INDEPENDENCE PANEL

Panel on the Independence of the Voluntary Sector

INDEPENDENCE UNDER THREAT: THE VOLUNTARY SECTOR IN 2013

The Panel's second annual assessment

Initiated and funded by

The Baring Foundation

Foreword

This is the second of four annual assessments of the state of independence that the Panel expects to make over the five years of its work.

We have gathered evidence from a wide range of organisations and examined many sources over the last year, as well as drawing on our own direct knowledge and expertise. I would like to thank everyone who engaged with us, particularly those who participated in our two evidence gathering sessions.

We conclude that the sector as we know it is at risk because its necessary independence is under threat, and that that threat is greatest for organisations working with disadvantaged people. This should concern everyone who values the role of the voluntary sector in our society.

Voluntary organisations enjoy such widespread support because they provide opportunities for intervention and action which are independent and distinctive. This is not just through the personalised help they give, or the way in which they find new approaches and solutions to longstanding problems. It is also because they can speak forcefully and without fear on behalf of unpopular causes and people. This is especially important when engagement in mainstream politics is declining. These independent qualities help make charities and other voluntary bodies a lifeline for those facing crises in their lives, and who sometimes have no other forms of support.

We know the Government is developing new proposals to support the voluntary sector, for example through social finance. But the evidence is that it is not doing enough to recognise or safeguard the sector's independence. It is particularly surprising to see direct attacks by Government and others on the freedom of expression of voluntary bodies working with the state. Self-censorship by voluntary bodies is also a problem because some fear losing vital and increasingly scarce state funding if they challenge the status quo. There is widespread non-compliance by central and local government with measures to protect independence.

It's time to decide and take action on what is necessary to maintain and support the voluntary sector in today's world and sustain a diverse and tolerant society. Without this, we may see the voice of the vulnerable and marginalised being silenced, democracy being eroded and society impoverished.

Sir Roger Singleton CBE
Chair of the Panel on the Independence of the Voluntary Sector

January 2013

About the Panel

Chair

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Former Chief Executive of Barnado's, the National Council of Voluntary Child Care Organisations and the Independent Safeguarding Authority.

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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 second of four annual assessments.

Sir Roger Singleton took over from Dame Anne Owers as Chair in July 2012, after she took up appointment as Chair of the Independent Police Complaints Commission.

Civil Exchange, in partnership with DHA, provides the Panel's secretariat, which includes Peter Bass, Dominic Nutt (who took over from Jim Minton in 2012), David Casey and Jackie Humphreys.

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Executive summary

In this, the second of our annual assessments, we conclude that the independence of Britain's charities and voluntary sector is under threat and find that conditions have deteriorated over the last 12 months. With trust and engagement in national politics in decline,[1] and as the Government cuts back on the state, this independent role is ever more important - and voluntary bodies enjoy high levels of public support because of it.

Yet the right of some voluntary organisations to campaign and criticise the Government is now coming under direct challenge, self-censorship is increasingly common and lack of financial support and effective safeguards for independence threaten the future of parts of the voluntary sector.

The very identity of the sector is in question, as it is increasingly being treated as interchangeable with the public and private sectors. At particular risk is the support received from the voluntary sector by the marginalised, the voiceless and the impoverished, who may have no other advocate.

Independence matters

Independence is the key to what makes the voluntary sector, at its best, distinctive, trusted and successful - as innovators and risk takers, tackling social and other problems; as providers of advice, support and services, often to vulnerable people with nowhere else to turn; and as an independent voice speaking truth to power, representing unpopular causes and widening political debate.

The Barometer of Independence

Our *Barometer of Independence*, through which we define and assess independence, identifies three aspects - independence of purpose, voice and action - and the factors that support them. Respect for independence and the distinctive identify of the sector must underpin everything. Independent governance is crucial, focused on mission and independence and accountable to those served. Also important are supportive financial arrangements; effective, independent regulation and other safeguards; and genuine dialogue with partners and beneficiaries.

A difficult climate, tough choices

The context is extremely challenging, with many voluntary organisations facing exceptional cuts in public sector funding and falls in other income, including a 20 per cent real terms fall in donations over the last year,[2] making it especially hard to replace state funding.

The voluntary sector cannot be immune but many organisations working with disadvantaged groups are experiencing a dramatic rise in demand, as income plummets. The number of people receiving food parcels has doubled in a year, for example.[3] A recent survey of charities found that one in six believed they may face closure in 2013 and more than eight out of ten said they thought the charity sector was facing a crisis.[4] Some local authorities are working closely with the voluntary sector not just as funders but as allies but, across the country, tough choices about priorities, survival and independence are having to be made.

Some organisations lack the financial power and strong brand to defend themselves

Independence is easier to maintain with relative power. The sector has many relationships but the state - central and local government - is the most powerful influence, providing 38 per cent of income,[5] received by up to a third of the sector.[6] Government also sets the policy, tax and regulatory environment, affecting all voluntary bodies. We therefore focus in this report on the sector's relationship with the state, including indirectly, as it is increasingly encouraging the voluntary sector to sub-contract with private sector organisations. Some are multi-national corporations with considerable financial muscle and limited accountability.

Some voluntary organisations can draw on multiple sources of power to maintain their independence, including *brand power* derived from strong public support and *financial power* resulting from diversity of funding. They can focus on mission rather than money, walk away from restrictive or inappropriate partnerships and speak truth to power. We have heard from Barnardo's, for example, who told us how they are able to raise their powerful voice on behalf of unpopular causes, without fear or favour. Even so, challenges exist.

Other organisations may also be able to draw on their *knowledge power* derived from their understanding of those they serve and the services they need. But they are more at risk because they lack the funding and brand power to help them negotiate contractual terms which protect independence or to prevent partners from sometimes telling them what they should or should not do or say. Many organisations working with disadvantaged groups tend to identify funding from central or local government as most important to them,[7] lack access to donations and have low financial reserves. For example, we've heard from Clinks - which represents organisations working with offenders - who said that lack of financial strength did affect independence, with fear of loss of contracts being one factor that was leading to a general muting of the voice of that part of the sector.[8]

Small organisations are less likely to rely on state support. But those that do often lack financial and brand power to influence their environment. Community Matters and NAVCA have given us examples of how small organisations struggle with the bureaucracy and cost of commissioning, with tightly drawn contracts restricting their ability to meet the needs they were established to serve.[9]

Six key challenges

There are six major challenges to independence facing the sector, reflecting important factors in the *Barometer*:

1. Loss of the sector's distinctive identity - a key expression of its independence - fuelled by the blurring and crossing of sector boundaries. This is occurring as the voluntary sector provides more public services, sometimes as a subcontractor to the private sector; as the number of social enterprises increase; and the government spins outs more public functions to the voluntary sector. Cross-fertilisation can bring benefits. But it is becoming less clear what constitutes a charity or distinguishes it from the public or private sectors in working for the public good.

> The voluntary sector is increasingly being treated in funding, contracting and regulatory arrangements as interchangeable with the private or public sectors - potentially a mere arm of the state, a delivery agent or sub-contractor without an independent voice.

The powerful voluntary sector brand is being abused by some, with a quarter of smaller private sector organisations calling themselves 'social enterprises'. This term lacks legal definition and is open to different interpretations. The result is loss of respect for the voluntary sector's independence.

2. Ineffective safeguards and regulation.

> There are high levels of non- compliance with the Compact, in which the Government commits to upholding the sector's independence,[10] and with the new Best Value Guidance, designed to prevent local authorities passing on disproportionate cuts to voluntary organisations.

Equally worrying is the evident lack of commitment shown by the Government in ensuring compliance - even the Cabinet Office, which leads on the voluntary sector, is unable to give basic information about its funding and engagement with voluntary organisations.[11] The capacity of the Charity Commission to ensure the independence of charities is also under increasing threat due to spending cuts and the regulators for some exempt charities are not independent of funders.

3. Threats to independent governance by government over a period of time concern us, for example, the requirement to appoint local authority representatives on some community organisations' boards.

4. Statutory funding and contracting arrangements. Voluntary organisations need access to diverse funding to maintain their independence but, over many years, the type of financial support needed to support a fully independent, diverse sector has been diminishing - particularly for that part of the voluntary sector that lacks a popular enough brand to raise sufficient independent funding through donations but may nonetheless carry out an important social function. State funding has been shifting from grants to more targeted contract funding - and all funding is in very short supply, further reducing choice. Despite commitments by the Government to provide equal access to the voluntary sector, state commissioning and procurement practices tend to favour the private

sector and new payment by results contracts used in the Work Programme and elsewhere are forcing the voluntary sector to become a sub-contractor with even less influence over terms and power to resolve problems. The Government recently reported on how it is trying to make it easier for civil society to work with the state but recognises they are only at 'an early stage of a very challenging journey'.[12]

The survival of many smaller organisations working with disadvantaged groups is in doubt because of Government failure to tackle these barriers quickly enough or to provide for sufficient funding either from the state or elsewhere to support vital services to disadvantaged groups.

5. Threats to independence of voice. As many organisations fear for their survival, self-censorship is becoming a significant problem. For those that do speak out, there is a growing climate of opinion against the campaigning activities of charities.

The Government recently advised local authorities to stop funding what it calls 'fake charities' that 'lobby and call for more state regulation and more state funding'.[13] Voices are being directly silenced in the Work Programme through so-called 'gagging clauses' in contracts that prevent criticism of the Government and restrict the publication of their own data.

We do not know whether the trend toward fewer infrastructure bodies, and the withdrawal of government subsidies will reduce the voice of the less powerful parts of the sector, but there is certainly a risk. Mergers and closures of many voluntary bodies also reduce the number of voices speaking up for minority interests and groups - and our democracy is less vibrant as a result.

6. Lack of consultation and involvement by Government over funding and policy issues vital to the sector is also of concern and is crucial to effective policy and public services because of the knowledge of the voluntary sector. In 2012, 30 per cent of local authorities complied with the minimum 3 months notice of funding changes required by government guidance 'some of the time' or 'not at all'; and widespread non-compliance was reported locally and nationally with the other Compact requirement for 12 weeks consultation[14] - to which the Government responded by removing the notice period. Beyond the formalities, genuine dialogue with the voluntary sector to shape services and policies may exist behind the scenes but is not visibly apparent; for example, we were concerned by the failure of the Government to consult initially on the changes to the taxation of donations in the last Budget.

Our overall assessment of 2012

Assessment against our Barometer indicates deteriorating conditions compared to a year ago, with stormy weather ahead and independence of purpose, voice and action all under threat. Our judgement is based on conditions as they are now - but these will get worse over the coming 12 months as further cuts in public funding take effect.

> The situation is dangerous. When independence is lost by a significant number of organisations, trust in and public support for the whole sector may end up being eroded and even organisations with strong independence may feel the cold. Society will certainly feel the impact, with diverse voices becoming increasingly silent, narrowing political debate, and charities looking to their contract terms rather than their mission when vulnerable people turn up on their doorstep for support.

We are concerned that both the sector as a whole and the Government do not have independence in their sights as a priority. In discussions between Government and the voluntary sector, the focus is generally on money, not where an independent voluntary sector can best add value. The passing of the new Public Services (Social Value) Act 2012 could potentially lead to social value being given more weight in commissioning decisions and the Government is piloting a Commissioning Academy to improve practice. But the fact that the publication of a Procurement Pledge by the Government in 2012 did not mention the voluntary sector or the Compact until complaints were made is not a good sign.

Recommended changes in 2013

Over the next 12 months, we will be looking for:

- **A stronger sense of the unique identity of the sector** so that respect for its independence is increased. In his review of the Charities Act 2006,[15] Lord Hodgson called for a debate on what constitutes a charity. We think this debate must be led by the voluntary sector itself and should look not just at charities but the wider voluntary sector. The aim should be to identify and articulate what makes the sector distinctive and independent and build a consensus about what would best protect it. Calls to remove charitable status from charities that receive most of their funding from the state should be resisted, as mission not money is key, but it is vital that charities act like charities if they enjoy that status, including exercising their independent voice. Sector wide bodies should articulate the distinctive value of the voluntary sector in delivering public services and the importance of independence.
- **Improved safeguards and regulation.** We believe the Cabinet Office should produce an annual report on national compliance with the Compact to mirror the local review by Compact Voice. There should be stronger leadership nationally and locally and local authority resources to back up Compacts. The minimum 12 week period for consultation removed during 2012 should be reinstated. Sufficient funding must be available to the Charity Commission to promote independence; and there should be a clear separation between funders and regulators of exempt charities.

- **Greater protection for independent governance.** The Charity Commission should issue guidance like that in Scotland[16] which prohibits Ministerial direction or control of a charity.
- **Commissioning and funding models that allow voluntary sector bodies, including small ones, to give their best**. The new Public Services (Social Value Act) 2012 should result in quality and other social value being considered alongside price in determining value. Stronger safeguards are needed to protect sub-contractors in consortia delivering public services in the Work Programme and elsewhere. There should be 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.
- **Stronger independence of voice** of the sector. Gagging clauses and controls on data should not be allowed and the rights of voluntary organisations to campaign should be defended by the Government and others. Given the relative lack of power of small organisations and those working with disadvantaged groups to protect their independence, infrastructure bodies should do more to articulate their needs to Government.
- **Genuine consultation and involvement by Government.** We recommend 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.

We will report on progress again in January 2014.

1 Introduction: independence matters

Independence has never been more important for the voluntary sector. In this section, we explain why it should be a top priority and how it can be maintained, particularly when resources are in very short supply and money and mission may end up in conflict.

Why independence matters

At a time of austerity and declining trust in national politics, an independent voluntary sector is essential.

Under most direct challenge in 2012, as explored later, has been the independent voice of the sector.

In the sometimes narrow debate of party politics, the voluntary sector questions the status quo, raises the profile of neglected causes, gives voice to otherwise voiceless people and speaks truth to power.

That voice has particular legitimacy, as public membership of and active engagement in the voluntary sector is now far greater than in national political parties.[17] The grass roots knowledge and expertise of voluntary bodies also has the potential to shape better government policies and public services.

As the Government cuts back on public services and the welfare state, the independent services, advice and support provided by the voluntary sector are especially important, particularly as it often helps the most vulnerable in society who have nowhere else to turn. As independent actors, voluntary organisations are also often innovators, risk takers and trail blazers, developing preventative services, investigating unpopular areas, identifying solutions and delivering services in new and often highly economical ways.

Independence is what makes the voluntary sector, at its best, distinctive, trusted and successful and it is why benefactors of all types are prepared to support it. If the sector is no longer trusted by the public as independent, it will lose its financial life blood.

The erosion of independence is often slow, gradual and unnoticed but with far-reaching consequences, once gone.

If the voice of the sector falls silent and charities look to their contract terms rather than their mission when vulnerable people turn up on their doorstep for support, our democracy is damaged, our society is less compassionate.

The Barometer of Independence

Independence can be hard to pin down and measure so, in 2011, we consulted on a definition and the factors that promote independence. The result is the *Barometer of Independence* shown overleaf. The Barometer identifies three types of independence - purpose, voice and action - which are defined in the first column, with the organisational behaviours and environmental factors that support them alongside. A respect for independence must underpin all behaviours and environmental factors. Certain behaviours are key, particularly independent governance, accountable to those served. Supportive financial arrangements and genuine consultation by partners influence all three aspects of independence. Some organisations will be more vulnerable than others, depending on their sources of power, as explored in the next Section of this report.

DEFINITION OR CHARACTERISTIC OF INDEPENDENCE	RELATED BEHAVIOURS IN INDIVIDUAL VOLUNTARY ORGANISATIONS	THE CLIMATE: ENVIRONMENTAL FACTORS
Independence of **Purpose** • To set and review purpose to match the changing needs of the cause represented • To maintain purpose, mission and values	**How far is independence seen as important** and upheld in everything they do by trustees, staff, volunteers and people and communities served? **How aware of and compliant with best practice** (eg national and local Compacts) are they in the overall management of relationships with funders? **How independent are governing bodies**, representing the interests of the people and communities served? **How consistent with purpose are funding and other relationships?** **Are they trusted and seen as independent** by volunteers, clients and the public?	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 **Is independence seen as important** and upheld by independent regulatory bodies, funders and partners? **Are funders and partners aware of and compliant with best practice** (eg national and local Compacts) and the law? **Is the overall regime provided by Government supportive** of independence eg: - 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. **Is the sector fully and genuinely consulted and involved** by partners and funders in policy-making and relevant practices? **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: - respect independence of purpose, action and voice - promote good outcomes for users - ensure the 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 **Voice** • To protest, campaign and negotiate without fear of retribution • To be assertive about independence, focusing on the cause represented	**Is there capacity** to campaign, engage and negotiate in the organisation or through infrastructure bodies? Is there **unnecessary self-censorship?** Is there **legitimacy of voice** - reflecting views and voices of people and communities served? Is there a **clear mandate** through strong evidence base? **Do funding and other relationships support independence of voice?**	
Independence of **Action** • 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	**Is there engagement with** people and communities served to ensure activities match needs? **Do funding and other relationships support action to meet the needs of people and communities served?** Is there **good governance of funds** and compliance with contract/grant terms?	

Independence of Purpose

Independence of purpose allows organisations to be freely established, shaped and run to meet changing needs. The hallmark is strong independent governance which focuses in every decision on mission and independence. Accountability to those served is crucial.

Independence of Voice

The ability to protest, campaign or negotiate without fear of retribution is vital but capacity can be starved where funding for services is too narrowly drawn and organisations can rightly be challenged if their voice lacks legitimacy or a clear mandate. Voices may be muted or silenced if voluntary organisations believe that they face retribution - whether losing influence or funding - or if it becomes clear that partners are unwilling to listen or if funding and contractual arrangements are not supportive.

Independence of Action

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

Case study: Social Action for Health
In April, we heard from Elizabeth Bayliss, the Chief Executive of an East London based community group promoting health in the broadest sense, which has received a lot of NHS funding. Their services are grounded in local needs and are accountable to local people, she said, and they had worked very successfully within a commissioning context for 12 years but now found that funders were specifying what they should be doing to achieve broad outcomes, ie restricting freedom of action.

What independence would look like in practice?

The Barometer lists the questions voluntary organisations and potential partners and funders need to ask themselves. But what does independence look like in practice? In our last report we set out some key characteristics of independence that we would like to see:

- Independence seen as important by governing bodies as well as by key partners, with a clear recognition of the distinctive value the sector brings as a result
- Compliance with safeguards on independence, contracting and commissioning
- Independence embedded in all funding and governance arrangements
- The diverse needs of different parts of the sector, and the social benefits they bring, recognised in funding and commissioning arrangements
- A strong and distinctive voice for and within the sector
- A commitment to genuine dialogue by partners with different parts of the sector
- Regular audits of independence by Boards, using the Barometer and other tools.

The context over the last year

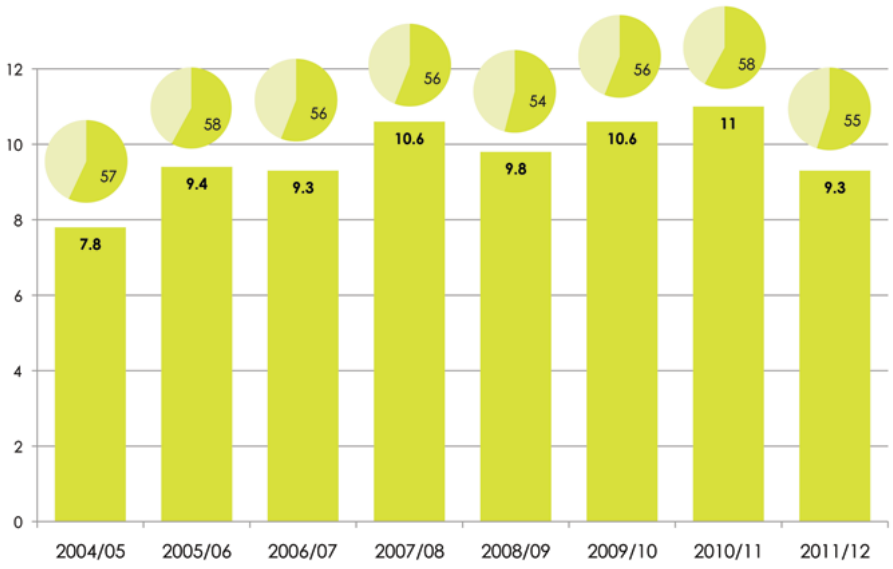
The context for independence continues to be very challenging. But it is precisely when tough decisions have to be made about money that a focus on mission - the needs of the people or causes served - is essential, as it ensures the right decisions are made.

The combined effects of economic downturn and cutbacks in spending are hitting the poorest in society hard. Voluntary organisations supporting them are experiencing increasing demands for their services, with diminishing income. The number of people relying on food parcels has doubled in a year and homelessness is on the rise.[18] Calls to the NSPCC's neglect helpline doubled between 2009/10 and 2011/12 and the number of children in need increased from 694,000 in 2009/10 to 736,400 in 2010/11.[19] State support is being withdrawn altogether in some areas of legal aid, dismantling structures that enable the citizen to hold it to account, for example, for failings in the benefit system.

Many local authorities have provided crucial support to the voluntary sector and some have been willing to negotiate about cuts. However, the front-loading of reductions to local authorities has led to cuts falling heavily on the voluntary sector, with some areas hit very hard: for example, spending on children's social care may have fallen by around a quarter.[20]

Moreover, the level of donations from individuals has still not recovered to pre-recession levels, with a 20 per cent drop last year in real terms, as shown below; giving by the private sector has also fallen and there have been large falls in investment income.[21]

Total amount donated, and proportion of the population who give to charity each month (£ billion, %)



Source: UK Giving 2012, NCVO/CAF

Organisations are having to close or reduce services where demand remains high; and financial resilience is reducing. Research by New Philanthropy Capital[22] surveying the top 750 charities in England and Wales found that 65 per cent were cutting frontline services. A recent survey of charities found that one in six believed they may face closure in 2013, half had used their reserves to cover shortfalls in income over the last year and more than eight out of ten said they thought the charity sector was facing a crisis.[23] Around half of all organisations have no reserves left.[24]

There are some positive developments, locally. Perhaps because of the funding crisis and reinforced by the localism agenda, many local authorities are becoming more assertive of their independence. Local authorities and voluntary organisations are working more closely together in some areas, which can strengthen independence, provided the sector's voice remains independent and voluntary organisations' voices are heard. Stockton Borough Council, for example, involved the voluntary sector in its funding review and, a result, it is funding more organisations and some are receiving more.[25]

Looking ahead, the situation is only likely to become worse in 2013, with the likelihood of further cuts in public funding and further pressures on other sources of income. The Institute for Fiscal Studies' analysis of the government's spending plans shows that the majority of real-terms cuts in public spending are yet to hit the front line.[26] It is far from clear that the Government has an effective strategy for filling the major gaps left by reductions in state funding. The Government has set up Big Society Capital in 2012, for example, but this is still a drop in the ocean and, without care, social finance may bring new challenges for independence. Its commitment to open up public services to new providers is another potential avenue but there are issues of access, which we explore later.

Against this backdrop, voluntary organisations are facing difficult choices between survival and whether to pursue funding that might restrict freedom, particularly of purpose and action. Because of fears about potential loss of funding, they may also fear to exercise independence of voice.

2 The sources of power and who is most affected

Independence is easier to guard from a position of relative strength. This section looks at where power lies and at what sources of power are available to voluntary sector organisations, seeking to identify which types of organisations are most likely to be affected by loss of independence.

Who has the greatest power over the voluntary sector?

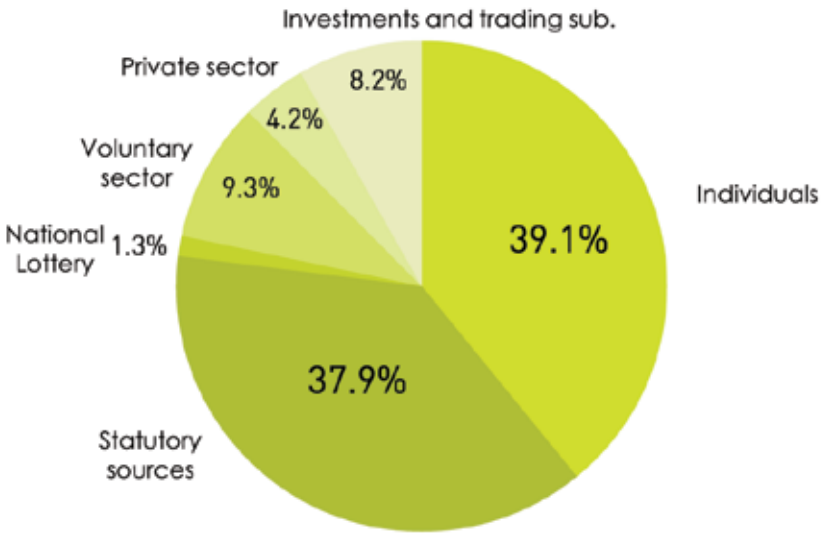
Many factors affect independence, not just financial ones, but the power relationship is key. There are many different players, from the state, to powerful corporations to charitable trusts, who fund or work with charitable organisations. All of these relationships can bring benefits but also challenges, where there is a lack of respect for, or understanding of, independence and the distinctive identity of the sector.

The power exercised by different sponsors may be considerable, and we do not wish to suggest that challenges to independence in specific cases are not important.

In this report we focus on the state - central and local government - because it is the most powerful *single* influence on the voluntary sector, whether through income, which affects some, or the policy, regulatory and commissioning environment, which affects all.

The state is the largest funder, slightly larger even than individual donors, when National Lottery funding is taken into account, as illustrated in the pie chart below, and it has been growing from 32 per cent of voluntary sector income in 2000/01 to 38 per cent in 2009/10.[27]

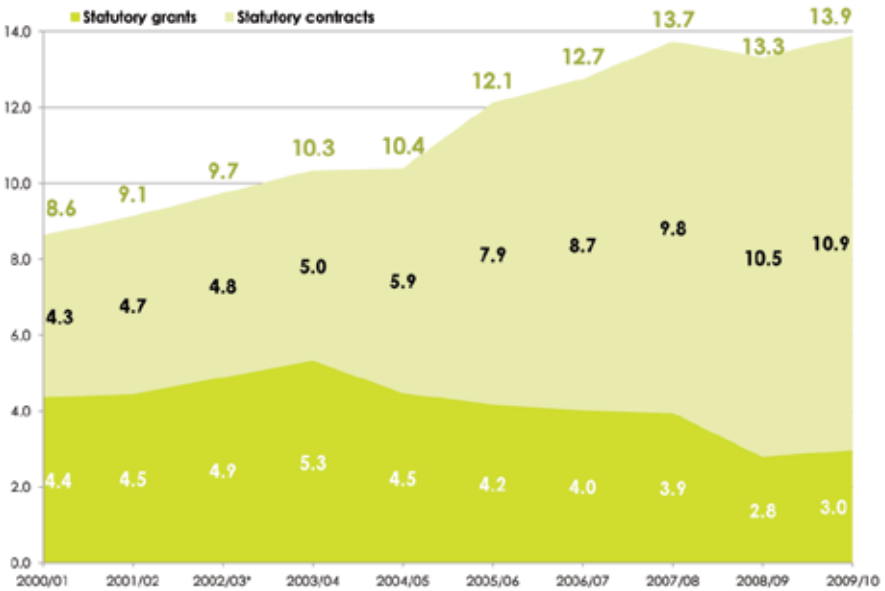
% of total voluntary sector income from each source, 2010



Source: NCVO Civil Society Almanac 2012

State funding is increasingly through contracts rather than grants, as shown below. Grant funding is generally less restrictive than contract funding and where this is the case it can better support independence of purpose, voice and action. That said, well defined long term contracts can bring stability and clarity about the relationship and clearer accountability to the taxpayer. However, grants are targeted specifically at the voluntary sector, whereas contracts are generally let through competitive tendering with the private sector and this often creates heavy transaction costs that the voluntary sector finds it hard to meet.

Statutory grant and contract income (excluding Lottery), 2000/01 to 2009/10
(£ billion, 2010 prices) Source: NCVO, UK Civil Society Almanac 2012

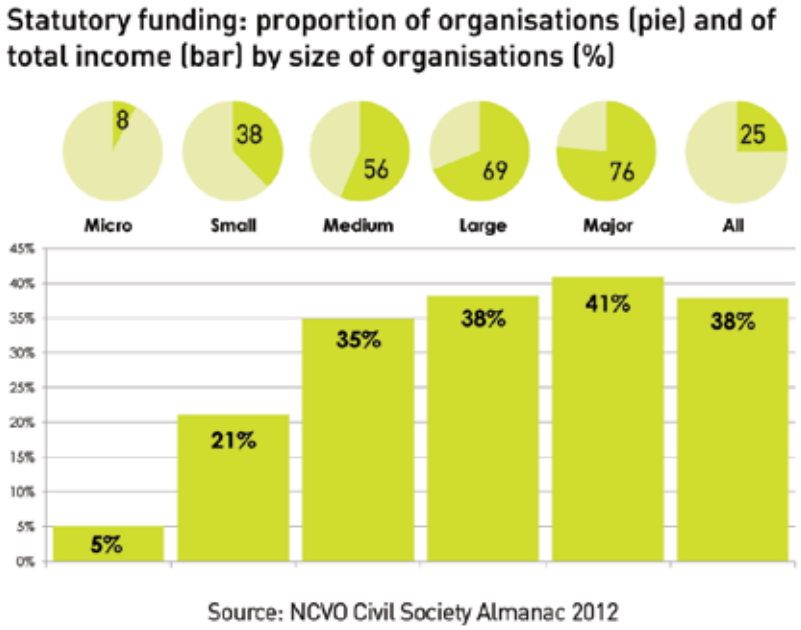


The power of the state over the voluntary sector is opening up a new power relationship. Traditionally, corporate sponsors are important funders and supporters.

Now, because the state wants to reduce the number of direct contracts with providers, the voluntary sector is increasingly becoming a sub-contractor to private organisations, some of them large multi-nationals with considerable financial muscle and no direct accountability to people in Britain.

What type of voluntary organisations are funded by the state?

Funding is concentrated in a significant minority of voluntary organisations, as shown below,[28] although around a third of charities and social enterprises now claim to be delivering public services.[29] As this graph shows, state funding is more likely in larger organisations but may be significant for whatever size of individual organisation that receives it.



Source: NCVO Civil Society Almanac 2012

Sources of power for the voluntary sector

Size and funding is only part of the picture: the ability of organisations to maintain independence is determined by their relative power, with a number of potential sources:

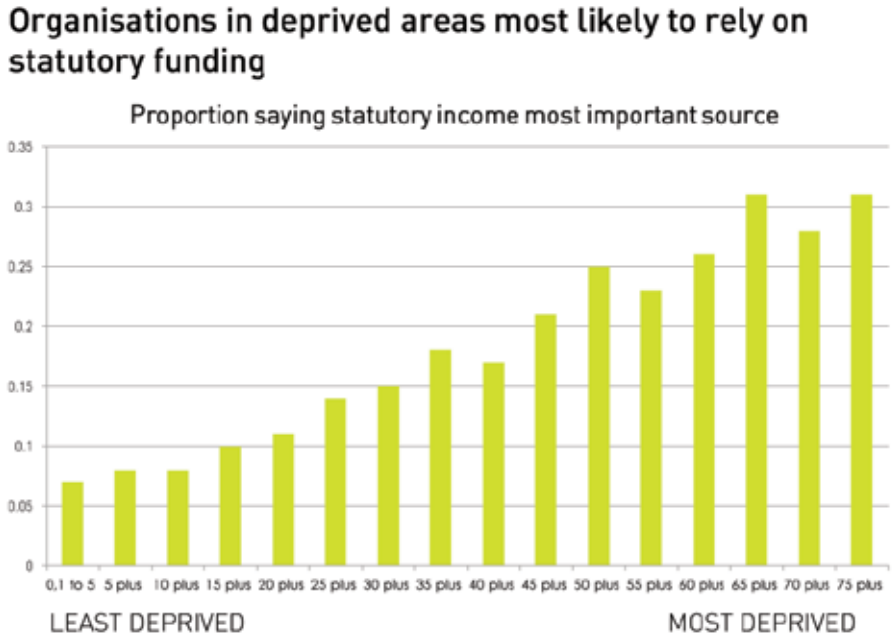
- ***Financial power:*** diversity of income makes it easier to walk away from funding that takes organisations away from mission, as does access to strong reserves. Private income, perhaps derived from sales from charity shops or individual donations, can be invaluable to fund unpopular causes or the 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 organization 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 be stronger for popular causes which enjoy widespread public support, less so for 'Cinderella' causes.

The dilemmas for organisations working with disadvantaged groups

Organisations working with disadvantaged groups and/or in disadvantaged areas are an illustration of this point. They tend to rely more on state funding than others and have less diversification of funding. The graph below shows the situation in disadvantaged areas.



Source: Clifford, Rajme and Mohan, 2010 (NSTSO 2008)

Organisations working with disadvantaged groups are also more likely to identify state funding as the most important to them - those working with socially excluded and vulnerable people; offenders and their families; people with mental health needs; parents and carers; people with substance abuse problems; lesbian, gay and bisexual people, homeless people, victims of crime and their families; and asylum seekers.[30]

Other sources of funding which might add to their financial and brand power - individual donations, private sector sponsorship or donations from wealthy individuals - tend to be directed at more popular forms of voluntary sector activity such as medical research, hospitals and children, overseas causes, animals.[31]

Because of their greater reliance on state funding, statutory cuts will have all the greater impact on these organisations. Cuts are tending to fall heaviest on local authorities containing the greatest concentrations of deprivation and on those organisations which are providing non-statutory services within them,[32] despite the rising demand for services noted in Section 1. The dilemma is illustrated by the case study below.

Case Study from Perfect Storms, a report by Children England[33]

This medium sized national charity provides advocacy, legal representation, information and advice to vulnerable children, young people and adults using both paid staff and volunteers. Local authorities have a statutory duty to provide advocacy services for children and young people and as such around 99 per cent of this charity's funding comes from statutory sources. Despite this, the charity's overall funding has fallen by 19 per cent when it has actually seen an identically large increase in the number of service users seeking support or being referred to it; 3482 in 2010 and 4135 in 2011. The charity is trying to find new funding through statutory contracts but the increased paperwork and competition has forced the charity to employ three fulltime fundraisers. In total, around 12 members of staff now spend over 900 working days a year on applications, adding to financial pressures.

The Barometer highlights how important it is that voluntary organisations choose funding and other relationships that are consistent with purpose. For organisations supporting disadvantaged groups, funding options may be limited and reserves low, making it harder to reject unsatisfactory funding. For example, many organisations working with offenders and their families have been reporting reduced income from both grants and donations coupled with an increase in demand for services and reduced reserves.[34]

It is often said that voluntary organisations can walk away from contracts that threaten independence. However, the Panel has heard that tier two providers in the Work Programme, providing services to vulnerable clients in London - for example, people with mental health needs - were unhappy with the arrangements. Call off contracts were what were on offer to tier two providers but they had to incur costs to be available, even when no referrals were made, bearing maximum risk, and referrals were low. However, they had limited choices if they wanted to continue to provide services to under-served groups, as statutory funding from other sources had been drying up. Their ability to influence the terms of contracts was said to be very low, though they had tried to influence them.[35]

Small organisations

Most small voluntary organisations do not receive state funding but, for those that do, including many that support vulnerable groups, it can be vital.

The Barometer identifies supportive commissioning, funding and contractual arrangements as important, including ones which are transparent, accessible and without unfair entry barriers. Successive surveys have demonstrated that smaller organisations can struggle particularly with the increasing bureaucracy of public funding and commissioning processes and lack the influence to change them.[36] The trend toward larger contracts for public services is also forcing mergers and collaborations to win contracts, which can support independence where it leads to better delivery of their core mission. However, if this is done simply to win contracts, the result is a less strong connection to the communities and causes served, with reduced independence and diversity of services.

Large organisations

It is larger organisations in the voluntary sector that tend to have the closest financial relationship with the state, often running large contracts for services, sometimes in collaboration with the private sector.

Some - but not all - large voluntary sector organisations have strong sources of financial, brand and knowledge power and can be independent if they draw on them.

In October, Anne Marie Carrie, the Chief Executive of Barnardo's and Martin Crewe, their Director in Scotland, gave evidence which underlined the importance of the sources of power to independence. Barnardo's is one of the most powerful charities in the UK and has diverse funding, including significant income of its own to devote to unpopular causes, and huge popular support. We heard that these factors, combined with a clear sense of purpose and mission and strong independent governance, help it to maintain independence of voice, action and purpose. We were told that potential contracts are carefully considered at Barnardo's and only entered into where that mission was supported; and they stressed the value of influencing commissioning early on - easier to achieve when power is strong. Anne Marie cited specific examples of independence of voice - public statements criticising central or local government - for example, on the scrapping of the educational maintenance allowance, changes to housing benefit and lack of protection against child sexual exploitation.

Even so, there are challenges. When we asked them about self-censorship, although we were told it was rare at Barnardo's, we were given one example when a potential complaint about one contract was not made to a contractor because it might have put others under threat.

But some large voluntary organisations have limited sources of power, particularly where they work for causes that do not attract significant levels of donations and do not have other diverse sources of income. The Work Programme is one area that illustrates this, where concerns about the impact of commissioning arrangements on voluntary organisations of all sizes have been raised with us - as explored in the next Section. The issues affecting organisations working with disadvantaged client groups and in disadvantaged areas apply to all sizes too.

Over the next year, we hope to hear from more large organisations about their experience, particularly those who have remained silent up to now but may nonetheless be facing challenges.

The next Section looks at the generic challenges being faced by organisations and explores some of these points further.

3 Six key challenges

Last year, we identified six key challenges affecting independence of purpose, voice and action:

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

Over the last 12 months, we have seen signs of further deterioration. We explore each of these in more detail below.

LOSS OF IDENTITY
Our verdict: worse than last year

The Barometer highlights that respect for independence should underpin all decisions and arrangements. However, the increasing blurring - and particularly crossing - of boundaries between the voluntary, public and private sectors is leading to a rapidly growing loss of identity and respect for independence.

There is growing confusion about what constitutes a charity in the 21st century, potentially undermining public trust.

Where independence is respected, collaboration between sectors can lead to innovation and better services but there is an increasing tendency to think of the public, private and voluntary sectors as interchangeable, fuelled by three growing trends.

First, all sectors are now delivering public services, with the voluntary sector increasingly working as a sub-contractor to the private sector.

Second, there is a positive interest in new hybrid 'not for profit' models, for example:

- Public sector 'spin outs,' including public sector mutuals. Social enterprise NHS 'spin outs' are estimated to be worth £886m by 2012.[37]
- Charities created from former public sector bodies in 2012 such as from British Waterways. So-called 'charification' is not new - NHS Primary Care Trusts, NHS Trusts and NHS Foundation Trusts are charities and most museums and galleries - but it is growing apace, for example, through new school Academies. 'Charification' of the public sector runs the risk of being just a masquerade if government control continues to be exercised, reducing independence and accountability to the taxpayer who lose direct control of their assets.
- New hybrid social enterprises are growing in popularity, including Community Interest Companies, a new form for social enterprises. There are now over 6,000.[38]

Third, 26 per cent of small and medium size enterprises badge themselves as social enterprises.[39] The voluntary sector brand is being abused: 'social enterprise' is a totally unregulated or defined concept and, for some, just a convenient brand.

On the one hand, the voluntary sector is being seen as a desirable brand. On the other, the distinctive value an independent voluntary sector can bring is not being unrecognised in commissioning arrangements. We think there is a real danger of parts of the sector being subsumed into the public or private sectors as boundaries are not just blurred but crossed. Some organisations are already being 'dragged' into unwelcome sub-contracting relationships with the private sector because it is difficult to gain prime contracts or are being forced to mimic other sectors to qualify for public sector funding.

Independence is lost gradually and often imperceptibly but the result will be a loss of services and a voice for those with little power in society. Ultimately, the existence of separate tax breaks, donations and volunteering may be called into question. If the voluntary sector is not different, why should it be treated differently by the public or the state?

The impact of blurred boundaries in practice

We are already seeing evidence of pinch points for independence, as explored later:

- Insufficient separation between regulation and funders and lack of respect for regulatory safeguards, including those that apply to cross-sector consortia
- Lack of respect for the independence of governance by state funders
- A 'one size fits all' approach to statutory funding and contracting arrangements in which the distinctive requirements of the voluntary sector are ignored
- A growing belief that organisations that deliver public services should not campaign or criticise the government
- A loss of voice in the sector and an inability to influence the 'terms of engagement' with government, which are increasingly geared toward the private sector.

How can genuine differences be better recognised and independence protected?

In our last report, we looked forward to the forthcoming review by Lord Hodgson of the Charities Act 2006, on which he reported in July 2012.[40] Lord Hodgson points to a potential mismatch between the public's perception of charitable activities and the reality, and calls for the Government to stimulate a widespread debate on 'What constitutes a charity.'

We welcome this debate - though it must be led by the voluntary sector, should go wider than simply considering what constitutes a charity and must focus on strengthening the independence of the sector, rather than further undermining the brand power of the sector by fracturing it. One danger is that commentators will call for new categories of not for profit organisations to be created, where public money is received, reducing rather than reinforcing distinctiveness. The defining characteristic of the voluntary sector should be the primacy of its mission and purpose and independence, rather than the

source of funding or activities. A clearer definition of social enterprise is needed to prevent abuse. But there should not be a futile attempt to define too tightly what is inevitably a highly diverse sector.

Treating different sectors as interchangeable is the problem, not the answer. A recognition of the distinctive qualities of the voluntary sector - explored in the box below - is essential.

What makes the voluntary sector distinctive and where does it add value?

Like the public sector, voluntary organisations are founded to serve the public good rather than profit and both have a strong sense of mission and values. But voluntary organisations are freely formed, changed and closed by individuals, normally deriving their legitimacy not from elections but from the physical communities or communities of interest that they serve.

Voluntary organisations are often run as businesses and generate financial surpluses in just the same way as private businesses; and, like the voluntary sector, the private sector is often highly focused on mission and serving the needs of its customers. What makes voluntary organisations different is that their primary focus should always be on mission, values and, ultimately, the groups, causes or localities for which they were formed, rather than profit. Any surpluses made can only be used to support those causes, rather than private benefit.

The public sector is often ideal for delivering universal services delivered right across the country, has high levels of public accountability and transparency and leads the way as an employer in areas like anti-discrimination. The private sector at its best brings a keen focus on efficiency and price, and high levels of customer service. Independent, high performing voluntary sector organisations add social value, often bringing a specialist knowledge and enduring commitment to a particular client group, locality or activity - and the benefit of volunteers. Each has its place and value.

INEFFECTIVE SAFEGUARDS AND REGULATION
Our verdict: worse than last year

The Barometer identifies effective safeguards and regulation as important factors in maintaining independence. But these are not in place. We are concerned, not just by high levels of non-compliance with the Compact and new Best Value Guidance, but by the lack of commitment shown during the year by central government in monitoring compliance with them. The capacity of the Charity Commission to ensure the independence of charities is also under increasing threat due to spending cuts and the regulators for some charities are not independent of funders.

The following box sets out the general standards with which public bodies should comply:

General standards which provide some protection

The Compact

The Compact is the agreement between government and civil society organisations that sets out key principles and establishes a way of working that improves their relationship. It includes an undertaking to *'respect and uphold the independence of civil society organisations to deliver their mission, including their right to campaign, regardless of any relationship, financial or otherwise, which may exist.'*[41] The Compact considers areas such as involvement in policy design and consultation, funding arrangements and ensuring better involvement in delivering services. Every government department is signed up and most local authorities and many other public bodies have a local Compact.

Protections in law

Public law also requires public bodies to act fairly and rationally and comply with human rights and equalities legislation. In practice this means they should undertake proper consultation about and give adequate notice of any contractual or funding changes.

Best Value Statutory Guidance

The Department for Local Government and Communities issued new Best Value Guidance for local authorities in September 2011, partly spurred by concerns about the passing on of disproportionate cuts to voluntary bodies. It states:

1. Best Value authorities are under a general Duty of Best Value to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness'.

2. Under the Duty of Best Value, therefore, authorities should consider overall value, including economic, environmental and social value, when reviewing service provision. As a concept, social value is about seeking to maximise the additional benefit that can be created by procuring or commissioning goods and services, above and beyond the benefit of merely the goods and services themselves.

3. To achieve the right balance - and before deciding how to fulfil their Best Value Duty - authorities are under a Duty to Consult representatives of a wide range of local persons; this is not optional. Authorities must consult representatives of council tax payers, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions. Authorities should include local voluntary and community organisations and small businesses in such consultation. This should apply at all stages of the commissioning cycle, including when considering the decommissioning of services. In the interests of economy and efficiency, it is not necessary for authorities to undertake lifestyle or diversity questionnaires of suppliers or residents.

4. Authorities should be responsive to the benefits and needs of voluntary and community sector organisations of all sizes (honouring the commitments set out in Local Compacts) and small businesses.

5. Authorities should seek to avoid passing on disproportionate reductions - by not passing on larger reductions to the voluntary and community sector and small businesses as a whole, than they take on themselves - and in particular:

- An authority intending to reduce or end funding (where 'funding' means both grant funding and any fixed term contract) or other support to a voluntary and community organisation or small business, should give at least three months' notice of the actual reduction to both the organisation involved and the public/service users.
- An authority should actively engage the organisation and service users as early as possible before making a decision on: the future of the service; any knock-on effect on assets used to provide this service; and the wider impact on the local community.
- Authorities should make provision for the organisation, service users, and wider community to put forward options on how to reshape the service or project. Local authorities should assist this by making available all appropriate information, in line with the government's transparency agenda.

In our last report, we promised to look at how awareness of the Compact could be raised and its effectiveness increased; whether regulation and the law should be strengthened further; whether present funding arrangements sufficiently protect the effectiveness and independence of the Charity Commission; and whether the recommendations of the Task Force into Better Regulation are being implemented.

The Compact, statutory Best Value guidance and public law protection

The Compact, and the related Best Value Guidance, are not working; and the Government is claiming credit for having strong standards in place but is not taking steps to implement them.

In 2011, the Government abolished the Commission for the Compact which reported annually on compliance nationally with the Compact and which used to hold annual meetings with Compact Champions in Government departments. In January 2012, the National Audit Office (NAO) published a review into the enforcement of the Compact at national level.[42] This found that departments were supportive of the Compact and gave some examples of good practice but it also remarked on lack of leadership, and particularly that there was no oversight by the Office of Civil Society (OCS) in the Cabinet Office of implementation. Departmental monitoring of compliance was also said to be poor. After the report was published, Third Sector discovered through Freedom of Information requests that the OCS had successfully petitioned the NAO to water down the report.[43] The report also noted that that 40 per cent of government consultations did not meet the 12 week period set out in the Compact and, of these, 54 per cent did not appear to provide an explanation.

The Government's response to the NAO concerns us. It did not increase OCS oversight but included the Compact as a cross-departmental agenda item in departmental business plans for 2012-13. Seven months after the NAO report was published, Compact Voice asked 15 departments for basic information under the Freedom of Information Act on levels of grant and contract funding to the voluntary sector, changes over the last year, and on consultation with it. Three gave no response at all,

despite the legal force of the Freedom of Information Act, and five refused to answer. Partial answers were given by others, including the Cabinet Office, which has the lead responsibility on the voluntary sector in Government, and which said it could give no information on two of the three questions and only partial information on the third.[44] Big Society champions are also said to exist in each Department but only two out of nine departments approached in July were able to consistently name them.[45]

The Government has also, worryingly, removed the 12 week minimum consultation period.

Compact Voice have called on the Cabinet Office to introduce consistent recording across government and publish an annual government-wide assessment of progress.[46]

Similar issues arise on the Compact, locally. Central government initiatives to strengthen the Compact have been well received, according to a Compact Voice survey of voluntary organisations in local authority areas in 2012.

Yet levels of awareness of the Compact in the public sector are low and have fallen compared to the previous years; it is often not being followed in practice; and confidence in its value is falling. Overall there is a feeling that independence had reduced over the last 12 months.[47]

A troubling 30 per cent of areas reported that, over the past 12 months, 3 months' notice was provided 'some of the time' or 'not at all' before changes to funding came into force, despite being required to do so by recent Best Value Statutory Guidance. Forty five per cent only reached the standard of keeping consultations open for at least 12 weeks over the past 12 months 'some of the time' or 'never.' Compact Voice is strong in its condemnation of both, saying that non-compliance is 'dismaying' and 'should only occur in exceptional circumstances,' with the breach of the 12 week consultation period suggesting 'a level of complacency that has perhaps been exacerbated by the inconsistent example set by central government'.

The Government announced in November[48] that it intended to significantly restrict the number of judicial reviews that were brought by reducing the time limit and the number of possible appeals. Judicial review is the court process widely used in legal cases taken by the voluntary sector to challenge local and central government decisions that affect their work and their service-users, including breaches of the Compact, and this change adds to our concerns.

The consultation process on these proposals was launched on 13 December 2012 and the deadline for responses is 24 January 2013: effectively a six-week consultation period with the Christmas holidays in the middle. The consultation document confirms that the proposals include reducing the usual three-month court deadline for bringing a claim to 30 days in certain types of cases, including challenges to the majority of procurement decisions.[49] This is very likely to restrict the sector's ability to challenge poor public-body decision-making in respect of procurement processes in the future. The timing and short period for the consultation exercise also severely limits the sector's ability to engage with this process.

The statutory Best Value guidance put in place in the autumn of 2011 told local authorities not to pass on disproportionate cuts.[50] Research by Compact Voice in late 2012 reveals that half of local authorities cut grants to voluntary bodies disproportionately and concludes that lack of enforcement of the Best Value Guidance 'has had a negative impact and potentially weakened' local Compacts.[51]

How can this lamentable situation be improved? Stronger national and local leadership is needed, including national reporting on compliance by central government. Respondents to the Compact Voice survey also pinpoint better resourcing and more promotion of the Compact locally as important: Compact compliance was reported as stronger in areas where someone was being paid specifically to support it.

Regulation

The Barometer also identifies effective, independent regulation as important but this is another area where our concerns have increased, if anything, since last year.

The Charity Commission

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 role of the Charity Commission is also to ensure that charities carry out their charitable purposes for the public benefit, serving neither private nor governmental or political interests.

Fulfilling these duties cannot be done through regulatory activity alone but the Charity Commission is increasingly being forced by a restricted budget into a narrow role.

Advice on maintaining independence is important. In the past this has included *The Independence of Charities from the State and Speaking out: Guidance on Campaigning and Political Activity by Charities*, and specific guidance on *NHS Charities and independence, indicators and evidence*, and *NHS charities guidance*, where issues arise because of decisions by the Government to include charitable assets on the NHS balance sheet.

Research, analysis and a clear, public voice on the independence of the sector is critical. The Commission should continue to analyse wider trends and issues affecting independence as it has done in the past, for example, through its report, *Stand and deliver: the future for charities providing public services*, February 2007, and *Public Trust and Confidence in Charities*, July 2010. Given the threats identified in this report, we would expect it to play an even greater role in future.

The Commission is entirely dependent on Government financially: it is funded by Government as a non-Ministerial department. However, the Charities Act 2006 provides that, although the Commission shall 'perform its functions on behalf of the Crown, 'it 'shall not be subject to the direction or control of any Minister of the Crown or other government department'.

However, to be truly independent and effective, the Commission must receive sufficient funding to carry out its role in ensuring the independence of charities. The Commission has been subject to significant cuts in its budget and more may follow: the Commission's budget for the current financial year is £25.7m, down from £29.3m in 2010-11, and it will further reduce to £21.3m by 2014-15. As a result, the Charity Commission is increasingly focusing on its compliance role. Lord Hodgson in his review of the Charities Act already questions whether the Commission can continue with its current advisory role and suggests that umbrella bodies may be able to take over the advisory functions of the Charity Commission. However, unlike the Charity Commission, they are not independent of the sector. Even if this were not so, it is hard to see how they could take on additional work without funding.

No body can be immune from spending constraints but sufficient funding for an advisory role that promotes independence should be available, whether from Government or through self-funding through, for example, a graded levy on charities themselves or, as Lord Hodgson proposes, through charging for filing annual returns and fines for late returns.

Otherwise, independence itself is at risk and public trust and confidence in charities.

Blurring of boundaries between funders and regulators

The independence of regulators is also highlighted in the Barometer.

In the Panel's view, funders and regulators should always be separate, which is not the case for many exempt charities, of which there are some 10,000.

Where there is no clear separation between funders and regulators, there is a risk that funders may use regulation to exercise undue influence over the independence of purpose, action and voice of charities. This also adds to the confusion in the public mind on the independence of charities from the state.

Museums and galleries, for example, are regulated by the Department for Culture, Media and Sport, their main funder, which the Charity Commission raised with us in 2011 as of concern.

Similar concerns have been drawn to our attention by the National Housing Federation (NHF) in relation to the new regulator for housing associations, the Homes and Communities Agency (HCA), which has replaced the independent Tenant Services Authority, where funding and regulation functions, formerly separated by the 2008 Act, have now been brought together. Regulation is exercised by a special Regulatory Committee appointed by the Secretary of State, with a distinct statutory function to try to assure the regulatory function has a degree of operational independence from the HCA's investment role. However, the NHF is concerned that there remains a risk that this regulatory role will become subject to undue political influence.

Lord Hodgson noted in his review that exempt charities are 'an anomaly' but did not think that the Charity Commission could be the regulator where the primary role requires its own special form of regulation, for example, as a school or university; and proposes only minimal changes. However, the Panel believes that there is a case for the independent Charity Commission regulating more exempt charities.

Impact of wider regulations and bureaucracy

Regulation and safeguards can be protective. But, as Lord Hodgson's Task Force into Better Regulation showed, over-regulation can also have a damaging effect, especially on small community groups. His report, *Unshackling Good Neighbours*, recorded 600 complaints from such organisations about what was perceived to be excessive bureaucracy: such as inappropriate CRB checks for volunteers or complex licensing rules for fund-raising events.[52]

Since then, the Cabinet Office has published an update on progress in implementing the report.[53] It reports that the Health and Safety Executive has already issued simplified risk assessment forms; insurance companies have clarified their policies toward volunteer drivers; Criminal Record checks for some volunteers will be scaled back; and there is an exemption from VAT for shared services for qualifying organisations. We will continue to keep an eye on progress.

INDEPENDENT GOVERNANCE
Our verdict: concerns unchanged since last year

The Barometer identifies independent governance - representing the interests of those served and ensuring that independence is seen as important - as critical to independence. We remain concerned about the ongoing threats to independence brought to our attention, but whether there has been any change in the level of threat from last year is impossible for us to judge on the available information.

In its last report, the Panel promised to explore whether Boards and trustees are actively promoting and monitoring independence; whether there should be additional safeguards to ensure independent governance; and whether there are lessons to learn from other countries and parts of the UK.

Last year, the Charity Commission drew to our attention that, since 2009, NHS charities' accounts have been consolidated into the group accounts of the Department of Health, thereby giving the impression that charitable assets form part of the NHS's assets. It commented in a submission to us that: 'This compromises the independence of those assets and of their trustees' use of them, and the perception created by consolidation may, unintentionally, present such charities as 'subsidiaries' of the State.'

This year, the National Housing Federation has raised with us its concerns about attempts by the current government to impose the public sector's practices on transparency of information on housing associations, even though they are voluntary organisations that are independent of the state. Although it recognises the importance of transparency, the Federation told us that the requirements which government was attempting to impose on it were not just inappropriate but also bureaucratic and costly and would cut across what is in place already.

In local government, we were told by Community Matters, which represents community organisations, that:

- When local authority owned buildings were used by community organisations, it was common for local authority councillors to be placed on their boards by the local authority. This presented a conflict of interest for those councillors as trustees, potentially weakening independence, and community groups were given no choice.
- The need to satisfy increasingly complex financial and bureaucratic requirements from the state was leading to a push for more 'professionally skilled' trustees, yet community groups relied on the engagement of ordinary local people to ensure they were meeting diverse local needs and they were in danger of being squeezed out.[54]

In Scotland in 2011 the Office for Scottish Charity Regulation released guidance which prohibits the involvement of Ministers in directing or controlling a charity (though it acknowledges that Scottish Ministers can by order disapply this).[55] We think similar guidance would be of value in England and Wales.

STATE FUNDING AND CONTRACTING ARRANGEMENTS
Our verdict: worse than last year

In our last report, we expressed concern that important standards identified in the Barometer in relation to statutory funding are too often not met, namely:

- Financial arrangements that enable voluntary sector bodies to maintain their independence
- Supportive commissioning, funding and contractual arrangements which respect independence of purpose, action and voice, promote good outcomes, are fair, transparent and accessible.

This is a rapidly moving area and one that is changing for the worse in both respects.

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. But they are starting to have a profound effect on the independence of the sector and it is time for everyone who cares about its future to take note and consider how it can be best protected.

Below, we focus on this and a number of other questions raised in our last report, including constraints caused by funding on freedom of purpose and action, whether there are entry barriers to contracts, the impact of payment by results and the importance of building in social value into commissioning arrangements. The effect on independence of voice is considered later in this section.

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. Funding power in the voluntary sector has been significantly eroded over the last 12 months, as described earlier in this report - deep cuts in state funding have taken effect, other sources of finance such as donations have reduced and, in order to survive, organisations have found themselves running down their reserves. For organisations working with disadvantaged groups, access to any funding is proving increasingly difficult, as demand for services rises.

Grant funding by central and local government has been an important source of funding to support independence in the past but over many years this has increasingly moved from grant to project and then to contract funding - and what grant funding remains is being severely affected by cuts. Contracts to deliver public services are now often the only significant source of funding for voluntary organisations that do not have access to significant amounts of non-state income - including many of those working with the most disadvantaged in society. Contract funding is not in itself a problem, and it does increase accountability, but there are problems with how it is designed, as discussed later. Moreover, it is increasingly the 'only show in town', reducing diversity of funding.

The Government is committed in the Compact to 'a strong, diverse and independent civil society' and to achieve this says that it will consider a range of ways to support civil society organisations, such as enabling greater access to state owned premises and resources. But, despite this commitment, such support is diminishing.

Certainly, when we spoke with Nick Hurd, he was clear that there was no going back to the days of grants, because they were, in his view, insufficiently accountable, and he did not seem to recognise a role for the state in supporting the independence of the voluntary sector financially. Indeed, he saw dependency on state funding as a problem and was looking to the private sector, new social finance, including social impact bonds, and donations.

Stimulation of new sources of finance is welcome and supports financial diversity. Whether this funding will ever be enough, especially given recent falls in corporate and individual giving, is one question. New social investment models may bring working capital and financial expertise but also need care in relation to independence, with a risk that investors will be risk averse and want to become too closely involved in operations to ensure their financial return.

We think it is time for a debate on what the distinctive contribution of voluntary organisations is and how best to fund it.

That debate is already opening up in some parts of the sector. For example, a report by Children England[56] comments that 'For many VCS (voluntary and community) organisations, whether publicly contracted or not, the sector has become consumed in the drive towards, and pressures of, the competitive tendering marketplace. But perhaps *the* most distinctive social and economic contribution that the VCS can offer in these difficult times is that of the more 'traditional' independent charitable model acting as independent voices and representatives of the most vulnerable in their communities, and operating independently from the state.'

Certainly, contract funding for the delivery of public services alone is unlikely to support the experimentation and risk taking that is a key element of what is valued about the voluntary sector by many. Furthermore, if society wants a truly independent voice from the voluntary sector for disadvantaged groups, contract funding will not deliver it.

Last year, we heard first hand about what the funding environment means for the independence of organisations working with vulnerable groups and of small community based organisations.

For example, we asked Clive Martin, the Director of Clinks, an umbrella organization for voluntary bodies working with offenders and their families, about the impact of government contracts on freedom of action and purpose. He said that voluntary organisations were the A&E of society but that, over the last ten years, that part of the sector increasingly saw its role as winning contracts, with the expertise of boards and staff shifting to support this goal. He said that he thought that it was the role and mission of the organisations he worked with to represent those on the margin.

Contracts were narrowing down who they were supporting and how they were working. He gave an illustration: at an awayday of a large voluntary organisation he attended, people were asked what they would do if, at 4 o'clock on a Friday, a distressed client arrived seeking help. They said that they would refer to the contract.

In April, we also heard evidence from small, community based voluntary organisations who suggested that the move of state funding from grants to contracts was skewing their activities, partly because contracts are generally more prescriptive. Social action, which by definition should be led locally and be responsive to grass roots needs, it was maintained, was being marshalled into the delivery of specific public services dictated by government, according to Community Matters. A 'winner takes all culture' could lead to a loss of diversity, it was argued. We were told that competitive tendering was also leading to the creation of partnerships, simply in order to win contracts, displacing real long term associations of interest focused on the grass roots.

The Government is keen for small voluntary organisations to form consortia but this can also be a costly, time consuming and speculative process which may not end up in gaining contracts which best support their work.

It is time for some fresh thinking from all funders, including central and local government, about how to provide a supportive funding environment.

As an example, some local councils have been working closely with the voluntary sector to understand its needs, for example in Bristol, where a 'mixed economy' of commissioning, competitive grants and direct grant funding has emerged through dialogue.

Case Study: Improving local commissioning in Bristol
Bristol City Council has been working with the voluntary sector through its Third Sector Commissioning Select Committee to improve the commissioning process, including more effective championing of the Compact and embedding a culture of understanding amongst commissioners through early and continuing engagement, early and clear communication of funding intentions and training for commissioners about the needs of the sector. A 'mixed economy' has been introduced which includes commissioning, competitive grant processes and direct grant-funding. The involvement of the voluntary sector in all stages of commissioning is now mandatory, including at the start.[57]

Such examples open up the possibility of strategic and development funding for specialist services which the voluntary sector is best placed to provide, alongside more conventional forms of contract and project funding models, as well as new forms of social finance.

Commissioning and contracting

Contracts for the delivery of public services are here to stay and will be an important part of that 'eco-system' for some voluntary organisations. Society also has much to gain from ensuring that public services benefit from the expertise of voluntary organisations, which often have deep knowledge of how to deliver effective services in specialist areas or to particular groups. So it is important to get the arrangements right.

The Compact commits to 'work to remove barriers that may prevent civil society organisations accessing government funding, thereby enabling smaller organisations to become involved in delivering services where they are best placed to achieve the desired outcomes'.[58]

Yet problems remain. In our last report, we set out survey evidence of problems with funding arrangements by central and local government, over a number of years. For example, in 2008, 37 per cent of voluntary sector organisations were worried about the potential loss of independence from

commissioning; and 41 per cent did not think procurement processes were fair and transparent.[59] In a survey of community based groups in deprived areas in 2010, 57 per cent of respondents found commissioning processes to be very or fairly ineffective, citing prohibitive contract sizes; limited subcontracting potential; overly tight timescales that fail to consider the consortia-building needs of community organisations; and bureaucracy that community organisations are not geared up to respond to.[60]

The Government's main focus to date has been on contracting with the private sector. For example, in 2012, the Government introduced a new Procurement Pledge for commissioning but only later included a recognition of the special requirements of the voluntary sector and the Compact after protests were made by Compact Voice and others.[61]

Commissioning arrangements best suit private sector and large organisations. Indeed, the Cabinet Office acknowledged in December 2012[62] that 'historically, when it came to bidding for public sector contracts, smaller organisations, often civil society organisations, were shut out. Bureaucratic, complex and costly procurement practices tended to favour the big providers, excluding some of the most competitive and innovative suppliers'.

A survey of local authorities in 2012 revealed that the value of contracts to the voluntary sector had reduced between 2011-12 and 2012-13 despite the increase in opportunities promised by the Government.[63]

This may be partly because private sector organisations can cope with the complex and costly procurement processes involved. As contracts increasingly move to payment by results, with delayed payment, it is necessary to have large reserves, which favours the private sector unless social financers step in to bear the risk. Increasingly, state contractors are also seeking to reduce their administrative costs by contracting with fewer prime contractors: in the Work Programme, primes had to have a minimum annual turnover of £20 million. As success in tenders often depends primarily on the lowest price, rather than on quality or the delivery of social value, economies of scale available to large organisations are important.

The Cabinet Office concedes that 'over many years and different governments, the private sector has dominated the outsourced public services market. Creating more space for civil society requires culture change within the public sector, and that will take time'.

However, many of the measures the Government is putting forward still focus on adapting the voluntary sector to fit the existing model, rather than considering fundamental change.[64]

For example, the Government is keen for small voluntary organisations to form consortia but this can also be a costly, time consuming and speculative process which may not end up in gaining contracts which may not best support their work.

When we heard evidence from small organisations in April last year, we were told that competitive tendering was inappropriate, where the amounts of money were small, particularly where there was no real market. The bureaucratic process was often felt to be unwieldy, with organisations feeling forced into choosing between lengthy and costly tendering processes, or not delivering responsive local services for which they could see there was a real need.

Because the Government favours larger contracts, there is an increasing pressure for merger and a danger that smaller voluntary organisations reliant on government funding will no longer be viable. Their loss would seriously reduce the diversity of the sector and the range of voices and services available to the public.

Payment by results

New payment by results contracts in the Work Programme and elsewhere could offer greater flexibility and freedom of action. But in practice they are leading to fewer prime contracts, largely with the private sector, and greater transfer of risk.

There is increasingly a new frontier in which to guard independence; the relationship of the voluntary sector as a sub-contractor to private sector organisations, some of whom are very powerful indeed.

Our concerns about the Work Programme, the first large scale payment by results programme, were aired in our last report. The lack of relative power of voluntary organisations as sub-contractors had resulted in a number of abuses, including voluntary sector organisations being used as 'bid candy' by the private sector, being kept in the dark about the terms of bids and then finding that prime contractors were creaming off the most remunerative work or not passing on work at all.

The Merlin Standard is in place to 'promote supply chain excellence'[65] and includes four principles which are self-assessed, with validation by an assessment company, emqc. Compliance with the Standard requires prime contractors in the Work Programme to manage their supply chains with integrity, openness and fairness. Good communication is important and primes must take the requirements of sub-contractors into account as well as ensuring that funding arrangements are fair and proportionate and do not cause undue financial risk. Accreditation is required to hold contracts but only after a year.

In an NCVO survey,[66] over 70 per cent of respondents felt the Merlin standard was 'not at all' or 'not really' adequately protecting them against contractor behaviour. Nor were the potential benefits of being part of a consortia emerging. 58 per cent of sub-contractors in an NCVO survey felt prime contractors had 'not at all' used their financial scale to shield them from risk.

Despite this, it was announced by emcq in July 2012 that all of the primes had received accreditation. Eleven of the providers were deemed to have achieved a 'good' score; the other seven were assessed as performing to a 'satisfactory' level against the standard. This suggests that the Merlin standard is failing to prevent harmful behaviour, certainly at the point that contracts are formed.

The Work Programme appears to be having a damaging effect of the finances of voluntary sector organisations. In research published by the NCVO in October 2012, which surveyed 98 voluntary sector providers to the Work Programme, seven out of ten indicated that their contract was at risk

of failure and 47 per cent feared that their contract would fail in the next six months. In more than half of cases the number of referrals had not matched expectations, and a third of providers had not received any referrals at all - these were mostly providers offering specialist services. Worryingly, almost half of providers were subsidising their Work Programme delivery from their reserves, and respondent said that primes were doing little to shield voluntary sector providers from risk - in one extreme case a charity had received more than 50 referrals without any payment.[67]

The Government's focus on large prime contractors may ultimately prove counterproductive. Initial results in getting participants into work have been poor. It is the needs of clients with whom the voluntary sector has a particular expertise that may suffer particularly - as indicated by the case study below from the Salvation Army.

Case Study: The Salvation Army and the Work Programme The Salvation Army - a tier one provider - have raised a number of issues related to the design of the Work Programme which affect their independence of action. They noted that payment groups are linked to the benefits clients receive, and so potential payments do not necessarily reflect an individual's level of need, and that pressure was being transmitted from DWP to find work for clients quickly, rather than to provide a deeper level of support to enable them to find them sustained work, which would be better for the client in the long-run. They also raised the issue of TUPE - staff had been transferred from local authorities - not only was this expensive, they argued that it was counter-productive to give employees no choice but to transfer to an organisation whose ethos they did not share.[68]

Moreover, a recent study concluded that DWP Commissioners were primarily awarding prime contracts on the basis of financial assets and capabilities, and found that this policy did not sufficiently incentivise personalised service innovation.[69]

Worryingly, Payment by Results contracts are now being extended into many other areas where voluntary organisations often have the greatest expertise, for example, to troubled families, reducing re-offending, to the National Citizens Service, where a consortium that includes Serco, the private sector services firm, but also charities such as Catch 22, has won the largest number of regional contracts. In January 2013, the Government announced that contracting out of probation services would also be paid through payment by results.

There is some evidence that problems with the Work Programme are causing the Government to take stock elsewhere on the detailed design of contracts but not to abandon the approach altogether. For example, the Ministry of Justice announced in October that it was temporarily suspending its payment by results contracts. We have been told by the Office of Civil Society that the new National Citizenship Service contracts have been adapted as a result of learning from the Work Programme. 75 per cent of the payment is being made in advance of delivery to reduce risk and the two consortia with private sector lead bodies are piloting guidelines for effective working with the voluntary sector developed by the NCVO.

A fundamental shift in thinking seems unlikely. A Cabinet Office document issued at the end of 2012 also seems to point to failings in the voluntary sector rather than in the Work Programme's design, commenting that 'civil society faces challenges in sharpening its competitive edge. Some big new central opportunities, such as the Work Programme, have presented significant difficulties for the sector.'[70]

At the same time, change and uncertainty in the arrangements, are themselves causing instability for providers, for example in the criminal justice system.[71]

We will keep an eye on progress.

Social value

In its progress report on 'Making it easier for civil society to work with the state', the Cabinet Office recognises that it is important to improve the public sector's skills of commissioning and to recognise social value in the services that are procured. The document points to the new Commissioners' Academy, that is being piloted as a development programme which is bringing commissioners from all parts of the public sector together to learn from the examples of the most successful commissioning organisations. Michael O'Toole, the former chief executive of the third sector bidding consortium 3SC, was also appointed in June 2012 as the government's 'crown representative' for the voluntary sector to help open up more business opportunities.

Potentially, the most significant development is the issue of guidance on the new Public Services (Social Value) Act 2012.

At the time of going to print, this has not yet been issued. We hope it will ensure that quality and other social value are considered alongside price in determining contracts. The Act requires 'public authorities to have regard to the economic, social and environmental well-being in connection with public services contracts and for connected purposes.' It is unclear whether this will mean that the wider social value of the main services delivered under the contract should be considered (for example, the wider cost savings of higher quality services beyond the immediate commissioning budget), which may favour the voluntary and social enterprise sector; or whether the offer of additional social benefits (such as sponsoring of local charities as part of wider corporate social responsibility) would qualify bidders for higher points in a tender, which might favour the private sector. There are also reports that the Act will only apply to contracts over £113,000 by central government, £173,000 by local councils.[72]

Although welcome, there is a real danger that these and other developments described by the Cabinet Office in its recent document[73] will lead to only marginal improvements.

LACK OF INDEPENDENCE OF VOICE
Our verdict: worse than last year

The ability of the voluntary sector to express its voice freely is critical to a healthy democracy. In our last report, we registered concerns that indirect and sometimes direct pressure towards self-censorship was muting the voice of some in the sector. It is hard to document silence. But, over the last year, we have heard more evidence which reinforces this point.

We believe that self-censorship is increasing because of the chilling effect of funding cuts, particularly the fear of loss of funding, and loss of capacity because of the move to restrictive contract funding. Direct censorship is also occurring through 'gagging clauses' in government contracts. The right of voluntary organisations to highlight issues with government policy is also coming under a growing attack from some politicians and journalists.

Overall, we suspect there is an increasing unwillingness to speak truth to power. It is also likely that the trend toward merging of smaller organisations, together with closures, is also reducing the capacity of the sector to speak out on minority issues.

Last year, we promised to examine whether this was just a problem for some types of organisation, whether infrastructure bodies were being constrained by government funding and whether small organisations were sufficiently represented by infrastructure bodies.

Charities with strong sources of financial, brand and knowledge power, as explored in Section 2, are certainly in a better position to speak up without fear or favour. The National Trust, for example, with little dependency on government and a powerful membership base, has been outspoken over the course of 2012 of government plans on planning. In October, we also heard from Barnardo's, one of the most powerful charities in the UK, who told us of many instances where they had taken up unpopular causes or directly challenged the Government, although they also gave one example of self-censorship, as described in Section 2. The NCVO and ACEVO also cited campaigns criticising government policy, including their own campaigns against the charity tax. Both are high profile, membership organisations with natural sources of power, although they do receive some state funding.

The position of organisations with less diversity of funding and popular support is much weaker. Many such organisations reported self-censorship to us in our consultation in 2011, including a few examples of direct pressure being put upon them by local authorities. Charities delivering government contracts seem to be increasingly at risk.

We were extremely concerned about what we heard from Clive Martin of Clinks, giving evidence in October, about the independence of voice of organisations working with offenders and their families. Self-censorship is one issue. Every voluntary organisation working in prisons would want to be free to speak out about conditions, it was said, but it was more difficult for them to speak out against the same people who commissioned services, when they had or were seeking contracts. This muting of

voice extends to campaigning. He said this part of the sector was not campaigning as it had done and when they did speak out it was often about process issues. The causes are more complex - partly because of loss of core funding, which reduced capacity, we heard, but also groups not served by contracts were increasingly falling off the radar, partly because organisations lacked knowledge: there was a lack of a voice about the experience of young black men in the criminal justice system, for example.

Explicit contract restrictions on freedom of expression are now emerging, which, in our view, directly contradict the commitment in the national Compact to 'respect and uphold the independence of civil society organisations to deliver their mission, including their right to campaign, regardless of any relationship, financial or otherwise, which may exist'.

The NCVO reports that many sub-contractors in the Government's Work Programme have signed contracts that state they must not do anything to attract adverse publicity for the Department of Work and Pensions or publicise the contract without approval from the department.[74] An example of such a contract clause, obtained via the London Voluntary Services Council, is given below:

Extract from a typical gagging clause for sub-contractors in the Work Programme Contract

NB the Contracting Body is DWP
X. Publicity, Visits, Media and Official Enquiries
X.1 The Supplier shall not

39.1.3 make any press announcements or publicise the Contract or its contents in any way; or
39.1.4 use the Prime Contractor's or the Contracting Body's name or brand in any promotion or marketing or the announcement of orders without approval (which shall not be unreasonably withheld or delayed).

The Supplier shall take reasonable steps to ensure that its servants, employees, agents, suppliers, professional advisors and consultants comply with this clause.

X.3 The Supplier shall pay the utmost regard to the standing and reputation of the Prime Contractor and the Contracting Body and shall not do anything (by act or omission) which may;

39.3.1 damage the reputation of the Prime Contractor or the Contracting Body
39.3.2 bring the Prime Contractor or the Contracting Body into disrepute
39.3.3 attract adverse publicity to the Prime Contractor or the Contracting Body
39.3.4 harm the confidence of the public in the Prime Contractor or the Contracting Body

DWP also place contractual restrictions on the publication of Work Programme data by each organisation, which require that providers should not release management information for purposes other than the needs of the business and not without DWP permission. This is because it wishes to publish all performance data itself - and present that data in its own way. DWP has written to providers to emphasise that this should not prevent the sharing of good practice within the supply chain.[75] But this limited freedom does not allow voluntary organisations independently to highlight problems to others that their specific clients may be experiencing.

More generally, the legitimacy of government funded charities in campaigning is increasingly under attack, for example by the Institute of Economic Affairs report published in 2012[76] alleging that such organisations are used by the Government as 'sock puppets' to argue on behalf of state funded services. The report argues that a new category of non-profit organisation should be created for organisations which receive substantial funds from statutory sources; and that all unrestricted funding by the state, ie grants, should cease.

Concerns about this negative climate were raised with us by the NCVO in October. They were concerned that charity campaigns are coming under political attack, as was seen in 2012 when Save the Children launched its anti-poverty campaign.[77] Some Conservative MPs and commentators criticised the campaign and said that it was, or could be seen as, politically motivated . Some members of the Public Administration Select Committee had in the past also questioned the independent campaigning role of charities that are funded by the state, we were told. Fraser Nelson, the editor of The Spectator, has argued in the Daily Telegraph that charities are a 'now stuffed to the gunwales with Labour placemen' and that this is why they are pointing out problems with government policies.[78] The NCVO stressed this was not the mainstream view but was a worrying trend.

Concerns about the inappropriateness of charities' campaigning role have recently started to surface in central government. In December 2012, the Department for Communities and Local Government issued guidance to local authorities advising them to stop funding what it calls 'fake charities' that 'lobby and call for more state regulation and more state funding' and referring specifically to the report by the Institute of Economic Affairs.[79]

It is right that charities should only pursue campaigning or political activities in support of their charitable purpose, but it is also important in that context to recognise that their ability to protest and campaign is a key expression of the independence of charities. Maintaining a diversity of voices, especially on behalf of the most disadvantaged in our society, is vital to a healthy democracy. The Government should actively defend the right of voluntary organisations to campaign, even where they receive government money.

One positive development is the rise of highly independent campaigning voluntary sector organisations which use social media to garner public support and deploy it to challenge entrenched power. 38 degrees is one example which has secured changes in policy and practice through such techniques. However, there is a risk of diminishing results if 'click' petitions become too familiar and are discounted.

Infrastructure bodies

Infrastructure bodies can play a vital role in gathering together the views of organisations and presenting them collectively, especially where the sources of power of individual organisations are weak or contracts are perceived to be at stake if an organisation is outspoken. This role is especially important for smaller organisations, for example, who may find it hard otherwise to get their voices heard.

When the NCIA gave evidence to the Panel, we were told that they thought a strong and distinctive voice was not evident and they argued that there was a 'London bubble' of larger organisations, with other, more numerous, voices frozen out. Community Matters told the Panel that the policy of the Government to reduce the number of strategic partners (from 44 to 7) was also seen as a potential loss of independence of voice, because certain sub-sectors with distinct interests were no longer represented. The voice of small organisations was particularly at risk, they thought. Community

Matters, for example, was no longer a strategic partner. Since the evidence was given, it has been announced that Community Matters and NAVCA are likely to merge.

The NCVO and ACEVO were clear in evidence that they actively campaigned on behalf of the sector without fear or favour and were unaffected by receiving state funding. They seemed sanguine about the phasing out of this funding and saw advantages in the planned merger of the NCVO with Volunteering England. They also argued that influence behind the scenes could sometimes be more effective.

And yet we suspect there is a growing reluctance in the sector to speak truth to power, partly because it is so hard to gain the ear of Government for the voluntary sector, as discussed below. For example, leading infrastructure bodies came under attack from within the sector when they wrote as 'charity leaders' to the Economic Secretary to the Treasury on 19th October 2012 saying that they 'were looking forward to working with you to build a more sustainable economic future for our country, by stimulating growth and tackling the deficit'. The letter was seen by some as placing the voluntary sector at the disposal of the government machine.

We recognise that challenging messages can sometimes be given more effectively in private, although visible campaigning can be important not just in its own right but also as an act of leadership for the wider sector. We also believe that infrastructure bodies could do even more than just question practices that threaten the independence of the sector - for example by launching judicial reviews of contractual terms which reduce independence.

It can also be hard for large infrastructure bodies to speak up clearly on behalf of diverse and sometimes competing interests. We are concerned that key voices will be lost in the trend toward merger of infrastructure bodies. Equally, the loss of many small, specialist voluntary bodies through merger or closure may mean a loss of independent voices for minority issues.

The Government must comply with its own Compact commitment to allow the sector to be independent. Voluntary organisations - especially those with strong sources of power - must also exercise leadership and stop self-editing what they say.

LACK OF CONSULTATION AND INVOLVEMENT
Our verdict: worse than last year

It is one thing for independent voices to be raised, another for them to be heard: good policies come from a mature relationship between funders and funded. The deep knowledge of the voluntary sector about what works, about diverse needs and about the impact of the Government is all essential to good government. It is part of an effective, independent relationship that knowledge should be shared and acted upon.

The Barometer identified the importance of full and genuine consultation with the sector by partners and other funders; and in last year's report we said we would be looking for a commitment by the Government to a genuine dialogue with different parts of the sector. Specifically, we promised to look at how 'co-design' of key government processes and policies with the voluntary sector and others could be achieved and how the interests of small organisations can be better promoted.

The national Compact commits the Government to 'work with civil society organisations from the earliest possible stage to design policies, programmes and services'. In the 2010 National Survey of Charities and Social Enterprises (the latest survey available) respondents were more likely to disagree than agree that they are consulted on issues that affect them; action is taken on the views expressed in consultations; and they are involved in developing and carrying out policy which affects them. Local as well as central government are committed to formal consultation under the Compacts and Best Value Guidance, although non-compliance is common. Whether the formalities of consultation are followed or not, there is the deeper question of whether voluntary organisations are listened to sufficiently or have sufficient influence, with true respect for independence. There is, of course, always the danger that consultation is simply lip service or abused as a way of implying shared responsibility for unpopular policies.

The Government also needs to recognise that voluntary organisations cannot respond to consultations overnight: the 12 week minimum consultation period should be re-instated.

It is uncertain how committed the civil service is to working closely with the voluntary sector, although practices vary across departments. In its Civil Service reform plan published in June 2012 by the Cabinet Office, the Government calls for more 'co-design' of policies, promising that 'open policy making will become the default.' Yet mentions of voluntary sector expertise are limited in this document. Indeed, the Foreword by the Prime Minister refers only to the importance of drawing on the expertise of the private sector, surprising for a document written by the lead department for the voluntary sector. The most striking example of lack of influence in co-designing policies was the announcement in the 2012 Budget of reduced tax relief for large donations without any prior consultation with the sector. A subsequent high profile and concerted media campaign by key voluntary sector infrastructure bodies eventually led to the decision being overturned.

This lack of influence is important because it eventually translates into poorer services and policies, and funding and commissioning arrangements which fail to deliver the best value.

A number or relevant points were made by small organisations and their representatives to the Panel, with a feeling that the sector as a whole had become more comfortable speaking about process than about the substance of government policies or services. They felt it was important for the sector to assert its right to independence in a co-ordinated and joined up way, and for it to speak up clearly. Independent networks should be encouraged.

Going forward, a greater focus in the voluntary sector on how to build a stronger voice on policy as well as funding issues is needed, as well as greater commitment in government to genuine dialogue, building on existing examples of good practice where they exist in individual local authorities and specific areas of policy.

4 Our overall assessment

It is clear from our review of the evidence in Section 3 that independence of voice, purpose and action in the voluntary sector is under real threat. The very identity of the sector is in question, as it is increasingly being treated as interchangeable with the public and private sectors, and public sector confidence and trust in it risks being undermined. At stake is the ability of voluntary organisations to speak out independently and to provide the best support to those that need their help, qualities at the heart of a healthy democracy and compassionate society. That independence is ever more important, as the Government cuts back on the welfare state and public services and trust and engagement in national politics is in decline.

All voluntary organisations need to guard their independence carefully and cannot afford to be complacent. But, as we explained in Section 2, organisations working closely with central and local government which have limited financial and brand power are likely to be facing the greatest challenges.

At particular risk is the support received from the voluntary sector by the marginalised, the voiceless and the impoverished, who may have nowhere else to turn and no other advocate.

Organisations helping them are facing rising demand for services, as income dramatically falls, and tough choices about funding, survival and independence.

As explored in the previous section, we have found that the same six challenges remain as a year ago, each picking up key aspects of our Barometer. In some, we see a rapidly deteriorating situation.

Our overall assessment against the Barometer is therefore of poor conditions compared to a year ago, with stormy weather ahead and independence of purpose, voice and action all under threat.

Society will certainly feel the impact if diverse voices are increasingly silent, narrowing political debate, and charities look to their contract terms rather than their mission when vulnerable people turn up on their doorstep for support. Even organisations with strong independence may feel the cold, if trust and public support are eroded, threatening the financial life blood of the whole sector.

We are concerned that both the sector as a whole and the Government do not have independence in their sights as a priority. In their discussions, the focus is generally on money, not where an independent voluntary sector can best add value. Worryingly, the blurring of boundaries between the sectors described in Section 3 is leading some to conclude that voluntary organisations delivering public services should no longer be classified as charities, rather than defending the distinctive value that independent voluntary organisations can bring. It is mission, not money that matters.

Independence is not just in danger of being forgotten, it is also being challenged by some, with the right of voluntary organisations to criticise government being openly questioned. Contract terms that restrict freedom of voice are creeping into the Work Programme. Fear of losing vital income is also leading to self-censorship.

Independence cannot be maintained without the right support - financial and regulatory. It is important that the Government and in particular the Office of Civil Society recognise the seriousness of the situation, but there are few signs that this is the case. There have been some positive developments, such as the passing of the new Public Services (Social Value) Act 2012, the impact of which is yet to be seen; and we recognise that the Office of Civil Society in the Cabinet Office has some steps in hand to modify commissioning processes to better match the needs of the voluntary sector. However, the failure to enforce the Compact, the removal of the minimum 12 week notice period for consultation in response to widespread non-compliance, the inability of the Cabinet Office itself even to provide adequate basic reporting information to Compact Voice on its relationship with the voluntary sector, and the mention of the voluntary sector in its new Procurement Pledge only as an afterthought, are examples where these issues appear not to have been taken forward sufficiently.

5 Looking ahead to 2013

Looking ahead to 2013, we hope to see significant improvements and hope to engage with all concerned in a debate about how to achieve this, not just nationally but at local government level too. There are issues here not just for government but also for the sector and individual organisations. Over the next 12 months, we want to see:

- **A stronger sense of the unique identity of the sector** so that respect for its independence is increased. In his review of the Charities Act 2006,[80] Lord Hodgson called for a debate on what constitutes a charity. We think this debate must be led by the voluntary sector itself and should look not just at charities but at the wider voluntary sector. The aim should be to identify and articulate what makes the sector distinctive and independent and build a consensus about what would best protect it. Calls to remove charitable status from charities that receive most of their funding from the state should be resisted, as mission not money is key, but it is vital that charities act like charities if they enjoy that status, including exercising their independent voice. Sector wide bodies should articulate the distinctive value of the voluntary sector in delivering public services and the importance of independence.
- **Improved safeguards and regulation,** with the Cabinet Office producing 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 removed during 2012 should be reinstated. Sufficient funding must be available to the Charity Commission to promote independence; and there should be a clear separation between funders and regulators of exempt charities.
- **Greater protection for independent governance.** The Charity Commission should issue guidance like that in Scotland which prohibits Ministerial direction or control of a charity.
- **Commissioning and funding models that allow voluntary sector bodies, including small ones, to give their best.** Guidance on the new Public Services (Social Value Act) 2012 should result in *quality and other social value* being considered alongside price in determining value. Stronger safeguards are needed to protect sub-contractors in consortia delivering public services in the Work Programme and elsewhere. There should be 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.
- **Stronger independence of voice of the sector.** Gagging clauses and controls on data should not be allowed and the rights of voluntary organisations to campaign should be defended by the Government and others. Given the relative lack of power to protect their independence of small organisations and those working with disadvantaged groups, infrastructure bodies should do more to articulate their needs to Government.
- **Genuine consultation and involvement by Government.** We recommend 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.

We will report on progress again in January 2014.

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