



## AGENDA

### SELECT COMMITTEE - COMMISSIONING

**Tuesday, 14th January, 2014, at 2.00 pm**

Ask for: **Denise Fitch**

**Swale 1, Sessions House, County Hall,  
Maidstone**

Telephone **01622 694269**

*Tea/Coffee will be available 15 minutes before the start of the meeting in the meeting room*

#### **Membership**

Mr M J Angell (Chairman), Mr M Baldock, Mr M A C Balfour, Mr H Birkby, Mr N J D Chard, Mr G Cowan, Mr T Gates, Mr C R Pearman and Mr M J Vye

#### **UNRESTRICTED ITEMS**

*(During these items the meeting is likely to be open to the public)*

- 1            Declarations of Interests by Members in items on the Agenda for this meeting.
- 2            Minutes of the meeting held on 16 December 2013 (Pages 3 - 6)
- 3            2.00pm - Informal discussion of Background Research - Briefing notes and research papers

The information pack was given to Members hardcopy at 16 December 2013. Members are requested to comment on key points of the documents in relation to the terms of reference.

- 4            2.45pm - Judy Doherty, Business Transformation and Programme Manager, Customer and Communities (Pages 7 - 26)

#### **EXEMPT ITEMS**

*(At the time of preparing the agenda there were no exempt items. During any such items which may arise the meeting is likely NOT to be open to the public)*

Peter Sass  
Head of Democratic Services  
(01622) 694002

**Monday, 6 January 2014**

## KENT COUNTY COUNCIL

---

### SELECT COMMITTEE - COMMISSIONING

MINUTES of a meeting of the Select Committee - Commissioning held at Wantsum Room, Sessions House, County Hall, Maidstone on Monday, 16 December 2013.

PRESENT: Mr M J Angell, Mr M Baldock, Mr M A C Balfour, Mr H Birkby, Mr N J D Chard, Mr G Cowan, Mr T Gates, Mr C R Pearman and Mr M J Vye

PRESENT AS A WITNESS:

IN ATTENDANCE: Mrs P Cracknell (Research Officer Scrutiny & Evaluation, Business Intelligence), Ms D Fitch (Democratic Services Manager (Council)) and Ms J Sage (Assisting Research & Business Intelligence)

### UNRESTRICTED ITEMS

**1. Election of Chairman**  
(Item. 1)

Mr M Balfour proposed and Mr M J Vye seconded that Mr M J Angell be elected Chairman of the Select Committee.

RESOLVED that Mr M J Angell be elected Chairman of the Committee.

**2. Commissioning and Procurement Topic Review**  
(Item. 2)

(1) The Chairman introduced the report that had been circulated with the agenda which set out proposed Terms of Reference, scope and general approach to the review included suggested witnesses either for written or oral evidence.

(2) The Committee discussed the proposed Terms of Reference and scope of the review and made the following points:

- Mr Baldock wished it to be noted that he did not agree with the assumption in paragraph 1.1 of the report that commissioning was the only response to the statement that "Public Services are changing as previous models of service delivery are no longer affordable in a time of reductions in public spending, future significant increase in demand for services and increased public expectation about quality of services."
- Mr Cowan emphasised the need to look at the voluntary sector and its issues in relations to commissioning of services, whilst acknowledging their hard work he questioned how far it was possible to provide services with volunteers.
- Mr Baldock proposed that the Terms of Reference be amended to include reference to giving consideration to what steps were taken to protect services if the provider failed to fulfil their contractual obligations. This on

being put to the vote was lost. It was pointed out that this was covered within the scope of the review.

- Reference was made to the importance of Members of the Select Committee being aware of the Public Services (Social Value) Act 2012, which would come into force on 31 January 2014.
- The Chairman drew the Committees attention to the importance of Members of the Committee not approaching individual providers involved in any ongoing tendering/procurement process to provide Kent services as this was prohibited in procurement law.
- Members expressed their individual perceptions of Commissioning within the public sector and there was a general discussion on the scope of the review.
- It was suggested that the Committee should also receive evidence from other Local Authorities who have had experience of commissioning services.
- Mr Vye circulated a note from the “Third Sector Commissioning” conference that he had attended on 26 November 2013.
- Reference was made to the recently commissioned Children’s and Adults Mental Health Service (CAMHS) which was being provided by Sussex County Council. It was noted that there was an item on this service at the meeting of the Health Overview and Scrutiny Committee on Friday 31 January 2014.
- The importance of robust contract monitoring was emphasised.
- The value of flexibility in commissioning was mentioned.
- It was confirmed that witnesses would be asked to share their experiences of barriers to commissioning as part of their evidence and that evidence would be sought from those who had been unsuccessful in the commissioning process.
- The importance of considering Best Value, including social value as part of the commissioning process was raised.
- It was mentioned that all County Councillors could have a role in informally monitoring contracts in their area and providing valuable feedback. Also reference was made to the changing role of Councillors as part of the transformation agenda and it was suggested that they may have a role in “due diligence” prior to commissioning of services.
- Mr Vye mentioned that the Leader was considering establishing a Cross Party Member Panel to oversee Commissioning.
- The Chairman put forward the suggestion that the Committee may wish to task small groups of Members with going on visits and feeding back to the Committee.
- It was acknowledged that the experience of Commissioning would be different depending on the service being commissioned.
- Reference was made to the Public Service agreement and the principle behind it of a single funding concept and a whole community perspective.
- Mrs Cracknell explained how it was proposed to engage with witnesses and the way in which the evidence gathering sessions would be run. She undertook to email written evidence to Members as it was received.
- Any Members who were linked to a company or voluntary sector organisation which was providing evidence to the Committee were requested to inform Ms Fitch so that that this could be recorded.
- Mrs Cracknell circulated Information Pack One: Background Papers for Members and explained that at the next meeting on 14 January 2014 the material would form the basis of the Committee’s initial discussion. Mrs Cracknell added that Ms Doherty, Business Transformation and Programme

Manager, Customer and Communities would be attending the meeting to provide an overview, discuss the key barriers and KCC successes. As the request of Mr Balfour, Mrs Cracknell agreed to circulate an electronic copy of the Information Pack to the Committee.

(3) RESOLVED that (a) the following Terms of Reference, as set out in the report be approved:

(i) to determine what KCC needs to do to become a better commissioning authority, with a particular focus on removing barriers to entry for the provision of KCC services from new providers, particularly small to medium sized enterprises (SMEs) and members of the voluntary, community and social enterprise sector (VCSE).

(ii) to consider if the authority is using its commissioning processes to ensure it meets its duties under the Social Value Act

(iii) to examine how, in becoming a commissioning authority the voluntary, community and social enterprise sector (VCSE) can play a more important role in the provision of KCC services

(iv ) to make recommendations around the role of KCC as a commissioning authority and the programme of activity through Facing the Challenge that will move the authority to have a commissioning focus and improve how we do commissioning.

(b) the general approach to the review on commissioning and procurement as set out in the report be approved.

This page is intentionally left blank

## Commissioning & Procurement Select Committee Briefing

### 1. The UK Voluntary and Community Sector

- 1.1 The UK Civil Society Almanac 2013, published by the National Council for Voluntary Organisations (NCVO), describes the voluntary and community sector nationally as made up of 162,000 charities, employing 732,000 staff and supported by 23 million volunteers. Sector income is estimated at £38.3 billion; it spends £36.8 billion and holds assets worth £101 billion. £14.2 billion of total voluntary sector income came from government sources, of which 79% was from contracts and 21% from grants.
- 1.2 The sector is very diverse and within these headline figures there is enormous disparity of size, income and purpose. The figures above would not reflect the condition of the very smallest organisations because the Charity Commission has a registration requirement of £5,000 minimum annual income.
- 1.3 NCVO describes four main segments within the sector as a way of understanding business models and funding dependencies.
  - 1.3.1 Big Fundraisers are organisations with strong brand recognition and for whom fundraising provides a major source of income. 24% of total sector income came from donations in 2011/12, but some 15% of this was donated to 10 well-known charities. Big Fundraiser charities tend to be those that operate in the fields of medical research, hospitals and hospices or children and young people's services, but the group includes The National Trust and Oxfam.
  - 1.3.2 Service Providers are those whose income tends to be earned from the provision of services to beneficiaries. There was considerable voluntary sector growth between 2000/01 and 2010/11 and this is principally accounted for by the increases in this source of income. Most comes directly from contracts with central and local government and during the same period that saw marked overall growth, the balance between contracts and grants has also shifted markedly in favour of contracts. The risk for these organisations is that growth will not be sustained as public spending falls and the contracting environment becomes highly competitive.
  - 1.3.3 Grant-makers are voluntary organisations or foundations that use income to make grants to other organisations. Voluntary sector recipients account for about 46% of the total spend in this category with the remainder funding research and development. Grant-maker income comes from individual, corporate and statutory sources as well as from investments. In 2010/11 grant expenditure from this source fell to £4.3 billion from a high of £5.6 billion in 2007/08 (at 2010/11 prices), mirroring a fall in investment income.
  - 1.3.4 Community Groups or micro-organisations have an annual income less than £10,000. This group includes those that are too small to register with the Charities Commissions and so estimates of the size and health of this part of the sector is more difficult to determine. NCVO sources estimate that micro-organisations account for over half of all voluntary organisations in the UK but that they account for only 0.6% of total sector income. They are particularly reliant on individual donation, legacies and purchases, including membership fees. The vast majority of Community Group receive no statutory income. They are also highly reliant on volunteers to deliver their services. This group includes Scout groups and youth clubs, Village Halls, charitable playgroups, sports clubs and Parent-Teacher Associations.

## **2. Sector Support Arrangements: National Infrastructure**

- 2.1 There are a number of organisations that support the voluntary and community sector at a national level. Three of the most significant are:
- National Council for Voluntary Organisations (NCVO) is the largest umbrella body for the voluntary and community sector in England. On January 1<sup>st</sup> 2013, Volunteer England merged with NCVO.
  - National Association for Voluntary and Community Action (NAVCA) is the national voice for local support and development organisations in England. Their role is to champion and strengthen voluntary and community action.
  - Many sector-specific organisations provide infrastructure support to parts of the sector including sports, arts and the environment.

## **3. Regional Infrastructure**

- 3.1 RAISE is the main organisation operating at a regional level. It was established in 1999 and is the support organisation for the voluntary and community sector in South East England. Its remit is to work in partnership with policy-makers, stakeholders and funders to increase the potential of the sector and to improve quality of life within the communities they serve. RAISE has a particular focus on supporting health and social care.

## **4. Local Infrastructure**

- 4.1 The term Local Infrastructure Organisations (LIO's) is generally understood to refer to Councils for Voluntary Service (CVS's) and Volunteer Centres (VC's). These organisations provide local infrastructure support to voluntary and community sector groups and organisations and contribute to overall community capacity. Some LIO's also provide direct community services under contract.
- 4.2 In Kent there are six CVS's that together cover the whole of the county. They vary in size with some serving one district and others serving up to four districts. Three CVS's have integrated Volunteer Centres and there are also seven separate local Volunteer Centres. All receive some funding from KCC and some receive district council funding.
- 4.3 Other organisations operating in and providing support services to the sector in Kent include Kent CAN, which has a county wide focus, and Action for Communities in Rural Kent which has a focus on rural communities. The latter is a voluntary organisation but supports rural business as well as community and volunteer-led groups.

## **5. Sector-led transformation**

- 5.1 The voluntary and community sector has been engaged in on-going modernisation for many years; developing new partnerships for collective action, improving on-line services and becoming more efficient through mergers, partnership and shared services. LIO's work together through the Kent and Medway Infrastructure Partnership.
- 5.2 In 2012, the Cabinet Office, through the Big Lottery, funded a modernisation project "Transforming Local Infrastructure". This was designed to encourage mergers and improve web-based services. Kent received an award which was managed by the Big Society Cooperative and focused on developing integrated on-line support products for the sector known as Big Society Web.



- 5.3 The most recent collaboration is the development of VOICE. This is a new infrastructure partnership in the east of the county involving the Volunteer Centres in Dover, Ashford, Shepway and Thanet and CASE Kent, which is a CVS.

Judy Doherty  
Business Transformation Manager  
Customer and Communities Directorate  
[Judy.doherty@kent.gov.uk](mailto:Judy.doherty@kent.gov.uk)

This page is intentionally left blank

# ANALYSIS OF RESPONSES TO THE CONSULTATION ON MAKING PUBLIC SECTOR PROCUREMENT MORE ACCESSIBLE TO SMALL AND MEDIUM SIZED ENTERPRISES

## Introduction

In May 2013, the Prime Minister's advisor on enterprise and small business, Lord Young of Graffham, recommended in his report, "Growing your Business", that government develop a set of "single market" principles to be applied by all public bodies in their procurement. This would ensure a simple and consistent approach across all public sector authorities, so that SMEs can gain better and more direct access.

The Government accepted Lord Young's recommendations and committed to consult on the high level standards which all public bodies should be looking to achieve.

A consultation paper was published by the Government on 19 September 2013. The consultation ran for four weeks to 17 October 2013. The consultation document was issued directly to a number of known stakeholders and was also made publicly available on the [GOV.UK website](http://gov.uk).

Responses were received from 155 organisations representing a broad range of suppliers, industry bodies and procuring authorities.

- Suppliers / businesses (50)
- Trade bodies (22)
- Local authorities (36)
- Heath organisations and NHS Trusts (8)
- Fire and rescue authority (4)
- Police (5)
- Other public bodies (9)
- Universities (2)
- Individual procurers (11)
- Other (7)

We are grateful to all those stakeholders who responded to the consultation paper and/or participated in one of the consultation meetings that were organised.

This document summarises the results of the consultation. It describes the overall results of the consultation and summarises the key points raised by stakeholders.

## Next steps

Next steps on the key reforms were announced within the Government's commitment, "Small Business: GREAT Ambition", published on 7 December at <https://www.gov.uk/bis>.

They are as follows:

We will use legislation to:

- Cut down on process by abolishing Pre-Qualification Questionnaires (PQQs) for low-value contracts

- Mandate the use of a standard core PQQ for high-value contracts and ensure small business needs are taken into account in the design of procurement processes.
- Make contract opportunities easier to find by making them all accessible on a single online portal.
- Make sure small firms get treated fairly by mandating prompt payment terms all the way down a public procurement supply chain.

To make sure that small businesses see the benefit of these reforms, we will:

- Require all public bodies to report their procurement spend and prompt payment performance with small businesses/VCSEs.

Further announcements on the detailed measures will follow in due course.

## **Analysis of responses**

### ***Q1. What mechanisms and incentives would prevent contracting authorities from asking unnecessary and burdensome questions during the procurement process?***

43% of respondents expressed support for eliminating Pre-Qualification Questionnaires (PQQs) below the EU threshold; 31% were opposed, and 26% neutral..

Those respondents which supported the measure considered PQQs to be unnecessary and burdensome for lower value procurements. Many of those contracting authorities which responded said they had already stopped using PQQs for contracts below the EU threshold.

Some public procurers did not support this reform because of a concern that without a mechanism to create a shorter list of suppliers to invite to tender there would be a significantly higher number of tenders to evaluate, adding to resource pressures.

A small number of businesses, and some industry bodies were concerned about the cost of preparing a tender response when there was potentially a reduced chance of winning the contract in a larger field of competitors.

There was some support for system a whereby tenderers self certify that they meet the minimum qualification levels, and then due diligence checks are only carried out on the winning tender. Many believed that better guidance and training would prevent unnecessary questions re-emerging elsewhere in the process.

### ***Q2. Should the core PQQ currently used in central government be adopted as standard across the public sector?***

64% of respondents agreed that there should be a standard core PQQ across the whole of the public sector. 15% were opposed, and 21% were neutral, or didn't know.

There was a strong view that better guidance would help prevent procuring authorities from asking disproportionate or irrelevant questions.

Some procurers expressed a desire to retain local core PQQs, rather than adopt central government's standard.

### ***Q3. Which, if any, questions could be removed from the core PQQ? Are there any additional questions or relevant standards that should be included because they are essential to a specific sector (and please explain why they are essential)?***

Some respondents advocated retention of the construction PAS 91 standard for construction related contracts. There were also requests for a menu of optional, non core questions (e.g. quality / diversity / health and safety / sustainability) which could be added to the core on a case by case basis depending on the nature of the procurement.

### ***Q4. How would a single online platform for managing, submitting and verifying PQQ responses provide advantages to bidders and contracting authorities over and above the PQQ reforms already described? Would suppliers be prepared to pay a small fee for using this system (assuming the option of manually submitting a PQQ without any charge is also still available)?***

52% of respondents supported the concept of a single online platform; 23% were against, and 25% were neutral or didn't know. However almost 100% said suppliers should not pay a fee to use a system.

Some respondents suggested that having a core standard PQQ which requires suppliers to submit the same standard information every time, removed the need for an online portal. Others stated that a central system would only hold basic data so questions would still need to be asked outside the system which might reduce any associated benefit. Some were concerned that this would add to the proliferation of existing systems and portals, thus adding to complexity.

***Q5. Do you agree that all public procurement opportunities over £10,000 should be accessible from Contracts Finder<sup>1</sup>? How can this be achieved simply and effectively? If you do not agree, why not?***

***Q6. Do you agree that all award notices for public contracts over £10,000 should be accessible from Contracts Finder? How can this be achieved simply and effectively? If you do not agree, why not?***

65% were in favour for publishing opportunities, and 61% for award notices. 18% opposed both these reforms, and, for those who were neutral, the figures were 17% (opportunities) and 21% (award notices). Some respondents stated that there was a need to make improvements to the contracts finder system as it will have to cope with significantly more traffic. A number of procuring authorities preferred the option of continuing to place adverts on local portals – which would require data feeds to the contracts finder system.

There was evidence of existing good practice with many authorities routinely publishing their new opportunities and award notices on-line.

There was a consensus in favour of raising the threshold above £10K so that, for very low value procurements, authorities would retain the flexibility to carry an informal, less process driven procurement, thereby reducing costs and bureaucracy.

***Q7. Do you agree that all public bodies should publish data on their procurement spend with SMEs in one place? How could this be achieved simply and effectively?***

***Q8. For Local Authorities, how can this work integrate with existing open data practices, such as the Code of Transparency, whilst minimising data reporting burdens? Are there similar issues in other sectors?***

59% supported this reform, with 6% opposed and 35% neutral. There was evidence that a large number of authorities are already publishing similar data locally. The concern about £10,000 being a low threshold was raised again in the responses, and some respondents believed that this new reporting obligation would add to resourcing pressures. Many commented on the need to ensure that SMEs could be easily identified. Some respondents identified the need to ensure alignment with the new transparency code and advocated the use of open data standards to avoid integration problems between portals and local websites.

---

<sup>1</sup> This could be achieved by publishing direct on Contracts Finder or through a feed from an existing system.

There were proposals from the voluntary sector to broaden the scope of this reform to include reporting on spend with voluntary organisations or charities.

***Q9. Do you agree that public bodies should publish data on their use of centrally negotiated deals, together with pricing data, to demonstrate value for money? How could this be achieved simply and effectively?***

49% supported this reform, with 29% opposed and 24% in the neutral / “don’t know” category. Many respondents said that, whilst they supported the objective for greater transparency on pricing, this obligation would be bureaucratic and cumbersome.

A number of respondents commented on difficulties associated with comparing pricing information in respect of non standard requirements, and some questioned how this reform could be enforced.

***Q10. How can we ensure that standard payment terms are passed down through the supply chain for all public contracts?***

84% were in favour, 3 % opposed, and 13% neutral or didn’t know.

The responses also highlighted the need to ensure that these new terms are enforced.

Many respondents stated that this could be achieved through legislation and a standard clause which public bodies would need to ensure was replicated down the supply chain.

***Q11. Should public authorities and their supply chains publish performance data on their prompt payment to suppliers? How could this be achieved simply and effectively?***

65% supported this with 16% opposed and 19% neutral or didn’t know. Many respondents noted that a high percentage of procuring authorities are already required to publish their performance on payment on invoices. There were a range of useful suggestions on how this reform could be implemented and enforced. For example, data could be stripped off existing finance systems, or this information could be published as a key performance indicator on an annual basis.

***Q12. Do you consider that requirements for performance bonds are disproportionate and creating barriers for SMES aiming to win public contracts? How is this happening and what reforms could help alleviate this?***

46% agreed with 25% not agreed and 29% neutral / didn’t know.

A number of respondents commented that performance bonds should only be considered for very high value complex procurements. Some respondents believed that better guidance on the use of financial guarantees that advocated a more risk based approach would be a sensible way of addressing the topic.

***Q13. How can government increase the take-up of electronic invoicing in public procurement to maximise the opportunities it affords and create a more enabling environment for SMEs?***

The consultation identified widespread use of e-invoicing across the board, although a few smaller businesses are still using a paper based approach.

Many believed that better integration between finance and procurements systems would increase take up further.

The forthcoming EU Directive on e-invoicing will require all procuring authorities to accept e-invoicing once it is transposed into law.





# INDEPENDENCE UNDER THREAT: THE VOLUNTARY SECTOR IN 2013

The Panel's second annual assessment

Initiated and funded by

**The Baring Foundation**



# 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,<sup>1</sup> 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 identity 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,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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,<sup>5</sup> received by up to a third of the sector.<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup>

## 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 out 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,<sup>10</sup> 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.<sup>11</sup> 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'.<sup>12</sup>

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'.<sup>13</sup> 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<sup>14</sup> - 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,<sup>15</sup> 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<sup>16</sup> 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.





© The Baring Foundation, Civil Exchange and DHA, January 2013  
Design by David Casey, DHA.

**The Baring Foundation**

[www.baringfoundation.org.uk](http://www.baringfoundation.org.uk)

**CIVIL  
EXCHANGE**  
Strengthening Society's Connection to Government

[www.civilexchange.org.uk](http://www.civilexchange.org.uk)



[www.dhacommunications.co.uk](http://www.dhacommunications.co.uk)

**[www.independencepanel.org.uk](http://www.independencepanel.org.uk)**