

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

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 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,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 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,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 consultation¹⁴ - 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 Scotland¹⁶ 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.

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