-term sustainability and working with the group to identify other health and wellbeing outcomes their services can help achieve.⁸²

Recommendations

Again, the Panel believes there is a need to develop a new consensus about the distinctive contribution of different kinds of voluntary organisations in providing local services; and about how that contribution can be best supported financially in a way that preserves all three aspects of independence. This needs to be developed through an honest debate within the sector, recognising potentially competing interests between larger and smaller organisations. Economies of scale can bring efficiency, especially where services benefit from being standardised and small is not always good. However, specialist and tailored services can also offer good value for money, particularly where complex social problems are involved and the strengths of wider social networks can be harnessed.

Financial models based on those we have explored in this section should be considered, which allow umbrella contracts with facilitating organisations to support small voluntary organisations meeting diverse needs with low levels of bureaucracy. It should also be recognised that there are already other, non-competitive models for funding voluntary sector delivery of public services, for example, through housing associations.

The Social Value Act is unlikely to have much impact without a deeper understanding of how social value is generated and the distinctive role of the voluntary sector in doing so. However, operation of the Public Services (Social Value Act) 2012 should be closely monitored to ensure that it results in quality and other social value being considered alongside price in determining value.

Stronger safeguards should be put in place to protect sub-contractors in consortia delivering public services in the Work Programme and elsewhere.

Ineffective safeguards and regulation

Our verdict: some changes, but overall our concerns remain the same as last year

In our last report, the Panel noted that there were high levels of non-compliance with the Compact nationally and locally and with Best Value Guidance; and we called for:

- The Cabinet Office to produce an annual report on national compliance with the Compact to mirror the local review by Compact Voice.
- Stronger leadership nationally and locally and local authority resources to back up Compacts.
- The minimum 12-week period for consultation to be reinstated.
- Sufficient funding to be made available to the Charity Commission to promote independence.
- A clear separation between funders and regulators of exempt charities.

In his response, Nick Hurd said that the Compact had been included in departmental business plans.

The Compact

The Panel continues to be concerned that the Compact is not working effectively. There are poor levels of compliance and ineffective monitoring, although some potential improvements in national monitoring have been announced in 2013.

The Compact is respected internationally, long established and endorsed by the current Government at the highest levels but the Panel heard from Compact Voice that the Compact had still not been mainstreamed into government practice, despite the Procurement Pledge, Best Value guidance and now the Social Value Act.

Indeed, Compact Voice pointed out to the Panel that there was a worrying lack of transparency of government departments on reporting on relationships with the voluntary sector. They said that they would be looking closely at the annual reports on business plans, and the follow up on last year's NAO report, which criticised central government on its monitoring and compliance. The appointment of new senior responsible officers in each department might improve accountability, Compact Voice believed.

In August 2013, Compact Voice and the Office for Civil Society also published a joint action plan which sets out clear activities and obligations for both to strengthen use of the Compact across government departments. Key commitments include: addressing instances where Compact principles are not upheld and encouraging greater transparency around government departments' engagement and spend. This will involve considering issues raised by Compact Voice into funding the third sector; providing Compact-specific training to relevant governmental staff; ensuring that relevant policy developments reflect Compact principles; and promoting the Compact principles in government commissioning and procurement.⁸³

However, the Compact remains relatively easy to sidestep, perhaps because it lacks consistent and high level commitment across Government and effective monitoring. Clearly there needs to be a strong, effective champion of the Compact but it is unclear whether the Cabinet Office has the commitment itself for the role. Prevention would also be better than cure.

Moreover, it is uncertain whether the Cabinet Office has the resources to carry out its action plan, given the widespread non-compliance reported by the NAO in 2012. Certainly, the new commitment falls short of the comprehensive annual report on Government activity that Compact Voice and the Panel called for last year.

In 2012, Compact Voice reported worryingly low levels of compliance locally. The results from their 2013 annual local survey show that around half of both voluntary sector (47 per cent) and local authority (54 per cent) respondents felt that there had been no real change over the past 12 months. However 35 per cent of voluntary sector respondents felt that respect for independence declined over the period compared to just five per cent of local authority respondents. Conversely, 42 per cent of local authority respondents reported an improvement against 18 per cent of those from the voluntary sector.⁸⁴

In 2013, ACEVO, NAVCA and others wrote to local authorities and Monitor warning them not to break Compact and Best Value guidance.

NAVCA also raised issues with the Panel about the operation of the Compact and the NHS. Changes to health service structures have created a hiatus in Compact arrangements, they said. NAVCA said they looked forward to an increasing number of local bodies like Clinical Commissioning Groups, as well as Police and Crime Commissioners and other public authorities, signing up to their local Compact.

The Panel concludes that adequate safeguards are not in place and that non-compliance is now so widespread that a fresh approach may be necessary.

Charity Commission

Independence is fundamental to charitable status.

The first statutory objective of the Charity Commission is to increase public trust and confidence in charities and safeguarding the independence of the sector is central to this. A key part of the role of the Charity Commission is to ensure that charities carry out their charitable purposes for the public benefit, serving neither private nor governmental or political interests. The Panel think this involves not just regulatory activity but the linked task of promoting proper understanding of what this means in practice and monitoring practice nationally. Advisory and policy work of this kind is integral to effective regulation as it helps to prevent abuse and promote trust and confidence in the sector.

Following high profile cases of abuse of charitable status, the Charity Commission has been heavily attacked by the NAO for not regulating charities effectively. However, the NAO also notes that the Commission's annual budget fell 40 per cent in real terms between 2007-08 and 2013-14 to £22.7 million, although the number of main registered charities has remained fairly constant at around 160,000. In response to budget cuts, the NAO reports that the Commission has reviewed how it works and successfully reduced demand for its services, but it also expresses concerns that it has not identified what budget it would need to regulate effectively.⁸⁵ The pressure for the Commission to focus entirely on regulatory work is now intense – and is even coming from some in the sector itself.⁸⁶ The Chair of the Public Accounts Committee, Margaret Hodge, has gone so far as suggesting its role should be transferred to HMRC.⁸⁷

This comes on the back of Lord Hodgson's review in 2012, which questioned whether the Commission could continue with its current advisory role, and the Public Administration Select Committee report on the Charity Act 2006, which concluded that its role should be narrowed to focus on regulation.

Reduced funds certainly affect the Commission's ability to promote and advise as well as regulate on independence – but that role remains important.

In its written evidence to the Panel, the Barrow Cadbury Trust also commented on 'a sense among some charities that the Charity Commission has been passive in the face of attacks on charities acting perfectly legitimately within their purposes (such as the RSPCA, which faced considerable hostility for its decision to pursue hunt prosecutions), where it might be reasonable to expect a strong regulator to defend charities acting within their remit.'

New Government appointments to the Charity Commission Board have also been criticised because there is a lack of the sectoral knowledge, which may undermine the effectiveness of the Commission. There are also perceptions that appointments are increasingly being driven by party political considerations – a trend that started under the last Government over Dame Suzi Leather's appointment.

Recommendations

Effective regulation is regulation that establishes a strong culture of compliance rather than simply stepping in when things go wrong. This is particularly the case in relation to upholding independence, the loss of which can be hard to pinpoint.

The Panel believes that the spirit and letter of the Compact should be reflected in the actions taken by central and local government and that should start from the top with strong leadership. Action should be taken to step in when things go wrong. The Compact should be underpinned by more robust monitoring and an annual report of national compliance. Similar agreements are needed across the public sector with new Compacts put in place where they are currently absent.

Action is also needed to 'Compact proof' new policies, processes and consultations to make sure they are compliant from the outset. An analogy is the way in which previous Governments introduced impact assessments across Government for measures that might affect small businesses.

The Panel appreciates that resources are tightly constrained but believes that the Charity Commission should be resourced to allow it to monitor and maintain the independence of charities through proactive as well as reactive work. Anything less would be a false economy in the long run, as lack of trust in independence will have a deeply corrosive effect on the sector. Care must also be taken to ensure that the Commission remains truly independent of political influence.

Infrastructure bodies need to play a more active part in defending the role of the Commission in protecting and promoting the independence of charities.

Greater protection for independent governance

Our verdict: our concerns are the same as last year

Last year, the Panel recommended that the Charity Commission should issue guidance similar to that in Scotland which prohibits Ministerial direction or control of a charity. Nick Hurd responded by saying that charities must by law be independent and that where this was an issue it was a matter for the Charity Commission, 'which has broad intervention and protection powers.'

Since then, as noted above, the Charity Commission's funding has been cut further in the 2015-16 Spending Review and its role is likely to be narrowed down.

The Minister for Civil Society's assurances disregard the fact that some charities very close to Government are not regulated by the Charity Commission. This issue was again raised with the Panel by Sam Younger when he gave evidence in October, as well as by an NAO Landscape review on charities.⁸⁸ The Panel remains concerned that inappropriate controls are being exercised.

One example which has come to the Panel's attention is that of museums, which are registered as charities (though regulated by the Department for Culture, Media and Sport (DCMS)) but they are also classified as non-departmental public bodies (NDPBs) because the state has power to appoint Board members and provides a substantial amount of funding. DCMS has been applying the same tight controls as on other NDPBs, for example freezing pay levels and recruitment, and received protests from museums themselves.⁸⁹ It was announced in June that some relaxation of these rules is to be piloted.⁹⁰

The Government is currently consulting on the arrangements for setting up part of English Heritage as a charity. The Government's consultation states that the trustees of the new charity will be appointed by the part of the body that will remain within the public sector (which in turn is accountable to Government and whose Commissioners are appointed by it), at least until it stops receiving grant aid from the Government, and this remaining financial support will also be subject to conditions which could, potentially, restrict independence.⁹¹

Since our last report, we have looked further into the safeguards in operation in Scotland, as this is a potential model.

Charity legislation there specifically provides that an organisation fails the charity test if 'its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities'⁹² in other words be free from control by Scottish or UK central government. The Office for Scottish Charity Regulator (OSCR) explains the principles behind this: 'When it is unclear who is in charge of a charity, serious governance problems can develop and harm the charity's activities and reputation.' Moreover, it says 'Charities and charity trustees should behave in a way that demonstrates they are acting independently to protect the public perception of their charity.' The OSCR also has advice for government departments: 'In considering relationships with charities (they) should beware of seeking constitutional and operating provisions which may jeopardise their charitable status.'⁹³

On the face of it, this would be a significant step forward if introduced in England and Wales and would prevent organisations being called charities where their constitution builds in rights for a Minister to direct or control it, therefore preventing Ministers from setting up charities that they control. However, there are some exceptions including: Scottish 'National Collections' (national museums, art galleries) the Royal Botanic Garden and incorporated Further Education Colleges.

Moreover, the Scottish legislation would have no impact in situations where control is not written into a constitution but is being exerted on a de facto basis in less direct ways. So, for example, it would not prevent the situations that have been drawn to our attention where a local authority exerts pressure to have a representative on the board of a community organisation, or where access to funding has the effect of compromising the independence of a body.⁹⁴

Nonetheless, the Panel remains of the view that consistent guidance should be in place across the UK. The Government should also stop treating charities that it predominantly funds like mere arms of the state.

6 Conclusion

We opened this report by saying that the independence of the voluntary sector is being undervalued and that this risks undermining the very qualities that are so valued in it.

Individual Boards of Trustees have a vital role in upholding the independence of their organisations. One simple step would be for Boards to use the Barometer of Independence included in this report as a self-diagnostic tool to consider if and where any challenges might lie.

Voluntary organisations might also do more to come together in infrastructure bodies to assert themselves and surface and resolve issues. Communities of interest around specific issues can also help build a stronger voice. The Commission on Civil Society and Democratic Engagement, which has crystalised the views of a very diverse sector on the Lobbying Bill, is one role model.

However, there are also wider forces that are difficult for any single organisation to influence. Some of these could be remedied by others relatively easily, if there was a will to do so.

In this report we have called on the Government to:

- Engage fully with the sector when the impact of the new provisions in the Lobbying Bill are reviewed after the election.
- Safeguard voluntary organisations' ability to take judicial reviews.
- Outlaw gagging clauses.
- Restore the 12-week consultation period.
- Ensure that funding and commissioning processes support independence and are not biased against small, specialist organisations.
- Compact proof new policies.
- Ensure that the Charity Commission is equipped to carry out a strategic role.
- Introduce regulations that would prevent government interference in charity governance.

Leadership is needed too, starting with the Prime Minister, to help demonstrate that independence is truly valued and rebuild trust in the Government's good intentions toward the voluntary sector.

However, the Panel is not optimistic that these steps will be taken in 2014: the evidence suggests that the independence of the sector is being undervalued by central government and others. The very distinctiveness of the sector is increasingly being obscured – with public, private and voluntary sectors being regarded as interchangeable delivery agents of the state. Increasingly the independent voice of the sector is under challenge, even where it receives no funding from the state.

That is why we are calling for a fundamental debate that develops greater understanding about what is distinctive and valuable about an independent voluntary sector. This will make it clear why it is in everyone's interests to create a 'new settlement' between the voluntary sector and key partners, particularly the state.

This call for a debate about the role of the sector is not new. One reason why the challenge has not been taken up may be the diversity of the sector. Another may be that views within it about that role may vary, and in some cases interests will be in conflict. There are also many stakeholders who need to be involved. Ways need to be found to bring in all these interests and achieve a consensus as far as possible.

It is also a complex task. It must take into account the changing nature of society, the state and the sector, as well as its historical role. Pressure points also need to be identified, in terms of activities under threat, particular challenges and potential conflicts with other stakeholders.

Over the course of 2014, the Panel therefore intends to explore with others what this exercise needs to cover, who needs to be involved and how it will be funded and taken forward.

Subject to funding, we also think it would be valuable to kick-start the debate by asking practitioners and others to 'get ahead of the curve' and consider in a collection of essays and follow up discussion what the future might hold – both the opportunities and challenges – in the context of a potentially smaller state.

2013 was a year in which we saw many threats to independence but also the sector working together to form a completely new coalition to fight the Lobbying Bill. We hope to draw on this energy to ensure that independence is truly valued in 2014 and beyond.

References

- ¹*Non-Party Campaigning Ahead of Elections: Consultation and recommendations relating to Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Bill*, Commission on Civil Society and Democratic Engagement, Report 2, December 2013
- ²*The Compact*, Compact Voice and the Cabinet Office, December 2010
- ³For example: *14th Quarterly Confidence Survey*, Involve Yorkshire and Humber, May 2013, see section 1: Threats to independence of voice
- ⁴*All in a Good Cause*, Panorama, 10 December 2013
- ⁵*NCVO Civil Society Almanac*, 2013
- ⁶For example: *Can the Work Programme work for all user groups?*, First Report of Session 2013-14, House of Commons Select Committee on Work and Pensions, May 2013
- ⁷*Making it easier for civil society to work with the state: progress update*, Cabinet Office, December 2012
- ⁸*The Regulatory Effectiveness of the Charity Commission*, NAO, December 2013
- ⁹For example, *The Third Sector* editorial, 10 December 2013
- ¹⁰*We could scrap the Charity Commission, says Labour's Margaret Hodge*, David Ainsworth, Third Sector online, 3 December 2013
- ¹¹*Revolutionising Philanthropy – the role of the regulator*, William Shawcross, speech to the Lord Mayor's Charity Leadership Programme, 13 November 2013
- ¹²*Trusted and Independent: giving charity back to charities – review of the Charities Act 2006*, Lord Hodgson, Cabinet Office, 2006
- ¹³David Cameron, speech at the Lord Mayor's Banquet, 11 November 2013
- ¹⁴*Audit of Political Engagement 10*, The 2013 Report, Hansard Society, May 2013
- ¹⁵*Ibid*
- ¹⁶<http://www.conservativehome.com/thetorydiary/2013/09/exclusive-cchq-declares-conservative-party-membership-to-be-134000.html>
- ¹⁷*Membership of UK political parties*, House of Commons Library, 2012
- ¹⁸*Charity Awareness Monitor*, NfPSynergy, May 2013
- ¹⁹<http://www.38degrees.org.uk/pages/about38degrees>
- ²⁰David Cameron, speech at the Lord Mayor's Banquet, 14 November 2013
- ²¹*Counting the Cuts, The impact of spending cuts on the UK voluntary and community sector – 2013 update*, Neena Bhati, Joe Heywood, NCVO, May 2013
- ²²*UK Giving 2012*, NCVO, CAF, November 2012
- ²³*How do we explain the growth in the sector's income?* Cathy Pharoah, Third Sector, 19 November 2013
- ²⁴*Counting the Cuts, The impact of spending cuts on the UK voluntary and community sector – 2013 update*, Neena Bhati, Joe Heywood, NCVO, May 2013
- ²⁵*Something's Got to Give: The State of Britain's Voluntary Sector*, Centre for Social Justice, December 2013
- ²⁶*Financial sustainability of local authorities*, NAO, January 2013
- ²⁷*Surviving or Thriving: Tracking the impact of spending cuts on the North East's third sector, Newcastle Study*, VONNE, Newcastle CVS and partners, April 2013
- ²⁸*The reality cheque: Will it cash, or bounce?* Ferg Slade, Adarsh Bhogal, Nottingham Community and Voluntary Service, July 2013
- ²⁹*Greater Manchester State of the Voluntary Sector 2013: A report on the social and economic impact*, Sheffield Hallam University, Centre for Regional Economic and Social Research, 2013

- ³⁰*Health of Birmingham's Third Sector, A report from Overview & Scrutiny, Birmingham City Council, 2013*
- ³¹*All in a Good Cause, Panorama, 10 December 2013*
- ³²*NCVO Civil Society Almanac, 2013*
- ³³The NCVO Almanac identifies 25 per cent, looking at charities. The *National Survey of Charities and Social Enterprises* reported that around a third of respondents said they delivered public services.
- ³⁴*NCVO Civil Society Almanac, 2012*
- ³⁵*2010 National Survey of Charities and Social Enterprises, Cabinet Office, 2011*
- ³⁶*Voluntary sector organisations working at the neighbourhood level in England: patterns by local area deprivation, Dr David Clifford, Third Sector Research Centre, August 2011*
- ³⁷*Regulating charities: a landscape review, briefing for the House of Commons Public Administration Select Committee, National Audit Office, 2012*
- ³⁸Ibid
- ³⁹*50 ways to save: examples of sensible savings in local government, Department for Communities and Local Government, December 2012*
- ⁴⁰*Iain Duncan Smith accused of 'losing his cool' in housing benefit outburst, Randeep Ramesh, social affairs editor, The Guardian, 14 October 2011*
- ⁴¹*Report by the Joint Committee on Human Rights, 13 December 2013*
- ⁴²*An ounce of prevention is worth a pound of cuts, findings from a GMCVO survey on the impact of spending cuts on communities across Greater Manchester, GMCVO, 2012*
- ⁴³*Judicial Review: Proposals for Further Reform, Public Law Project, October 2013*
- ⁴⁴*Judicial Review: proposals for further reform, Ministry of Justice, September 2013*
- ⁴⁵Chris Grayling, Justice Secretary, in the Daily Mail, 6 September 2013
- ⁴⁶*Non-Party Campaigning ahead of elections: Consultation and Recommendations relating to Part 2 of the Transparency in Lobbying, Non-Party Campaigning, and Trade Union Administration Bill, Commission on Civil Society and Democratic Engagement, October 2013*
- ⁴⁷*Cabinet Office says lobbying law will not restrict charity campaigning, Third Sector Online, 20 August 2013*
- ⁴⁸*Non-Party Campaigning Ahead of Elections: Consultation and recommendations relating to Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Bill, Commission on Civil Society and Democratic Engagement, Report 2, December 2013*
- ⁴⁹*Princess Diana fund cynically hijacked by the Left: How money is being diverted to pro-immigration campaign fund, Daily Mail, 13 April 2013*
- ⁵⁰*Revealed: The charity that uses taxpayer cash to campaign for migrant benefits and protect a foreign rapist, Jack Doyle, Daily Mail, 1 June 2013*
- ⁵¹*Charities plan Autumn offensive against Tory plans to reform Human Rights Act, Christopher Hope, Daily Telegraph, 10 August 2013*
- ⁵²*Politicising charity, The Telegraph, 5 June 2013*
- ⁵³*Archbishop of Canterbury Justin Welby snubs RSPCA by refusing role as patron, The Times, 17 August 2013*
- ⁵⁴*Push too hard and we lose our faith in charity, Libby Purves, The Times, 19 August, 2013*
- ⁵⁵Quoted in *Lansley defends lobbying bill, but suggests concessions, Vibeka Mair, Civil Society, 4 September 2013*
- ⁵⁶*Push too hard and we lose our faith in charity, Libby Purves, The Times, 19 August, 2013*
- ⁵⁷*The role of the Charity Commission and 'public benefit': Post-legislative scrutiny of the Charities Act 2006: Charity Commission Response to the Committee's Third Report of Session 2013-14, House of Commons Public Administration Select Committee, December 2013*
- ⁵⁸*CC9: Speaking Out: Guidance on Campaigning and Political Activity by Charities, Charity Commission, 2008*
- ⁵⁹*Interview Gwythian Prins, Third Sector, 30 September 2013*

- ⁶⁰CC4: *What Makes a Charity*, Charity Commission, September 2013
- ⁶¹*New Charity Commission Guidance 'more restrictive' than before on campaigning*, David Ainsworth, Third Sector Online, 18 September 2013
- ⁶²Today Programme, BBC Radio 4, 22 January 2013
- ⁶³*Charities must campaign strongly against unjust welfare changes*, Third Sector, 20 March 2013
- ⁶⁴Letter to The Telegraph, 8 June 2013
- ⁶⁵*Charity sector leaders react to budget statement*, The Guardian, 20 March 2013
- ⁶⁶Mind, Crisis and Drugscope, as reported in *Work Programme 'not helping the most disadvantaged unemployed people'*, Third Sector Online, 22 May 2013
- ⁶⁷*14th Quarterly Confidence Survey*, Involve Yorkshire and Humber, May 2013
- ⁶⁸*The reality cheque: Will it cash or will it bounce?* Ferg Slade, Adaresh Bhogal. Nottingham Community and Voluntary Service, 2013
- ⁶⁹*Sustaining services, ensuring fairness: A consultation on migrant access and their financial contribution to NHS provision in England*, Department of Health, 3 July 2013
- ⁷⁰<http://www.compactvoice.org.uk/news/2013/07/17/department-health-respond-our-query-about-short-consultation-times>
- ⁷¹*Etherington criticises ministers' 'blatant indifference' to the voluntary sector*, Andy Ricketts, Third Sector Online, 18 June 2013
- ⁷²William Shawcross, speech to the Lord Mayor's Charity Leadership Programme, 13 November 2013
- ⁷³*Making public service markets work, Professionalising government's approach to commissioning and market stewardship*, Tom Gash, Nehal Panchamia, Sam Sims, Louisa Hotson, Institute for Government, 2013
- ⁷⁴*The Big Society Audit 2013*, Civil Exchange, December 2013
- ⁷⁵*Work Programme Evaluation: Procurement, supply chains and implementation of the commissioning model*, Pippa Lane, Rowan Foster, Laura Gardiner, Lorraine Lanceley, Ann Purvis, CESI on behalf of DWP, 2013
- ⁷⁶Ibid
- ⁷⁷Ibid
- ⁷⁸*Can the Work Programme work for all user groups?*, First Report of Session 2013-14, House of Commons Select Committee on Work and Pensions, May 2013
- ⁷⁹*Making public service markets work, Professionalising government's approach to commissioning and market stewardship*, Institute for Government, Tom Gash, Nehal Panchamia, Sam Sims, Louisa Hotson, 2013
- ⁸⁰*Analysis: 'A step in the right direction' on probation service contracts*, Third Sector Online, 25 June 2013
- ⁸¹*Local Compact survey results 2013: briefing 3 – Social value*, Compact Voice, 2013
- ⁸²*Social Enterprise and the Public Services (Social Value) Act 2012: A policy briefing for social enterprises and third sector organisations*, Birmingham & Solihull Social Economy Consortium, 2013
- ⁸³*Joint Action Plan between Compact Voice and OCS: 2013-14*, Compact Voice, Cabinet Office, August 2013
- ⁸⁴*Local Compact Survey results 2013: briefing 2 – independence*, Compact Voice, 2013
- ⁸⁵*The Regulatory Effectiveness of the Charity Commission*, NAO, December 2013
- ⁸⁶For example, *The Third Sector* editorial, 10 December 2013
- ⁸⁷*We could scrap the Charity Commission, says Labour's Margaret Hodge*, David Ainsworth, Third Sector online, 3 December 2013
- ⁸⁸*Regulating charities: a landscape review*, briefing for the House of Commons Public Administration Select Committee, National Audit Office, 2012
- ⁸⁹*Heritage charities complain of government interference*, David Ainsworth, Third Sector Online, 2 June 2011
- ⁹⁰*Charitable museums to be given more power to spend reserves*, David Ainsworth, Third Sector Online, 1 July 2013
- ⁹¹*English Heritage New Model: Consultation*, Department for Culture, Media & Sport, December 2013

⁹²Section 7 (4)(b) of the Charities and Trustee Investment (Scotland) Act 2005

⁹³*Who's In Charge: Control and Independence in Scottish Charities*, OSCR, 2011

⁹⁴*Final report and recommendations of NCVO's independent review of the Charities Act 2006*, NCVO Charity Law Review Advisory Group, 2012



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