

INDEPENDENCE PANEL  
Panel on the Independence of the Voluntary Sector

# AN INDEPENDENT MISSION: THE VOLUNTARY SECTOR IN 2015

The Panel's fourth and final annual assessment

Initiated and funded by

**The Baring Foundation**



# Foreword

Over the last four years, the Independence Panel has charted worrying and growing threats to the independence of the sector. This last report by the Panel says that unless we act now, the future of an independent voluntary sector is at serious risk.

There's so much lost when independence is threatened. Our society needs a thriving and independent voluntary sector – speaking up on behalf of often vulnerable and relatively powerless groups, helping to design better public services, and providing trusted support for countless communities and individuals across the country.

That's even more important now, as austerity bites. Charities' knowledge of what is happening on the ground can help governments meet needs more effectively. Yet the Trussell Trust, which runs hundreds of food banks across the country, told us how they were threatened with closure when they raised issues with the Government that could have led to fewer people going hungry. Women's Aid informed us too that 'gagging clauses' in contracts for public services, self-censorship because of fear of loss of vital funding and active threats by some local authorities to those that do speak out are having a damaging effect on the services victims of domestic violence receive. 'Gagging clauses' are being used more widely, the new Lobbying Act has had a silencing effect on many charities and further restrictions have been placed on the ability of NGOs to support individuals challenging government decisions in the courts. The proportion of Government consultations that are cut short has also doubled.

The causes and effects of this are of deep concern. Under successive governments, the voluntary sector has increasingly been seen as a contractual arm of the state, without an independent mission or voice, interchangeable with the private sector. We are also starting to see a defensive attitude toward the campaigning voice of charities from some leading politicians, as documented in our report in pages 36 – 37, perhaps because more people are turning to the voluntary sector to express their views, as engagement with traditional politics declines.

This won't be reversed without strong and inclusive leadership from the voluntary sector that stands up for its independence and communicates why it is important. Just as vital, the Government must work with the sector to establish what the Panel has called a 'new settlement.' It is very welcome that the Baring Foundation is now fundraising to establish a Commission on the future of the voluntary sector. There are many fundamental issues for it to consider, including a new model for working with the public sector and for funding and regulation that can better support the sector's independence.

Immediate, practical steps should also be taken by the next Government, including reversing the checks on the voice of the sector described above, reviewing and reforming public sector commissioning, giving targeted financial support for the sector and creating new platforms for public dialogue.

I would like to thank everyone who has given evidence to, and worked with the Panel, including present and past Panel members. Your support for a robust, independent voluntary sector is invaluable.



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

**11 February 2015**

# About the Panel

## Chair



**Sir Roger Singleton CBE**

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

## Other members



**Nicholas Deakin CBE**

Emeritus Professor of Social Policy at Birmingham University and Chair of the Commission on the Future of the Voluntary Sector which reported in 1996.



**Julia Unwin CBE**

Chief Executive of the Joseph Rowntree Foundation.



**Andrew Hind CB**

Editor of Charity Finance and Trustee of the Baring Foundation, formerly Chief Executive of the Charity Commission.



**Louise Whitfield**

Partner at Deighton Pierce Glynn and an expert in public law and judicial review.



**Joanna Holmes**

Chief Executive of the Barton Hill Settlement and Chair of Locality.



**Nick Wilkie**

Nick Wilkie, Director of UK Programmes at Save the Children.



**Sir Bert Massie CBE**

Formerly Commissioner on the Compact and Chair of the Disability Rights Commission.

## Head of the Panel's secretariat

**Caroline Slocock**

Director, Civil Exchange.

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. The Panel was initially chaired by Dame Anne Owers until July 2012 and also included Lord Hodgson until November 2011. Joanna Holmes joined the Panel in early 2014. This report is the last of four annual assessments.

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

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# Executive summary

Over the last four years, since the Panel began monitoring the independence of the voluntary sector, our concerns have grown year on year. The voluntary sector's independent voice, freedom of purpose and action are being undermined by a negative climate. This includes the Lobbying Act, 'gagging clauses' in public service contracts, new restrictions on the ability of voluntary organisations to use the courts to overturn poor Government decisions, truncated government consultations, commissioning and procurement for public services that does not support independence and diversity in the voluntary sector; and weakened safeguards to protect the sector's independence.

Some of these problems could be quite easily reversed but underlying attitudes also need to change - a more challenging task. It is becoming more common for Government Ministers and MPs to attack campaigning by the sector. Reports of self-censorship by voluntary organisations may be understandable but are no less worrying.

## **Why independence is important**

It is in everyone's interests to take urgent action to stop this. An independent voluntary sector lies at the heart of a healthy democracy and has helped shape much of what we value today, from the abolition of slavery to rights for disabled people. Its independent voice provides a channel for different people's voices to be heard, including those who have least power - and this voice is even more important, given increasing disengagement with formal politics. There's also enormous potential for an independent voluntary sector to help design more effective public services, especially to better support people with specialist needs, and it can reach out to different communities and mobilise their energies. The Panel heard from the Trussell Trust and Women's Aid about attempts by voluntary organisations to realize this potential which were rebuffed, or even suppressed, leading to more people going hungry and more victims of domestic violence receiving less effective help.

## **How independence can be protected**

There are concrete and straightforward steps that can be taken by individual charities to protect independence. As our Barometer of Independence shows, a clear sense of mission, strong governance and a focus on the needs of those served are important: if mission follows money, independent purpose can be lost and independent voice and action are also at risk. Wider environmental factors are often beyond the control of individual organisations but are critical: supportive funding and contractual arrangements, genuine respect for independence and the distinctive benefits this brings; with effective safeguards to protect independence. That's why sector wide action, working with central and local government, is vital for independence.

## **The context for independence**

Successive national and local governments have publicly committed to upholding the independence of the voluntary sector, yet we still find that independence under growing threat. Specific developments under this Government are partly to blame and reductions in public spending may have added pressure. But the underlying causes are long term and therefore harder to address. Successive governments have started to see the voluntary sector primarily as a sub-contractor, interchangeable with the private sector, acting merely as an arm of the state when publicly funded, without an independent mission of its own. However, as the democratic mandate of governments has declined, the potential of civil society to express the views of the public has grown. This very power appears to be pushing politicians on to the defensive. These are trends we see in other countries too.

## Our assessment

The Panel has identified six specific challenges to independence, which it has been monitoring annually, with its first baseline report in January 2012. A summary of our concerns, including the trend, is given here, with more information in the full report.

### 1. LOSS OF THE SECTOR'S DISTINCTIVE IDENTITY AND RESPECT FOR INDEPENDENCE

**Our verdict: this continues to get worse.** The voluntary sector continues to be treated largely as interchangeable with the private sector in public contracting, with limited recognition of where it can add distinctive value or why its voice is important. Last year we called for more positive leadership from the Government but have since seen two new Civil Society Ministers and other developments that increase our concerns, including the use of volunteering as a workfare tool. But there are welcome signs of the voluntary sector starting to debate what makes it distinctive.

### 2. THREATS TO INDEPENDENCE OF VOICE

**Our verdict: this has worsened every year since we have been monitoring independence.**

The introduction of the Lobbying Act in 2014 is having a chilling impact on campaigning. We have heard of more 'gagging clauses' in public service contracts since our previous report. The Criminal Justice and Courts Bill, despite some welcome amendment, has introduced further restrictions on the ability of NGOs to support individuals who seek to overturn poor government decisions through the courts. Ministers, including the Chancellor, have taken an increasingly hostile public stance toward charity campaigning. We heard first hand from the Trussell Trust and Women's Aid of attacks on the independence of voice of charities that have sought to raise issues with central and local government, and also of examples of 'self-censorship.' The Charity Commission is taking a more ambiguous stance on charity campaigning. However, the sector has been strong in arguing against specific threats.

### 3. LACK OF CONSULTATION

**Our verdict: this has worsened every year since we have been monitoring independence.**

A recent NAO report confirms an increasing tendency to cut government consultations short, following the removal of the minimum 12 week consultation period in the Compact, the agreement between the Government and voluntary sector, in 2012; and the introduction of the Lobbying Bill in 2014 without any consultation.

### 4. UNSUPPORTIVE STATUTORY FUNDING AND CONTRACTING ARRANGEMENTS

**Our verdict: After reporting a declining picture up until January 2013, we have seen no significant improvement in recent years.**

Statutory funding is not supporting a strong, independent and diverse sector and poor commissioning and procurement practices fail to draw on the distinctive strengths of voluntary organisations, particularly in working with people with complex, specialist needs, often at local level. The Social Value Act 2012 and new changes to EU Procurement Regulations that may reduce bureaucracy are positives, as are instances of good practice, but there is no sign yet of the systemic change required.

### 5. INEFFECTIVE SAFEGUARDS AND REGULATION

**Our verdict: this continues to get worse.** We are concerned about the political independence of the Charity Commission and its unambiguous commitment to upholding the ability of charities to campaign. Its recent judgment on an anti-poverty campaign by Oxfam has only muddied the waters and we are concerned by signs that it is considering tightening existing guidance on campaigning. The Compact remains weak.

## 6. THREATS TO INDEPENDENT GOVERNANCE

**Our verdict: our concerns remain the same as expressed in 2012, with no sign of improvement.** A whole category of public functions, including museums and galleries, are nominally charities but remain tightly controlled by the Government. Some local authorities seek to exercise control over local voluntary organisations, which receive some state funding or support such as use of premises.

### Looking ahead

For independence to be respected and better protected, we need a far deeper understanding from the state about why the independence of the sector enables it to make a distinctive and important contribution to society, and strong leadership in the sector.

In our last report, we suggested civil society leaders set out their views about the future in a series of essays, published by Civil Exchange as *Making Good: the future of the voluntary sector* in November 2014. Contributors wrote about what is distinctive about the voluntary sector - its ability to generate and deploy social resources because it is not for profit and not the public sector; the way it allows people to come together voluntarily for a common cause; the 'civic space' it creates for people to express diverse views; and the way it can generate transformative relationships of trust which helps people find lasting solutions to their own problems. Many contributors called for stronger leadership in the sector and a more confident use of the sector's voice, a greater focus on prevention, more collaboration and innovation, a greater focus on the value of local services, and a shift from simply delivering public services to helping to design better ones and only delivering services where they add real value.

### Recommendations

If independence is to be better protected in the years ahead, the voluntary sector itself must seize the agenda, confidently pursue its independent mission and find new ways to work with the state and others for the public good. The role of infrastructure bodies is crucial. We hope the sector will rise to this leadership challenge.

In our last report we called for a new Commission to be established on the future of the sector; and we are delighted to announce that the Baring Foundation is now actively fundraising to make this happen. Some key areas for a Commission to consider which will strengthen independence are how to strengthen the sector's independent mission and identity and the sector's voice in a modern democracy; identification of a new model for working with the public sector; how to foster more innovation and collaboration; a new funding model for the sector that works for organisations that currently rely on state funding, including smaller organisations; and how to strengthen independent regulation.

Government action is vital too and we recommend that the next Government takes specific and urgent action in these five areas:

- Remove constraints on independence of voice and protect the legitimate right of voluntary organisations to campaign, repealing the Lobbying Act, reversing changes to judicial review and expert interventions and removing 'gagging clauses.'
- Establish formal mechanisms for dialogue and collaboration between government and the voluntary sector, at national and local level.
- Reform commissioning and procurement to get the best out of the voluntary sector and to recognise the value it creates. We recommend the voluntary sector be involved, including in drawing up new contracts.

- Provide targeted financial support to the voluntary sector, particularly for smaller organisations working with disadvantaged groups who are most at risk, to support it to deliver common social goals.
- Introduce stronger support to protect independence, including a Compact with teeth, enforced by an independent body reporting to Parliament, and ensure that the Charity Commission is politically independent with a clear role to protect the independence of the sector, including its right to campaign.

Finally, we would like to thank all those who have given evidence to the Panel over the last four years and worked with us to help strengthen the independence of the voluntary sector.

# 1 Overall assessment and recommendations

This is the last of four annual assessments by the Panel on the Independence of the Voluntary Sector, which was established in 2011 by the Baring Foundation to assess and monitor independence and ensure that it is not lost.

The Baring Foundation had been concerned for some time about threats to the independence of the sector and it decided to appoint a panel of independent experts to review the evidence in depth and reach a considered view on the scale of the challenge and the best way ahead. In our first annual assessment, published in January 2012, we identified six major challenges to independence and, against this baseline, we have since seen a deepening of the threat posed by most of them - and, in others, no significant improvement.

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We are conscious not just of the very real threats that exist but also of the opportunities for the state and the voluntary sector to work together much more effectively.

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As we look to 2015 and beyond, we are conscious not just of the very real threats that exist but also of the opportunities for the state and the voluntary sector to work together much more effectively - if the importance of independence is better understood and respected. An independent voluntary sector lies at the heart of a healthy democracy - and many of the freedoms and social changes of which this country is most proud originate from ideas, initiatives and campaigning by the voluntary sector. As governments look to do more with less, increasingly at local level, and seek to revitalise democracy, as citizens expect more from public services and society becomes increasingly diverse, a voluntary sector that is able to retain and express its independent mission can mobilise communities, innovate in its services and give voice to different perspectives and needs.

Throughout our investigations, the Panel has heard first-hand from many different kinds of organisations about the challenges they face, as well as looking closely at written evidence. We began our work by consulting widely on the factors that affect independence, resulting in the Barometer of Independence explored further in Section 2. Because there is sometimes debate about whether 'independence' can exist when the voluntary sector often depends on external funding, the Barometer identified three different dimensions of independence - purpose, voice and action - and shows how these can be maintained as the sector works with others, including the state.

The six challenges we have identified, taken together, represent a serious threat to the sector's independence, a threat that has continued to grow since 2011. These challenges are: loss of distinctive identity and respect for independence linked to a blurring of boundaries; threats to independence of voice; lack of consultation; unsupportive statutory funding and contracting arrangements; safeguards and regulation that are not adequately protecting independence; and threats to independent governance.

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The voluntary sector is being increasingly characterised as a service deliverer – valued as a contractor for public services at low cost, applauded as an agent for alleviating social problems, but attacked when it raises its voice in dissent or argues for change.

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At the root of these challenges lies an instrumentalist view of the voluntary sector amongst many politicians and the public sector and a limited or patchy understanding of the importance of voluntary sector independence. The voluntary sector is being increasingly characterised as a service deliverer – valued as a contractor for public services at low cost, applauded as an agent for alleviating social problems, but attacked when it raises its voice in dissent or argues for change. Slowly, the mission of the sector is starting to be narrowed in public perception. It is a change that is being seen not just in this country but in others too, as explored in Section 3. In Canada, for example, Oxfam has bizarrely been told that the prevention of poverty cannot be a charitable objective.

Reductions in public spending may have added pressure to this tendency but its origins are more long term. Over many years and different governments, the voluntary sector has become a significant contractor for public services. This is not in itself a threat to independence: public services can benefit from the independence of purpose, voice and action that voluntary organisations can bring. But poorly designed commissioning, competitive tendering and contracts have contributed to an undervaluing of the distinctive qualities of the voluntary sector and an underfunding of its capacity. The private and voluntary sectors are seen as interchangeable in a competitive market place where price primarily determines value. At the same time, as democratic engagement declines and diversity in society increases, the voluntary sector is gaining a potentially much stronger voice, pushing some politicians into defensive mode -illustrated in Section 4.

In Section 4 we review the six challenges identified above in detail in relation to developments in 2014, with key points below, and a summary of the progress made since our first baseline report in January 2012. In four areas, we have seen a deterioration over the last year, and in the other two no improvement.

## 1. LOSS OF DISTINCTIVE IDENTITY AND RESPECT FOR INDEPENDENCE

**Our verdict: this continues to get worse.**

Last year, the Panel called for ‘visible leadership and practical demonstrations from the Government’ to demonstrate their respect for independence. Since then, two Ministers have been appointed to the role of Minister of Civil Society in the last 6 months of 2014 and we have seen the increasing appropriation of volunteering as a ‘workfare’ tool by the Government. A new requirement by the Charity Commission for charities to declare public funding in their annual returns may aid transparency but could well be a backward step if it ends up reinforcing an emerging view that publicly funded charities cannot - or should not - be fully independent from the state. However, we welcome signs that the voluntary sector is starting to debate its distinctive identity and future direction.

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We have seen the increasing appropriation of volunteering as a ‘workfare’ tool by the Government.

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## 2. THREATS TO INDEPENDENCE OF VOICE

**Our verdict: this has been getting worse in every year since we have been monitoring independence.**

Since our last report, we have seen no shift in the Government's position on areas of concern - and some worsening. The Transparency of Lobbying, Non-Party Campaigning, and Trade Union Administration Act 2014 (the so-called Lobbying Act) is now in force and is having a chilling effect;<sup>1</sup> the Government has restricted the ability of NGOs to intervene through the courts to challenge government decisions; and 'gagging clauses' in contracts are being, if anything, more extensively used, though we note the Opposition has committed to reverse many of these negative developments if elected. We are concerned by the increasingly negative views of the sector expressed by senior Government Ministers over the last year. We have heard worrying accounts from the Trussell Trust and Women's Aid about attempts by politicians nationally and locally to stifle legitimate points raised by the sector. We are troubled by the Charity Commission's signalling of a potentially tougher stance on campaigning in the run up to the election and beyond and by the mixed signals given in its response to complaints about campaigning by Oxfam.

But we do welcome the way that the voluntary sector has acted in a concerted way to defend itself against these attacks.

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We have heard worrying accounts from the Trussell Trust and Women's Aid about attempts by politicians nationally and locally to stifle legitimate points raised by the sector.

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## 3. LACK OF CONSULTATION

**Our verdict: this has been getting worse in every year since we have been monitoring independence.**

In its last report, the Panel expressed concerns about lack of consultation on key proposals, most notably on the introduction of the Lobbying Bill, and called on the Government to restore the 12-week consultation period. No action has been taken to restore the consultation period and, in January 2015, the National Audit Office reported that the proportion of Government consultations that are less than 12 weeks had doubled to over 80 per cent, compared to 2011.<sup>2</sup> Nor do we see signs of improvement in the Government's willingness to engage, although there are some examples of good practice elsewhere in the public sector.

## 4. UNSUPPORTIVE STATUTORY FUNDING AND CONTRACTING ARRANGEMENTS

**Our verdict: After reporting a declining picture up until January 2013, we have seen no significant improvement in recent years.**

We are concerned that statutory funding is not supporting a strong, independent and diverse sector and poor commissioning and procurement practices fail to draw on the distinctive strengths of voluntary organisations, particularly those working with people with complex, specialist needs, often at local level. The Social Value Act 2012 and the new EU Procurement regulations are positive developments but we see no sign of the scale of change that is needed. Evidence emerged in 2014 that the Work Programme has failed to provide sufficient support for disadvantaged groups; and the

new Rehabilitation Service contracts, though designed to reflect the lessons, are dominated by the private sector at prime contract level. However, we are pleased that the NHS in its Five Year forward review is intending to explore new forms of grant finance to help it work more productively with the voluntary and community sector.

The National Audit Office reported that the proportion of Government consultations that are less than 12 weeks had doubled to over 80 per cent, compared to 2011.

## 5. INEFFECTIVE SAFEGUARDS AND REGULATION

**Our verdict: this continues to get worse.**

In last year's report, the Panel called on the Government to 'Compact proof' new policies and ensure that the Charity Commission is equipped to carry out a strategic role. But, over the last year, the statutorily independent Charity Commission has appeared focused on an agenda set by the government and, as noted above, has been sending some ambiguous signals about charity campaigning. The political independence of the regulator is critical to an independent sector and we note that NCVO and ACEVO inquiries into that independence were announced in November. The Compact has not to date been effective in protecting the voice of the sector or adequate consultation and needs more teeth, with a new independent body being established to monitor performance and investigate complaints, reporting direct to Parliament.

The statutorily independent Charity Commission has appeared focused on an agenda set by the government.

## 6. THREATS TO INDEPENDENT GOVERNANCE

**Our verdict: no improvement seen since our first report.**

The Panel has called for the introduction of regulations of the kind in place in Scotland to reduce the capacity for interference by the state in independent governance. In Scotland, an organisation fails the charity test if 'its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities.'<sup>3</sup> No change has occurred since our last report. There remains an issue in relation to a whole category of public functions, including museums and galleries, which are nominally charities but remain tightly controlled by the Government. The Panel also continues to hear of instances where local authorities seek to exercise control over local voluntary organisations, which receive some state funding or support such as use of premises.

There remains an issue in relation to a whole category of public functions, including museums and galleries, which are nominally charities but remain tightly controlled by the Government.

## 2015 and beyond

Looking ahead, we see a danger that this trend will only persist and deepen. Reductions in public expenditure and increasing pressure to deliver services at an ever lower price, executed through poorly designed commissioning and procurement, may make it harder for voluntary organisations delivering public services to maintain their independence of purpose and action. There is a risk that politicians nationally and locally will continue to react defensively to dissent, particularly when they believe Government policies are being questioned. In parallel, we are already starting to see another trend for the state to expect the voluntary sector to pick up social problems caused by reduced funding for public services and welfare - and then to respond antagonistically where the voluntary sector argues for a change in this strategy on behalf of its beneficiaries. Foodbanks are an example explored in Section 4 of this report.

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‘The voluntary sector risks declining over the next ten years into a mere instrument of a shrunken state, voiceless and toothless, unless it seizes the agenda and creates its own vision.’

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In our last report, we suggested that civil society leaders be asked to consider the future of the voluntary sector and how its distinctive strengths could be best deployed, and in November 2014 these views were published in *Making Good: the future of the voluntary sector*. Concerns about the future are certainly expressed. As one of our members, Professor Nicholas Deakin puts it, ‘The voluntary sector risks declining over the next ten years into a mere instrument of a shrunken state, voiceless and toothless, unless it seizes the agenda and creates its own vision.’ But essayists also see grounds for real optimism, given the inherent strength, resilience and public support of the voluntary sector and the very real value that it offers in helping to strengthen democracy, empower communities and express diversity.

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The voluntary sector has an understanding of diverse needs and a history of active engagement with those it serves, often at community level, as well as skills in innovation.

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We agree that there is considerable potential for the voluntary sector, the state and indeed other sectors to work together more effectively to deliver better social outcomes - whether working in collaboration or under contract - provided the independence of the sector is better understood and respected. The reasons to do so are powerful: public services are increasingly unsustainable in the context of rising demand, partly caused by an ageing population and reduced resources, and people expect to take a more active part in shaping services and their own lives. The voluntary sector has an understanding of diverse needs and a history of active engagement with those it serves, often at community level, as well as skills in innovation. Greater devolution, which looks likely after the election, also creates opportunities for locally based voluntary activity to contribute and thrive.

Essayists in *Making Good* brought home the distinctive value added by the voluntary sector - its ability to generate and deploy social resources simply through the goodwill, compassion and trust of the public; the way it allows people to come together voluntarily for a common cause, independent of the state or for profit motives; the ‘civic space’ it creates for people to express diverse views and

pursue their vision of how things could be improved, including to voice dissent; and - at its best - to generate transformative relationships of trust with those served which can help people and individuals find lasting solutions to their own problems. These are qualities that can and should be more widely valued by the public sector.

## Recommendations

To achieve this more positive vision of the future, we see a need for a significant shift in attitudes.

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Only by strong and inclusive leadership will the sector's future independence be protected.

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Our first challenge is to the voluntary sector itself. Only by strong and inclusive leadership will the sector's future independence be protected. The voluntary sector must do more collectively to assert its independent mission and demonstrate how it adds distinctive value to the wider public and other stakeholders. The sector's infrastructure bodies have a vital role. Following on from this, it must find ways of working and sources of funding from the state and others that will enable it to keep operating effectively and independently in challenging social and financial circumstances.

A small start has already been made through the debate that is being sparked by the essays contained in *Making Good*. There are many different perspectives but Caroline Slocock in her introduction identifies these potential ingredients as the basis for kicking off future discussion about the future of the voluntary sector:

- Strong, inclusive leadership by the voluntary sector around an ambitious agenda for change in society.
- A mission focused on prevention, not just the alleviation of problems, acting as an enabler of people and communities, rather than treating them as passive recipients of charity.
- Collaborating within and beyond the sector to make change happen for the common good.
- Promoting the distinctive social value and social capital generated through people coming together in voluntary activity.
- Celebrating the ability of activities located within communities to generate this value – with 'local first' as a new default switch, rather than 'big is best.'
- Speaking with a more confident voice, backed by a Compact with teeth.
- Seeking better public services, not just through delivery, but through co-operation, collaboration and co-design.
- Looking for funding that better supports social value, locally based activity, innovation and the longer term.

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We hope a future Commission will help define where and how the voluntary sector can add most value in pursuit of its independent mission.

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This is a debate that is only just starting and must be deepened and widened. Last year, we called for a new Commission to look at the future of the voluntary sector and we are pleased that the Baring Foundation is now actively fundraising for this to happen. We hope a future Commission will help define where and how the voluntary sector can add most value in pursuit of its independent mission, developing relationships with the state and other sectors to best effect. Some key areas to develop in pursuit of that mission are how to strengthen and articulate the importance of the sector's mission and voice; the development of a new model for working with the public sector to achieve better social outcomes; how to foster more innovation and collaboration within the sector and beyond; identification of a new funding model for the sector that works for organisations that currently rely on state funding, including smaller organisations, and which supports independence; and how to strengthen independent regulation.

Our second challenge is to the next Government and politicians and public servants nationally and locally, who must also hear our concerns, respond to the recommendations we have made in this report and move toward a 'new settlement' with the voluntary sector, based on respect for the independent value it generates in society and an understanding of how to work with it more effectively.

An incoming Government should introduce changes in five key areas:

- **Remove recent constraints on independence of voice.** Repeal the Lobbying Act and outlaw gagging clauses. Preserve the ability of charities to take judicial reviews and make expert interventions in the courts. Restore the 12-week minimum consultation period; and ensure the Charity Commission upholds the ability of charities to undertake political activity as intended when its current guidance was introduced.
- **Establish formal mechanisms for dialogue and collaboration with the voluntary sector,** at national and local level, about how to achieve common goals.
- **Reform commissioning and procurement.** Establish where and how the voluntary sector can add best value to publicly funded services and redesign commissioning, contracting and funding arrangements to foster and reward this social value and preserve the independence of the sector that lies at the heart. We recommend the voluntary sector be involved, including in drawing up such contracts.
- **Provide targeted financial support to deliver common social goals.** Develop a coherent national strategy for supporting the voluntary sector which looks at the additional demands being placed upon it, establishes where the needs are greatest, and provides targeted funding. This should include core funding and support for infrastructure bodies in return for innovation and voluntary activity that supports prevention, early action and the building of social capital in disadvantaged communities.
- **Introduce stronger support to protect independence.** The Charity Commission must fulfill its independent statutory mission to increase public trust and confidence in charities, in which safeguarding independence is central. It must be seen to be politically independent itself and should be free to champion unambiguously the right of the voluntary sector to campaign on behalf of its beneficiaries. A new Compact should be written and its principles made binding. It should be supported by a new state funded agency to promote and enforce it. This agency must be independent and accountable directly to Parliament so it is free of the politics of the voluntary sector and the current whims of ministers. Regulation to prevent state interference in charities should be put in place.

## 2 How independence is protected

When we began our work in 2011, we identified three dimensions of independence in our Barometer of Independence (featured in Table 1) and summarised here:

- **Independence of Purpose**, which allows organisations to be freely established, shaped and run to meet changing needs. To preserve this form of independence, accountability to those served is crucial, along with strong independent governance. When mission follows money, purpose can be lost. If purpose is deflected, then independent voice and action are also at risk.

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Accountability to those served is crucial, along with strong independent governance

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- **Independence of Voice** ensures the ability to protest, campaign or negotiate without fear of retribution. It can be undermined by unsupportive funding agreements, including 'gagging clauses' and fear of retribution for speaking out - whether of loss of funding or influence. Voice can only be truly independent if supported by a clear mandate and the legitimacy that comes from genuinely reflecting the views of those served. Capacity is important too: organisations can be starved of funds for policy and advocacy work, particularly where funding comes through contracts.

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

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Independence of action can be threatened through unnecessary rules, under funding, or telling charities how to do their job.

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Independence is far from inevitably lost when the voluntary sector receives funding or other resources from others. Four factors are critical. First, a strong sense of mission and values. Second, a clear understanding amongst stakeholders of the distinctive value of an independent voluntary sector and why independence is important. Third, supportive funding and contracting arrangements and funding partners that respect the voice of the sector, even when it gives unwelcome feedback. Fourth, strong safeguards to protect independence.

## Examples of independence in practice

Two examples of how independence is protected or asserted are given in the box below.

### Independence in practice

In June, we heard from Chris Mould, the Chair of the Trussell Trust, how his organisation developed its resilience to the threats to independence described later in this report in Section 4. We were told that the Trussell Trust has a clear vision, values and sense of purpose; and that members of the governing body have been recruited for their skills, commitment and professionalism. It has forged partnerships within the voluntary and private sectors. The Trust also has a clear policy on fundraising, making a deliberate decision to avoid contracts that would stipulate outcomes that would distract it from its central mission. It takes care it has a clear mandate when making public statements by having a robust approach to data collection and analysis using Office for National Statistics guidelines.

In her evidence to us, Blanche Jones, Campaigns Director of 38 Degrees described how its membership of over 2.5 million gave its campaigning voice legitimacy. Each week the organisation polls a sample of its members to determine the topics on which to campaign. For example, when asked to bring a member to a meeting to discuss NHS reforms, 38 Degrees was able, after a poll of its membership, to announce that it was speaking on behalf of 70,000 people.

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

# 3 The context for independence

This Section looks at the current context for the voluntary sector and the likely trends for the future. Both are challenging to the independence of the sector but the sector still derives huge strength from public support and there is potential for it to draw on that support and shape a strong agenda going forward.

## The context now

### The voluntary sector widely valued by the public

A large and growing proportion of the public see the voluntary sector as essential: 76 per cent in 2012 compared to 63 per cent in 2005.<sup>4</sup> Three out of five teenagers recently said charities and social enterprises are having the most impact in their communities, compared to just one in ten who cited politicians.<sup>5</sup>

The voice of the sector is valued by the public, in contrast to the views of politicians:

- The majority (58 per cent) of the public agree 'charities should be able to campaign to change laws and government policies relevant to their work,' while only 10 per cent disagree.
- 'Lobbying government and other organisations' was seen as worthwhile by 46 per cent of the public, while just 22 per cent saw it as wasteful.
- In contrast, the vast majority of Tory MPs (78 per cent) said it was a negative thing for a charity 'to be political;' 23 per cent of Labour MPs and 38 per cent of Lib Dems also saw it as negative.<sup>6</sup>

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Voluntary organisations connect with and engage with different communities of interests in a way that, increasingly, politicians cannot. Membership of the organisation 38 degrees continues to rise and now stands at over 2.5 million members, while membership of the main political parties stands at less than half a million.

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Voluntary organisations connect with and engage with different communities of interests in a way that, increasingly, politicians cannot. Membership of the organisation 38 degrees continues to rise and now stands at over 2.5 million members,<sup>7</sup> while membership of the main political parties stands at less than half a million. Moreover, half of the public say they are not interested in politics.<sup>8</sup> In 2014, only 22 per cent of people in the DE socio-economic group agreed that the system of government is working 'extremely' or 'mainly' well, compared to 48 per cent of ABs.<sup>9</sup>

Trust in the voluntary sector remains strong. According to research by IPSOS MORI, every year between 2005 and 2013, levels of trust in the voluntary sector have remained consistently high at over 60 per cent of the population, whereas faith in politicians has fallen and remains low at below 20 per cent.<sup>10</sup>

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Demand for the voluntary sector is continuing to rise - seen, for example, in the dramatic increase in the use of foodbanks, the rise in the number of homeless people and a developing crisis on mental health.

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### **Facing increased social demand**

Demand for the voluntary sector is continuing to rise - seen, for example, in the dramatic increase in the use of foodbanks, the rise in the number of homeless people and a developing crisis on mental health. There is an increasing reliance by central and local government on the voluntary sector to fill the gaps it leaves, as it cuts back services and benefits. In some cases, the voluntary sector is also cross-subsidising the state by bringing in donations and volunteers to help run services.

#### **Demand for voluntary sector services: in more detail**

An ACEVO survey carried out early in 2014 found that 88 per cent of charities surveyed experienced a rise in demand for their services in the last year and 89 per cent envisaged that demand rising again next year.<sup>11</sup>

**Food poverty.** The Trussell Trust reported that 900,000 adults and children received three days' emergency food and support from its foodbanks in the year to April 2014, a 163 per cent rise on numbers helped in the previous financial year. Static incomes, rising living costs, low pay, underemployment and problems with welfare, especially sanctioning, are significant drivers of the increased demand. 83 per cent of its foodbanks reported that benefits sanctions have caused more people to be referred to them for emergency food.<sup>12</sup>

**Homelessness** has increased for three consecutive years, partly because of housing shortages and cuts to benefits, with an estimated 185,000 people in England now affected. Visible forms of homelessness are up, with rough sleeping up by 6 per cent in England in 2012 and rising in London by over 60 per cent in the two years from April 2011. After falling sharply for six years, the number of statutory homelessness acceptances across England has risen substantially by 34 per cent since 2009-10.<sup>13</sup>

**Mental health.** The number and severity of mental health cases in children referred to the NHS's Child and Adolescent Mental Health Services has increased significantly in recent years, according to the British Psychological Society, whilst services have been cut back.<sup>14</sup> Services are already under huge pressure and more cuts now seem likely. Six leading mental health organisations have warned that the recent decision by NHS England and the health regulator Monitor to recommend cutting funding for mental health services by 20 per cent will put lives at risk.<sup>15</sup>

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At the same time, existing state support for what the voluntary sector does is diminishing - and that income is shifting from grants to contracts.

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### Income falling, public sector funding reducing

At the same time, existing state support for what the voluntary sector does is diminishing - and that income is shifting from grants to contracts. In 2011-12, the latest figures available, total income for UK charities fell by £700 million to £39.2 billion, a drop of 1.7 per cent in real terms. UK charities lost over £1.3 billion in income from government in 2011-12 (the latest year available), a reduction of 8.8 per cent from the previous year.<sup>16</sup> More than 80 per cent of government funding received by charities in 2011-12 was in the form of contracts for delivering services rather than in the form of grants, compared to just under half in 2000-2001.<sup>17</sup> Fuelled partly by the relative difficulty for the voluntary sector in gaining contracts, the loss of statutory income to the sector in 2011-12 is worse than the NCVO originally estimated. The cuts will continue until at least 2017-18 and the NCVO is currently revising forecasts for the period.<sup>18</sup>

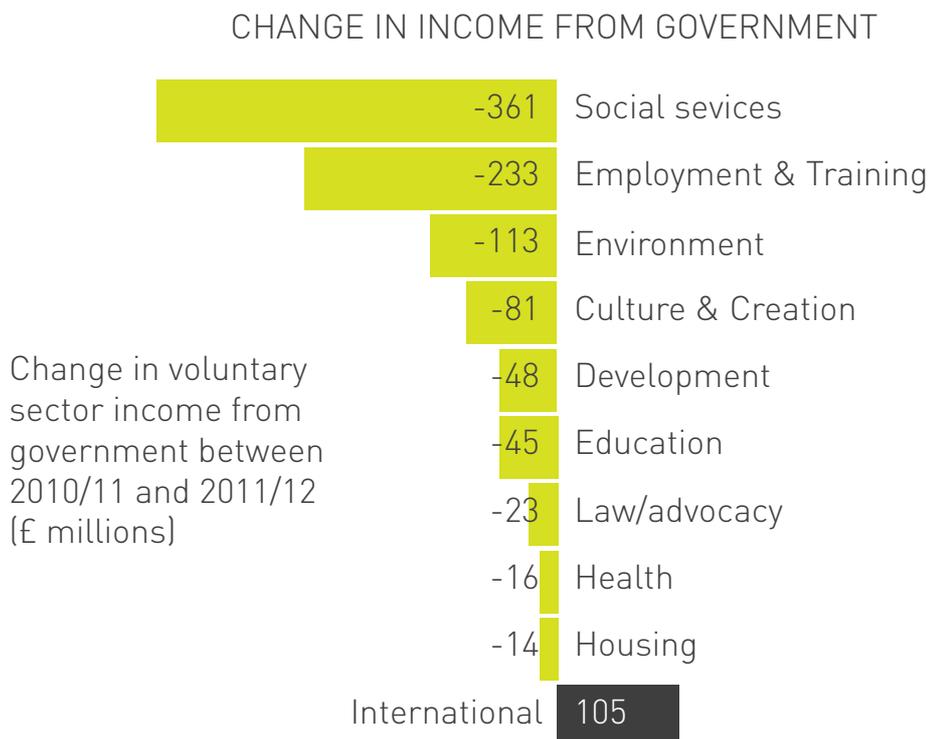
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The overall picture conceals major variations.

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### Certain types of services badly affected

The overall picture conceals major variations. International organisations had an increase of statutory income of £105 million between 2010-11 and 2011-12. Funding for all other sectors decreased, and especially so for organisations working in the social services field (by £361 million) and those providing employment and training services (by £233 million representing a 23 per cent reduction).<sup>19</sup>



Source: *The UK Civil Society Almanac*, NVCO, 2014

The people most likely to be affected are vulnerable groups, often living in disadvantaged areas.

The people most likely to be affected are vulnerable groups, often living in disadvantaged areas. Organisations working with certain client groups are more likely to rely on state funding: socially excluded/vulnerable people; offenders; people with mental health needs; parents and carers; people with substance abuse problems; lesbian, gay, bisexual or transgender people; people with learning difficulties; homeless people; victims of crime and their families; asylum seekers. Many of these organisations will have been hit by the cuts above.

Some parts of the country are more likely to be affected too, as explored in the box below.

### **Some parts of the country more likely to be more affected**

Research suggests that voluntary organisations rely more on state funding in certain parts of the country, especially where there are high concentrations of deprivation. State funding is also particularly important in disadvantaged areas. Overall, less deprived local areas have more voluntary organisations than more deprived local areas, according to Third Sector Research Centre research by David Clifford, but certain kinds of organisations are more prevalent in more deprived areas, including those working in the field of economic well-being. This reflects the presence of organisations which receive public funds and underlines the important role of government in ensuring resources are available in areas of particular need.

As the Panel reported last year, the first round of cuts fell heavily in these areas. In 2012-13, the National Audit Office (NAO) concluded that the overall reduction in spending power as a result of cuts between local authorities ranged from 1.1 per cent to 8.8 per cent in cash terms.<sup>20</sup>

There is also new evidence that non-governmental funding fails to reach the most disadvantaged areas. Britain faces a north south divide in charitable giving, reflecting the broader regional divide in the economic recovery. People in the South East were nearly twice as likely (11 per cent) as those from the North (6 per cent) to be increasing charitable donations over the next 12 months.<sup>21</sup> The same is true for corporate giving. The Directory of Social Change found for example areas in the north of England including Teesside, Northumberland and Durham have apparently no support from large corporate donors, whereas London receives 33 per cent of total cash donations. But, in the capital, donations do not reflect deprivation levels. Tower Hamlets, attracts just 5.9 per cent of corporate giving compared to 35 per cent going to Westminster.<sup>22</sup>

Other research points to a variation in distribution of voluntary organisations across the country. The South West has the highest (3.3) number of organisations per 1,000 people and the North East the lowest (1.7). In terms of Income, London has the highest figure (£16,087.7 million) followed by the South East (£4,593.3 million) and the North East by far the lowest (£794.7 million).<sup>23</sup>

*Something's Got to Give*, a report by the Centre for Social Justice (CSJ) set up by Iain Duncan Smith, cited areas like Port Clarence on Teesside and Camborne in central Cornwall as 'charity deserts' where the state was dysfunctional and there was no charitable sector to plug the gaps. The CSJ said little progress had been made in getting local people to run public services. Christian Guy, director of the CSJ, said in the same report that the Big Society needed to be as relevant in poor areas of Wales as in David Cameron's Oxfordshire constituency. 'It can be transformational for our country, but it needs to mean as much in Rhyl as in Witney. The government should help to spread its benefits, resisting the inevitable clamour for shorter-term political gimmicks ahead of 2015.'<sup>24</sup>

### **Smaller organisations under particular threat**

The NCVO's 2014 Almanac concluded, 'Wealth in the sector is hugely concentrated. All too often the most dynamic community-based local charities are losing out to large, professionalised national ones.'<sup>25</sup> The Almanac noted that the proportion of the sector's total income which goes to charities with an annual income of £100,000 or less fell from 5.4 per cent in 2006 to 3.5 per cent in 2013. This shift in income is starkly revealed by some secondary analysis we have carried out of NCVO figures of both income and state funding, explored in the box below, which shows that smaller organisations have been losing out significantly in both income and statutory funding, whilst the largest have actually gained income over the last two years up to 2011-12 (the latest figures available).

#### **Change in voluntary sector income by size of organisation<sup>26</sup>**

The voluntary sector's overall income in real terms fell by 0.8 per cent in the two years between 2009-10 to 2011-12 but it increased by 2.3 per cent for major organisations (income of £10 million or more). Income fell by over 3 per cent for small organisations (£10,000 -£100,000) and medium organisations (£100,000 - £1 million), and by as much as 4 per cent for large organisations (£1 million - £10 million). Over the same period, all sizes of voluntary organisations lost some statutory income in real terms. But small and medium organisations lost nearly 25 per cent and 20 per cent of their statutory income respectively. In sharp contrast, major organisations lost only 1.6 per cent.

The voluntary sector as a whole is resilient - but the viability of small organisations, which provides an important eco-system of social support, is an issue.

The voluntary sector as a whole is resilient - but the viability of small organisations, which provides an important eco-system of social support, is an issue, particularly those working with disadvantaged groups, often in disadvantaged areas where funding is less likely to reach: relative funding 'deserts.'

The Centre for Social Justice which looked at 350 small, community based organisations fighting poverty found that 1 in 5 said they were at risk of closing their doors. The same report also concluded that small community charities were losing out to larger voluntary sector organisations.<sup>27</sup> The Community Development Foundation drew similar conclusions when investigating the contribution made by the estimated 600,000 – 900,000 'under the radar' community groups with an annual income of less than £2,000. The majority of their funds come through individual donations but other sources include grants, commissioning and social investment - and there is some evidence that state funding is a larger component of the 'funding mix' for groups in more deprived areas. The research suggests that community groups that are providing vital services and support could be under threat as state sources diminish.<sup>28</sup>

Cathy Pharaoh, co-director of the Centre for Charitable Giving and Philanthropy at Cass Business Centre, who gave evidence to us in October, expressed particular concern about smaller organisations working in deprived areas. She says that 'all the evidence suggests that when funding is cut smaller organisations prioritise front-line service delivery at the expense of activities like fundraising, or business and training and skills development. This leads to a vicious cycle in which, without adequate fundraising resource, income falls further. Unless smaller organisations are better supported through transition, and there is a shift towards core and infrastructure funding, sector services may weaken in the localities where they most need to be strengthened. Some major charitable funders recognise this danger and are re-prioritising core funding. Statutory funders must follow suit.'<sup>29</sup>

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### Sources of power

The relative vulnerability of smaller organisations facing financial difficulties to threats to independence needs to be understood in the context of the sources of power explored in our earlier reports. Larger organisations often have more ‘brand’ and ‘financial’ power that comes from high levels of public recognition and support and diverse sources of funding, including income from donations and trading activities.

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The wider picture is one where corporate power has a firm seat at the table of governments and international bodies and citizens are struggling to correct what Civicus has called ‘a democratic deficit.’

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### The international context

Looking internationally, the wider picture is one where corporate power has a firm seat at the table of governments and international bodies and citizens are struggling to correct what Civicus has called ‘a democratic deficit.’<sup>30</sup> A Charities Aid Foundation report concluded that the independent voice of the sector is highly valued by the public worldwide, but that ‘not-for-profits around the world are facing an increasingly hostile legal environment for advocacy, with governments moving to restrict their ability to speak out on issues that are relevant to their stated mission.’<sup>31</sup> Member organisations of the Civic Space Initiative have called upon the UN Human Rights Council (HRC) to address the shrinking space for civil society across the globe.<sup>32</sup>

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In Canada, the regulatory authority has ruled that Oxfam cannot have prevention of poverty as one of its charitable objectives.

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In Canada, the regulatory authority has ruled that Oxfam cannot have *prevention* of poverty as one of its charitable objectives, as the *alleviation* of poverty is what charity should be about. And in many developed countries, voluntary bodies are increasingly being pushed into becoming an arm of the state or bodies that are seen but not heard. Dozens of non-governmental organisations in Hungary that have received funds from the Norwegian government under a 20-year-old deal to strengthen civil society in poorer parts of Europe, including the Roma Press Centre, Women for Women against Violence and Labrisz Lesbian Association, are being ‘audited’ by the Hungarian government, leading Norway to suspend its payments in protest.<sup>33</sup> Azerbaijan, Mexico, Pakistan, Russia, Sudan and Venezuela have all passed laws in the past two years affecting NGOs that receive foreign funds. Around a dozen more countries plan to do so, including Bangladesh, Egypt, Malaysia and Nigeria. NGOs focused on democracy-building or human rights are the most affected but the crackdown is also hitting those active in other areas, such as public health.<sup>34</sup>

Frank La Rue, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, commented in 2014: 'Unfortunately the situation for human rights is worse off, especially in the case of freedom of expression, than it was 6 years ago when I began my mandate. The growing power of internet and civil society has provoked tremendous fear in authoritarian governments and sometimes democratic ones.'<sup>35</sup>

Caroline Slocock in 2014 heard of real concerns in Sweden about government challenges to the independent voice of civil society and a tendency to treat voluntary organisations interchangeably with the private sector – concerns echoed by other northern European countries at a recent international conference on the Compact at which she spoke.<sup>36</sup>

## Looking ahead...

Looking ahead, there lie considerable risks to the independence of the sector but there could be a potential turning point if the voluntary sector can seize the agenda and find more effective ways of working with the state.

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### A changing state

All main national political parties are committed to cutting public expenditure dramatically and David Cameron has signalled that he believes a smaller state is inevitable.<sup>37</sup> Although the Government has been seeking to encourage philanthropy, including from the private sector, analysis in a recent report shows that the increase is showing no signs of being sufficient to fill the gap already left by cuts in statutory funding, let alone future cuts, and new funding is unlikely to reach the parts that need it most on current trends.<sup>38</sup>

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There is an opportunity to reinvent the state so that it is better at building the capabilities of disadvantaged people and communities and preventing problems.

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Demand is also rising, particularly from an ageing population, and the state would be seeking to do more with less, even without austerity, and will continue to call on the voluntary sector to help, potentially a double-edged sword. There is an opportunity to reinvent the state so that it is better at building the capabilities of disadvantaged people and communities and preventing problems. Some public services, most notably the NHS, are looking for new kinds of relationships with the voluntary and community sector to help manage demand – as explored in Section 4. There is the danger that the voluntary sector simply becomes an ambulance that picks up social emergencies the state has left behind, and there are likely to be too few to save everyone.

### **A changing democracy**

Disenchantment with traditional politics makes it even more important that a new 'civic space' is opened up for the expression of diverse views in society and the voluntary sector is a key channel. Social media provides new routes for individuals to express their views and shape agendas and the voluntary sector must itself adapt to this, or get left behind. Commitments across political parties to more devolution in the light of the referendum in Scotland potentially open up opportunities for the voluntary sector to enable local people and diverse communities to take on more power and help remodel services to better meet their needs. Some councils, including co-operative councils are already trying to work more closely with local organisations to achieve this.

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A key source of independence for the sector is its focus on the communities it serves, rather than on who funds it or its own established ways of doing things, and it is uniquely placed to give expression to different needs and voices and promote an inclusive agenda.

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### **A changing society, including new technology**

Britain is increasingly diverse and people also expect public services to be more responsive to their diverse needs. A key source of independence for the sector is its focus on the communities it serves, rather than on who funds it or its own established ways of doing things, and it is uniquely placed to give expression to different needs and voices and promote an inclusive agenda. There is also significant social and technological change that is already affecting how voluntary bodies operate and creating new opportunities for engaging people in their work, or even letting them initiate and direct it. There will also be increasing pressure for the voluntary sector itself to be transparent and open.

### **Seizing the agenda, asserting an independent mission**

There are significant opportunities here as well as threats. As Julia Unwin says in her *Making Good* essay: 'The voluntary sector has the will, the power and the capability to set its own direction. If it can do this, and not be diverted by politics, funding or simply fashion, it will continue with its vital historic mission of serving the dispossessed and at the same time providing a platform for dissent.'

As part of this new direction, some of the essayists in *Making Good* also suggest a possible reframing of the mission of the sector around *prevention*, rather than the *alleviation* of social problems, and *empowerment*. Lynne Berry asks whether the sector is really ready to move away from 'ideas of dependency, vulnerability and disengagement' and allow older beneficiaries the power and agency they increasingly expect. Paul Farmer sees a move from charities being simply 'campaigners' and 'doers,' to becoming 'changemakers' and 'enablers.' Voluntary sector 'changemakers' support social action initiated by others within the community or facilitate this wider action. 'Enablers' work with others to 'create a different debate, change the environment, help people to help themselves.'

# 4 Review of the six challenges

As in previous years, we make an assessment in this Section against the six risk factors we identified in our first report as serious threats to independence of purpose, voice and action. In making our assessment, we are considering the factors - highlighted in our Barometer of Independence - that support independence: a clear sense of mission, respect for independence, and funding and regulation that supports that.

## 1. LOSS OF IDENTITY AND RESPECT FOR INDEPENDENCE **Our verdict: this continues to get worse**

**Previous recommendations and progress:** Last year, the Panel called for 'visible leadership and practical demonstrations from the Government' to demonstrate their respect for independence. Since then, two Ministers have been appointed to the role of Minister of Civil Society in the last 6 months of 2014, we have seen the increasing appropriation of volunteering as a 'workfare' tool by the Government and the first signs of steps by the Charity Commission to differentiate between charities receiving public money and others. A new requirement by the Charity Commission for charities to declare public funding in their annual returns may aid transparency but could well be a backward step if it ends up reinforcing an emerging view that publicly funded charities cannot - or should not - be fully independent from the state. On the plus side, there are increasing signs of the voluntary sector itself taking steps to articulate its distinctive contribution.

'The emphasis is increasingly on carrying out the tasks as defined by the centre - and becoming dependent on the private sector, its priorities and values.'

We have in successive reports raised concerns that the voluntary, private and public sectors are increasingly seen as interchangeable in government contracting. This is corrosive to the independent mission of the sector - and ultimately to public perceptions. As one of our members, Nicholas Deakin, has said: 'the emphasis is increasingly on carrying out the tasks as defined by the centre - and becoming dependent on the private sector, its priorities and values.'<sup>39</sup>

This is a long term trend across successive governments. But there have been two developments over the course of 2014 that suggest that this trend is deepening.

The first is a lack of respect for a distinctive feature of an independent voluntary sector - voluntary volunteering - which has arguably been demonstrated by the Government's new Help to Work scheme, which started in 2014 and which requires long term unemployed people to work unpaid for 30 hours a week as volunteers. Many organisations believe the Help to Work scheme is undermining volunteering, a distinctive characteristic of the voluntary and community sector. Such is the concern that a group of about 30 voluntary and community organisations, including Oxfam, the Conservation

Volunteers and YMCA England, have said they will boycott any scheme in which long-term unemployed people will face losing their benefits if they do not commit to options including six-month 'community work placements.'<sup>40</sup>

The second is the Charity Commission's recent decision to require charities to report their public funding in their annual returns. On the face of it, this is simply a step toward greater transparency and might in other circumstances be welcomed. However, the Chair of the Commission, William Shawcross, has said publicly on a number of occasions that he thinks there is a case for drawing a distinction in the Commission's register between voluntary organisations that receive public funding and 'truly' voluntary organisations that do not. One of the Charity Commission's Board members, Gwythian Prins is quoted as saying that charities should 'stick to the knitting' - a phrase later picked up by the new Civil Society Minister, Brook Newmark. This is how Mr Prins was reported in an interview in September 2013:

'When I give voluntarily, there's a choice,' he says. 'If it's my tax money, then I have no choice - that is both a practical and a moral difference. There has been a sharp growth in the number of charities that rely on taxpayers' money through government grants, often to deliver services for national or local government.

'But as our chair, William Shawcross, said in a recent speech, charities should not be thought of as adjunct delivery agents for the welfare state. Indeed, the essence of a charity is the antithesis of a state organisation. We are all on a journey as we as a society seek to define - and in the commission's case protect by effective regulation - what William Beveridge called the 'living tapestry' of charitable action, fit for the 21st century. This is where I think a conversation needs to be had.'<sup>41</sup>

The Panel note that Frank Prochaska gave a lecture to the Charity Commission in September in which he said that the sector had increasingly surrendered its independence as it and government became 'so intertwined that it is rather fanciful to think of them as representing two distinct sectors.'<sup>42</sup> In February 2014, the Institute of Economic Affairs, a free market think tank, published a report which recommends that the government should ban voluntary organisations from lobbying or campaigning if they receive more than half their funding from the state, and that the Charity Commission should require charities to disclose how much they spend on campaigning and how much money they receive from government.<sup>43</sup> The reporting change by the Charity Commission also seems all the more pointed given the relative lack of information available about government funding to private sector organisations, including their level of profits.<sup>44</sup>

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Voluntary organisations delivering public services should retain their ability to speak out about public services, not be deprived of this and turned into just another contractor, interchangeable with the private or public sector.

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In our view it is independence of purpose, not funding that should determine whether organisations are charities or belong to the voluntary sector, or not. Voluntary organisations delivering public services should retain their ability to speak out about public services, not be deprived of this and turned into just another contractor, interchangeable with the private or public sector.

We welcome productive collaborations across sectors, which can add real value to society - provided independence is respected, including the distinctive ability of the sector to give voice to the needs of

different communities. As Sir Stephen Bubb says 'Communities of place, interest or need - such as people with sight loss or older people living in an isolated town - will best get the social services that they need not if their services are run by political elites but if their voices are united in a flexible mutual association that is responsive to their wishes. This idea that the user's voice should be represented at all levels of public services was too often lost in the post-1945 welfare state.'<sup>45</sup>

But we are concerned that the sector is sometimes being driven away from an independent mission - one focused on working with those it serves in ways that work best for those groups - toward simply undertaking the mission set for it by government.

During an interactive session between the Panel and participants at the Shropshire CVS's annual conference in April, the challenges highlighted in the Panel's last report were clearly recognised. As one group said, a push toward more bureaucracy and a more private sector business model was leading to mission drift. It was felt that the distinctiveness of the sector was not understood, particularly its local knowledge, its diversity and effective use of volunteers, and its key role as the champion of the most vulnerable. Looking to the future, it was hoped that there would be stronger dialogue, a greater focus on outcomes, fewer large contracts that marginalise smaller and more specialist organisations and contracts that were more stable and longer term. Similar views emerged from a session with the CVS in Hampshire.

To avoid mission drift, the voluntary sector needs to be much clearer about what its role is and where and how it adds value to society, not just as a service deliverer under contract with the state, or working alongside it, but as an agent of social change or support.

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As noted earlier, in our last report we recommended that voluntary sector leaders give their views about the future of the voluntary sector and what is distinctive and important about its contribution. The result, *Making Good: the Future of the Voluntary Sector*, published in November 2014, includes views from some 30 public sector leaders.

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What emerges from many of these essays as distinctive and important about the voluntary sector, at its best, is the human, rather than financial or organisational dimension, of the voluntary sector.

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First, its ability to draw on the goodwill of communities through mutual association and the donation of time and money to create social value - value *beyond* money, as Kathy Evans from Children England calls it in her essay, 'acting as a 'currency convertor' between the 'core economy' of family, friendship and community, and the 'cash economy' where everyone and everything must be paid for.'

Second, the way in which the voluntary sector uses what Sir John Elvidge in his essay calls 'mutuality' and 'reciprocity' to build strong and potentially transformative relationships with those served, building capacity and creating 'social capital' - the glue that holds society together.

And, finally, its voice, reflecting diverse needs and issues and inspired by a passion for shaping a better world.

The result can be something distinctive and special. As Chris Mould puts it in his essay, 'Merciful, non-judgemental, believing in you, are not phrases anyone would commonly associate with State social security provision. And, maybe, we should not expect to be able to make the links? Voluntary organisations can justifiably occupy a different and complementary space.'

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These qualities do not themselves suggest a particular type of structure or organisation - indeed a focus on the organisation rather than mission is one way to lose independence. But they do suggest particular ways of working: the importance of a mission that serves the common good - as Steve Wyler pointed out in his evidence to us in October; the value of strong connections into communities, as Sir John Elvidge stressed to us, where the interests of the community, not the organisation, remain paramount. That means, as Danny Kruger writes in his essay, 'We need to fight with everything in us to avoid becoming the poverty industry,' turning those served from a 'beneficiary' into an agent so that, ultimately, the voluntary sector should be seeking to put itself out of business.

Many of the essays challenge practices and views that have become widely accepted in recent years - questioning, for example, whether the current 'market model' of public sector reform is the best way to secure the real 'added value' of the voluntary sector.

Indeed, ACEVO's Chief Executive Sir Stephen Bubb announced in November the launch of a new Commission on the role the third sector should play in future public service delivery to move debate on public services 'beyond choice and competition.' The Remaking the State Commission is co-chaired by academic and commentator Will Hutton, and Rob Owen, Chief Executive of the offender rehabilitation charity St Giles Trust.

There are clearly many wide-ranging issues that need further discussion and development across the whole sector. In our last report, we called for a new Commission on the future of the voluntary sector to help develop the independent mission of the sector over future years and protect its independence. We are delighted that the Baring Foundation is now actively looking to other charitable foundations to help it fund such a Commission.

## 2. THREATS TO INDEPENDENCE OF VOICE

### **Our verdict: threats have increased in every year since we have been monitoring independence**

**Previous recommendations:** In our last report, the Panel expressed concerns about the so-called Lobbying Bill, changes to judicial review, 'gagging clauses' in contracts and self-censorship. The Panel called on the Government to:

- Engage fully with the sector when the impact of the new provisions in the Lobbying Act are reviewed after the election.
- Safeguard voluntary organisations' ability to take judicial reviews and to intervene in them.
- Outlaw 'gagging clauses.'

The Panel also noted that voluntary organisations themselves have a key role to assert their voice and surface and resolve issues, sometimes individually, often working together.

In 2014, we have seen no positive shift in the Government's position in these areas - and some worsening, though we note the Opposition has committed to reverse them should it be elected. The Lobbying Act is now in force and is reported to be having a chilling effect. Despite some amendments to changes in the Criminal Justice and Courts Bill as a result of pressure from the House of Lords, some potentially damaging restrictions are being taken forward to the ability of NGOs to support individuals seeking to challenge government decisions in the courts. We are concerned by negative views of the sector expressed by senior Government Ministers and by the specific attempts of which we have heard, both nationally and locally, to stifle the sector's voice. The Charity Commission's signalling of a potentially tougher stance on campaigning in the run up to the election and beyond is potentially contributing to a climate of self-censorship, as is its mixed signals in its response to complaints about campaigning by Oxfam. But it is positive that the voluntary sector has acted in a concerted way to defend itself against attacks.

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The independent voice of the voluntary sector is vital to a fully functioning democracy and properly functioning judicial system. And yet it has been ever more visibly under fire and attack over the last few years.

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The independent voice of the voluntary sector is vital to a fully functioning democracy and properly functioning judicial system. And yet it has been ever more visibly under fire and attack over the last few years - particularly through the Lobbying Act which restricts the voice of the sector in the run up to elections, a series of worrying restrictions to judicial review, cuts in legal aid and 'gagging clauses' in public service contracts.

Some welcome concessions were made on the Lobbying Act but the Chair of the Commission on Civil Society and Democratic Engagement has recently expressed real concerns about the chilling impact of the legislation, which we share.<sup>46</sup> There were also some amendments to proposals to restrict judicial review and expert intervention in the courts. But our general concerns remain, as explored in the box below, with more evidence emerging about their impact.

**The Lobbying Act:** When Blanche Jones from 38 Degrees gave evidence to us in June she said the new Act would involve more bureaucracy and difficult decision making, often involving legal advice on a case by case basis, and therefore increasing costs. 38 Degrees might be able to absorb these burdens, she said, but she was concerned about the ability of smaller organisations to do so. Ros Baston, a freelance electoral law specialist and former senior adviser at the Electoral Commission, said the act 'means people are going to have to be a lot less flexible in how they work together', as cooperation must now be more formally classified and accounted for.<sup>47</sup>

The Commission concluded that the Act had a 'chilling effect' on charities and campaign groups which had been 'frightened into curtailing their public work.'

The Commission on Civil Society and Democratic Engagement's third report recorded that 63 per cent of survey respondents stated that compliance with the Lobbying Act would make some or all of their organisational or charitable objectives harder to achieve; 20 per cent had already spent more than 10 working days understanding and/or adjusting plans based on Electoral Commission guidance; and it found that the new law makes it almost impossible for charities and campaign groups to work together to speak out on politically contested issues as they did before the Act. The Commission concluded that the Act had a 'chilling effect' on charities and campaign groups which had been 'frightened into curtailing their public work.'<sup>48</sup>

A review by Lord Hodgson of the Act's operations was announced by the Government in January 2015.

**Restrictions to judicial review and intervention:** Last year, we concluded that a series of agreed and proposed changes on judicial review (and the related ability of NGOs to intervene in court decisions) 'added up to a major threat to the ability of voluntary organisations to act independently to safeguard the interests of the relatively powerless against abuses by the state.' Others are concerned too: the Conservative peer and former Minister, John Gummer, now Lord Deben, said, as the Lords attempted for a second time to overturn the most recent attempts to restrict judicial review: 'If we are not here to uphold principles of this kind, then we should not be here at all.'

Initially, the Government consulted on a proposal to introduce a test for 'standing,' limiting entitlement to bring a judicial review to those with a direct interest in the case, which might have removed the ability of charities and NGOs to bring claims on behalf of individuals. It stepped back from this but the Bill will still make it more difficult for voluntary sector organisations to bring judicial reviews themselves by only making protective costs orders<sup>49</sup> available after a certain stage in proceedings; this puts the organisation at risk of the other side's costs up to that point and is likely to deter many from bringing claims. The rules on the costs for which 'interveners' are liable are also going to change; an intervention allows organisations to give the court expert assistance in test cases and previously they would be highly unlikely to be liable for anyone else's costs in the case; but the new rules will make it more likely for an intervener to be held liable, again restricting access to the courts for voluntary sector organisations with limited resources.

The House of Lords voted in October against the Government's plans but MPs voted out the Lords' amendments in December 2014. After some 'ping-ponging' between the two Houses, a final accommodation was reached in mid January. The dust needs to settle on the outcome but there remain potential constraints both on the ability of NGOs to take judicial reviews and make expert interventions in court cases taken by others. These are important powers that enable charities to support vulnerable individuals to challenge incorrect decisions by the Government and to bring out issues of wider, strategic concern beyond individual cases. Bodies such as the Bar Council and the Law Society continue to express concerns about the impact.<sup>50</sup>

These latest changes follow on the heels of the removal of legal aid to support individuals in relation to the vast majority of housing, debt, benefits and immigration cases and, after a short consultation in 2013, restrictions to the funding of judicial review cases affecting individuals, many of whom take cases with the help of the voluntary sector. After a short consultation, the Government also altered the normal deadline from 3 months to 30 days for judicial reviews that challenge procurement decisions. This change will severely curtail the ability of voluntary organisations to ensure compliance with the Compact.

The Minister concerned, Chris Grayling has continued to speak negatively about the use of judicial review and of his wish to curtail the use of it by voluntary groups. Speaking to the House of Lords Constitutional Committee, Chris Grayling said: '... increasingly we are seeing pressure groups which are there to campaign - we have people who are professional campaigners - and it is one of the tools they use ... The use of judicial review is being used to delay, to make a campaigning point or to try to challenge with a campaigning view, as opposed to an injustice view, a legitimate decision taken by government and endorsed by Parliament.'<sup>51</sup>

As the Bill was going through the House, the Ministry of Justice lost a judicial review taken with the help of the Howard League for Penal Reform, the result of which was to restore the ability of prisoners to receive books to read in prison unlawfully removed by Chris Grayling.

**Wider cuts to legal aid:** Cuts to legal aid in key areas such as benefits and debt are reducing the supply of legal advice and access to redress against poor decisions for vulnerable groups. Nine Law Centres have closed since the legal aid restrictions have come into force, although 50 are still operating, according to the Law Centres Network, and those that remain are turning away clients that need help.<sup>52</sup> There is also evidence on how cuts are affecting vulnerable client groups. For example, Rights of Women surveyed women survivors of domestic violence who were attempting to access legal aid for the first time between April and July 2013 and found that 61 per cent took no action in relation to their family law problem as a result of not being able to apply for legal aid.<sup>53</sup> There are also areas of the country that do not have any active providers: in 14 local authorities no face-to-face providers based in the area started any legal aid-funded work during 2013-14 (Broadland, Castle Point, Christchurch, Daventry, Elmbridge, Epsom and Ewell, Hart, Isles of Scilly, Lewes, Melton, Oadby and Wigston, Rochford, Rugby, and Wealden).<sup>54</sup>

**Gagging clauses:** The Panel has been concerned about the use of 'gagging clauses' in the Work Programme and called for their abolition. In April, Lisa Nandy, the Opposition spokesperson on Civil Society, announced that Labour would abolish them, if elected.<sup>55</sup> The Panel heard evidence in June from the barrister, David Schmitz, that questions the legality and enforceability of 'gagging clauses.' 'For a charitable trustee to agree to a 'gagging clause' would amount to a breach of the well-established principle that trustees must not fetter their discretion in the exercise of their powers.'<sup>56</sup>

*continues overleaf*

Gagging clauses in contracts are still a major concern. Joe Irvin, when chief executive of NAVCA, reported: 'We've had members say they couldn't attend meetings to discuss the Work Programme because of these clauses ... With the Work Programme this hasn't helped people looking for work; it's just hidden poor practice by primes.'<sup>57</sup> Matters are often made worse by an imbalance of power between small providers and large prime contractors.

In April, Third Sector published details of a 'gagging clause' apparently being invoked in the case of a small subcontractor, Community Enterprise Derby (CED), with A4e. When A4e terminated its contract with its subcontractor, CED, A4e warned the organisation in writing not to speak publicly about the terms of the contract, referring to the 'gagging clause.' The former director of CED then wrote to Third Sector arguing that such contracts were unsuitable for small voluntary organisations, and that it was difficult to secure the best outcome for unemployed people if the issues raised by their experience could not be debated in public. These include the contract's financial model, the balance of financial risk and 'creaming and parking' - the alleged sending of a growing proportion of hard-to-place clients to voluntary sector subcontractors.<sup>58</sup> The CEO then received a letter from A4e reminding it of its contractual requirement to receive approval in writing before making public statements.<sup>59</sup>

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*Face the Facts*, found further evidence of the use of gagging clauses in drafts of the new contracts for Rehabilitation Services, similar to those used in the Work Programme.

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Face the Facts, a Radio 4 programme broadcast on 27 July 2014 also found further evidence of the use of gagging clauses in drafts of the new contracts for Rehabilitation Services, similar to those used in the Work Programme.<sup>60</sup>

A report published by the National Coalition for Independent Action concludes that charities and other voluntary groups are often absent from campaigns to tackle the root causes of poverty because of a climate of fear over the negative impact of campaigning.<sup>61</sup>

We understand that the Labour Party promises to repeal the Lobbying Act and look at gagging clauses, should it become the next Government, which is welcome.

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The Panel welcome the way in which the voluntary sector has continued to work together to protect itself against attacks by Ministers and others.

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The Panel also welcome the way in which the voluntary sector has continued to work together to protect itself against attacks by Ministers and others, as illustrated by various examples below. Protection of its independent voice is now very high on the leadership agenda, illustrated most recently by ACEVO's election manifesto launched in November, *Free Society: Realising our nation's potential through the third sector*, which calls on the government to protect the free speech of the third sector explicitly in law, protect the access of charities to judicial review, extend the right to legal aid to include charities that represent at-risk or under-represented groups and create an All-Party Parliamentary Group for Third Sector Independence and Campaigning.

### **Voluntary sector leaders defending the right to campaign**

Kumi Naidoo, international executive director of Greenpeace, has said 'Many of our governments and business leaders are very comfortable when we step up and say there are poor children that need feeding programmes or provide shelters for women who have experienced domestic violence,' but '... when we start saying we need domestic violence legislation to prevent women having to end up in these shelters in the first place; you get told 'It is not your job, who elected you?' He warned that 'We as civil society must not give up that fight to say we have a right to deliver services to the most vulnerable, but also being able to affect and voice concerns around policy and governance is critically important as well.'<sup>62</sup>

Martin Sime, the Chief Executive of the Scottish Council for Voluntary Organisations, said 'Ministers have recently accused us all of being left-wing, anti-business and full of Labour Party activists. This is part of an orchestrated attempt to undermine charity campaigning on behalf of the most marginalised and vulnerable people in our society - the very same people who are bearing the brunt of austerity policies and the politics of division and blame.'<sup>63</sup>

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We are very concerned by the way in which current and former Ministers increasingly speak negatively about the voice of the sector.

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We are very concerned by the way in which current and former Ministers increasingly speak negatively about the voice of the sector, including the Secretary of State for Justice, Chris Grayling, the Chancellor of the Exchequer, George Osborne, former Environment Secretary, Owen Patterson, and then Minister for Civil Society, Brooks Newmark. These examples are included in the box below.

### **Negative Ministerial views on the voice of charities**

George Osborne, the Chancellor of the Exchequer, has attacked charities' 'anti-business views' and told business leaders to pro-actively defend the economy from charities and others who he claimed were making arguments against the free market and economic prosperity because '... there are plenty of pressure groups, plenty of trade unions and plenty of charities and the like, that will put the counter view.'<sup>64</sup>

The Justice Secretary, Chris Grayling, speaking at a social welfare debate in London, organised by the Lord Mayor's Charity Leadership Programme, said 'I disagree strongly with the campaigning side ... I see there are big national organisations with active, well-funded campaigning groups at the centre, but with cash-strapped branches trying to provide services on the ground in communities, and I think 'are you sure you've got the balance right?'<sup>65</sup> See also his comments about 'pressure groups' and the use of judicial review on page 34.

Former Environment Secretary Owen Patterson, spoke of a 'Green Blob' of environmental pressure groups, renewable energy companies and some public officials and said 'It was not my job to do the bidding of two organisations that are little more than anti-capitalist agitprop groups ... Their goal was to enhance their own income streams and influence by myth making and lobbying. Would they have been as determined to blacken my name if I was not challenging them rather effectively? When I arrived at Defra I found a department that had become under successive Labour governments a milch cow for the Green Blob.'<sup>66</sup>

Brooks Newmark, then a new Minister for Civil Society, said in his first major speech 'We really want to try and keep charities and voluntary groups out of the realms of politics. Some 99.9 per cent do exactly that. When they stray into the realm of politics that is not what they are about and that is not why people give them money ...The important thing charities should be doing is sticking to their knitting and doing the best they can to promote their agenda, which should be about helping others.' He later clarified his remarks to say he recognised the importance of legitimate campaigning.<sup>67</sup>

See also the comments made by Iain Duncan Smith, the Secretary of State for Work and Pensions, about the Trussell Trust, quoted on page 38.

Ministers may be partly reflecting views from Conservative MPs who seem to be markedly more negative about the campaigning role of charities compared to MPs as a whole, according to one poll. Only a minority of Conservative MPs felt it was acceptable for charities to challenge government policy (42 per cent compared to 63 per cent of all MPs), to challenge the policies of a political party (37 per cent compared to 60 per cent of all MPs) and for a state-funded charity to challenge government policy (16 per cent as compared to 44 per cent of MPs as a whole).<sup>68</sup>

### **The example of foodbanks**

These issues have come to a head around foodbanks, where the role of civil society (the voluntary sector and churches) in seeking changes to prevent food poverty have been highly contested. We heard firsthand from Chris Mould, Chair of the Trussell Trust, in June about how it has been criticised by Ministers and even threatened behind the scenes for raising legitimate policy issues in relation to foodbanks, details of which are given in the box below.

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### **The argument over foodbanks**

At the end of 2013, Iain Duncan Smith responded in a leaked letter to requests for a meeting from the Chair of the foodbank charity, the Trussell Trust, Chris Mould, by dismissing claims that the problems are linked to welfare reforms and attacking the charity for publicity-seeking. He criticised the 'political messaging of your organisation,' which 'despite claiming to be nonpartisan' had 'repeatedly sought to link the growth in your network to welfare reform.' He asked the Trust to 'stop scaremongering in this way. I understand that a feature of your business model must require you to continuously achieve publicity, but I'm concerned that you are now seeking to do this by making your political opposition to welfare reform overtly clear.'<sup>69</sup>

Chris Mould told us that the basic purpose of the charity is to tackle poverty but it does publicise concerns if government policies are having a detrimental impact on service users, in the hope of having a discussion on how to improve these policies. He outlined a catalogue of government attempts to undermine the message of the Trust, and the organisation itself, in response to raising concerns, notably about the impact of welfare reforms. These included:

- angry conversations with ministerial aides accompanied by threats: 'you need to think more carefully, the government might try to shut you down' as a charity 'crossing the line from a regulatory point of view;'
- prevarication and inertia in response to a request for a meeting to discuss implications of welfare reform on food poverty;
- attempts to belittle the organisation by questioning the robustness of its data, by accusing it of using publicity to attract donations and by suggesting it is a supply led organisation - people use it to get a free meal;
- briefing newspapers with untruths about the Chair's plans to resign in an attempt to damage the cohesion of the Board;
- and undermining its supporters by, for example, accusing the Trust of being a device for helping the Church to better engage with communities.

The Mail on Sunday also carried out an investigation on foodbanks in April. Reporters posed as volunteers who highlighted 'abuse' by 'scroungers' and 'asylum seekers' and questioned the Trussell Trust's claims about the rise of the number of users. The editorial commented: '... our revelations ought surely to bring an end to the crude, anti-Government propaganda which threatens to turn a noble enterprise into a political shouting-match. 'But there was a backlash. Before the article was published there had been about 250 public donations to the Trust's JustGiving page since late January. In less than a day that jumped to more than 2,800, worth more than £30,000, according to a BuzzFeed report. A number of donors cited the Mail on Sunday article as the reason for making a contribution.'<sup>70</sup>

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'Campaigning is now a dirty word', and with the government 'you are either friend or foe'.

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We also heard evidence from others about the defensive or hostile attitude of politicians to the views expressed by voluntary organisations. Blanche Jones, Campaigns Director of 38 Degrees, described the ethos of the organisation as 'giving people who want to engage in the political system a true voice.' However, her organisation had faced similar attacks through misinformation being distributed about its 'aggressive' campaigns. 'Campaigning is now a dirty word', and with the government 'you are

either friend or foe,' she said. She pointed out that, though some politicians welcome the new form of political engagement, others refuse to acknowledge correspondence from its members and on occasion have called the police to deal with the volume of members who arrived at their surgeries.

### Oxfam

Oxfam too was criticised for campaigning following its advertising campaign for its report: *Below the Breadline, The relentless rise of food poverty in Britain*, and in particular for sending the following tweet which said: 'Lifting the lid on austerity Britain reveals a perfect storm - and it's forcing more people into poverty' and which included this picture.



Oxfam was referred to the Charity Commission by Connor Burns MP who said: 'Most of us operated under the illusion that Oxfam's focus was on the relief of poverty and famine overseas. I cannot see how using funds donated to charity to campaign politically can be in accord with Oxfam's charitable status.' Charlie Elphicke MP added: 'Political campaigning by charities like Oxfam is a shameful abuse of taxpayers' money.'<sup>71</sup> The Daily Mail echoed their sentiments: 'Abuse of charity: With thousands in the Third World dying of starvation, what in God's name does Oxfam think it is doing, campaigning against the modest austerity programme in prosperous Britain?'<sup>72</sup> Voluntary organisations immediately rallied in defence of Oxfam with a letter to the Times with more than 70 signatories - including representatives of the National Federation of Women's Institutes, Christian Aid, Friends of the Earth, NAVCA and the Ramblers.<sup>73</sup>

At the same time as considering this allegation, the Charity Commission also looked at an Oxfam advert that called in August 2014 for the end to the blockade of Gaza and an end to violence on both sides.

No formal response was published by the Charity Commission for six months, with it finally appearing just a few days before Christmas. At some point before this, however, the following statement has appeared on Oxfam's website under the heading of its 'constitution,' without any specific reference to the case. Oxfam says that the Charity Commission has told it its political activities must be

*ancillary* and that 'The Commission sees a difference between a charity 'contributing to public debate' by expressing a point of view, and using funds to mobilise public opinion to apply pressure on a government to change policy or practice.' The Commission's guidance was revised in 2008 to go beyond the view that political activity should just be 'ancillary' and to allow such activity as long as it was not 'the continuing and sole activity of the charity.' The Commission appears to be defining its own guidance on campaigning more restrictively than hitherto.

## **Extract from Oxfam's website**

### **Oxfam's charitable mandate**

Oxfam's charitable mandate allows Oxfam to:

- promote the relief of poverty, distress, and suffering;
- educate the public as to the nature, causes, and effects of poverty;
- procure research into the nature, causes, and effects of poverty.

### **Advocacy and campaigning**

Campaigning and advocacy work by charities is subject to guidance from the Charity Commission. This allows charities to undertake advocacy and campaigning provided:

- the advocacy and campaigning is an ancillary activity;
- it is based on 'well founded' and 'reasoned' argument;
- supporters and the public are encouraged to participate on the basis of informed opinion;
- it is carried out within the law;
- it is conducted 'responsibly';
- direct action is limited to peaceful demonstrations.

By 'ancillary' the Charity Commission mean that the policy changes being promoted by the charity must further the charity's objects, and must not dominate activities which the charity itself undertakes to directly support its beneficiaries.

The Commission sees a difference between a charity 'contributing to public debate' by expressing a point of view, and using funds to mobilise public opinion to apply pressure on a government to change policy or practice.

### **Education and research**

The sub-clause on education and research allows Oxfam to fund education and research programmes aimed at the general public and supporters. Note that Oxfam can procure and publish research into the 'nature, causes, and effects' of poverty. This is broader than the primary purpose of the relief of poverty. Education means contributing to public knowledge and understanding. The Commission's guidelines emphasise that education must not be propagandist or used to promote any particular ideology.

Research must be objective and designed to test a hypothesis linked to the nature, causes, and effects of poverty. It must not seek to prove a pre-conceived view of the world, and the research must be made available to the public.<sup>74</sup>

The Charity Commission's opinion on Oxfam's campaign, when finally published, was ambiguous, suggesting in effect that whenever a complainant says that they perceived a campaign to be party political, it had crossed over an acceptable line, and suggesting particular caution in the use of social media. The Charity Commission's ruling focused on the use of social media, but seemed to have wider application to campaigning. Details are given in the box below.

### **The Charity Commission's decision on Oxfam**

The Charity Commission's operational report states that 'a number of policy areas were cited in the tweet and suggested these were forcing more people into poverty ... In relation to the Perfect Storm tweet, the Commission's main concern was whether it sought to influence public opinion in a party political sense.' In relation to the Gaza Trapped advert, the Commission said, 'Whilst this was a political activity, we were satisfied it was undertaken in the context of supporting the delivery of Oxfam's charitable purposes and was within the scope of our Guidance on Campaigning and Political Activity.'

However, on Oxfam's poverty campaign tweet, it writes that 'We considered that the text of the tweet and the embedded picture, gave rise to speculation and varying perceptions about the tweet's purpose, leading to complaints. We consequently considered that the tweet could have affected the views of those who received it and could be misconstrued by some as party political campaigning ... Although we accept that the Charity had no intention to act in a party political way, we concluded that the charity should have done more to avoid any misperception of political bias by providing greater clarity and ensuring that the link to the 'Below the Breadline' report was more obvious. We appreciate that tweets by nature are short. Nevertheless, consideration must always be given as to how they might be perceived when received in isolation.'

It advises charities in general that there should be written sign off procedures for the use of social media and concludes that 'particular care should be taken to ensure that any material does not damage the charity's reputation or impact on public trust and confidence in the charity, that messages are appropriate and in furtherance of its objects and do not have any risk of being misinterpreted or perceived as being party political.'<sup>75</sup>

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The Commission's response can be interpreted as a clear endorsement of Oxfam's right to campaign or as a clear upholding of the complaint.

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The Commission's response can be interpreted as a clear endorsement of Oxfam's right to campaign or as a clear upholding of the complaint. The Mail Online reported on 22nd December 2014 that the complainant, Conor Burns MP, responded: 'The fact that the Commission have published this conclusion after a very long period of deliberation shows how seriously they took what was very clearly a breach by Oxfam. I hope Oxfam and other charities will reflect very carefully on it, and make sure donations made in good faith to good causes are not spent on overtly partisan campaigning.' Oxfam, according to Mail Online, said 'We have reviewed our social media procedures to reduce the risk of tweets being misconstrued in future.'

Although the Commission's handling of the complaint might be seen by some as politically deft, it leaves open considerable ambiguity about what is acceptable or not.

### **Charity Commission and campaigning activities**

Toward the end of 2014, the Charity Commission stepped back from implementing a recommendation in the previous year by the Public Administration Select Committee which had been endorsed by the Government - to increase the level of reporting on campaigning activities in the annual return- but said it would return to the question in a year's time.

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However there are emerging signs of a tougher stance on political campaigning by the Charity Commission.

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However there are emerging signs of what may turn out to be a tougher stance on political campaigning:

- The annual report of the Charity Commission, published in 2014, contains a new section entitled Statement of Regulatory Approach, which says it will 'be alert' (amongst other things) 'to improper politicisation.'
- In November, a 'rapid response case handling system' was announced to follow up on concerns reported to it about charities campaigning activities.
- The Commission's Chief Executive also said 'We will, just after the election, review the current guidance and we are particularly looking, in the run-up to the election, at an awful lot of test cases,' she said. 'It's going to be a tightly fought election. So we are going to look at more evidence and test cases to look at the way the current guidance is working.'<sup>76</sup>
- The Charity Commission now seems to be taking a hard line on what constitutes 'political.' It refused to register the Human Dignity Trust, a gay rights organisation, in October 2013, claiming that it was too political to be a charity. The HDT lodged an appeal with the Charity Tribunal which has now ruled in its favour. The Commission said reasons for refusing to register the charity were 'of a technical legal nature and these are addressed in the decision.' HDT is now a registered charity.<sup>77</sup>

### **Threats to independent voice at local level**

During 2014, we also heard about the significant problems that some local organisations are experiencing with their relationships with local authorities. These local voices are important and can be forgotten. 'Small voluntary organisations embody the idea that people organising in their own community are a force for good. Their independent voices informed by a kaleidoscope of experience and the connection they bring to individuals and to communities is a distinctive value that has the capacity to enliven social democracy and bring new ideas about what sort of society we want,' writes Judy Robinson, from Involve Yorks and Humber, in her *Making Good* essay.

Polly Neate, Chief Executive of Women's Aid, who gave evidence to us in October, explained why campaigning and publicity are integral to the women's aid movement, partly to raise awareness and change attitudes amongst policy makers and the public, but also, and critically, to encourage women to seek help. But a tight funding background was helping to create a negative climate for its voice: the movement has experienced funding cuts to refuges by a third each year since 2010, she said.

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Local authority commissioners have tried to impose detrimental changes in services that women's refuges should be able to speak out against - but which they feel they cannot.

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Against this background, we were told that local authority commissioners have tried to impose detrimental changes in services that women's refuges should be able to speak out against - but which they feel they cannot. For example, some local authorities are now only prepared to fund refuges for *local* women, although the ability to move away from their area is often critical to their safety. A combination of 'gagging clauses,' self-censorship, because of fear of loss of vital funding, and active threats to those that do speak out are having a damaging effect, as explored in more detail below.

### Women's refuges and domestic violence services

In October, we learnt from Polly Neate that some local authority tender specifications have 'gagging clauses' that forbid suppliers from taking on media work or discussing local authority policies and practices.

More informally, there have been instances where charities have been told that if they challenge the tender specification, they will never be invited to bid again. One refuge in the same area lost its grant, but felt unable to challenge the decision as it feared this would jeopardise any future funding prospects. Other groups were told, off the record, that they had lost funding because they had previously challenged a decision. 'This is not isolated; this is day in, day out.'

In one case, after losing all financial support, and taking part in a national publicity campaign to highlight the crisis affecting the refuge's funding, the local authority contacted all local statutory agencies saying that they should no longer refer people to the refuge, as a 'punishment' for their campaigning work; it is also 'punishing the women that should have been referred to the service,' we were told.

One result, Polly Neate said, is that 'local authorities have an unwarranted level of freedom in carrying out commissioning without being challenged' ... which in turn impacts upon democracy as 'the public at a local level are not aware of how commissioning decisions are made because people are not allowed to talk about them.' Another is a 'loss of voice for a marginalised group, who by definition cannot speak out for themselves' and who 'absolutely need the advocacy of charity.'

These examples of threats to voice at local level are not isolated. Face the Facts, a Radio 4 programme broadcast in July 2014, was told by one charity worker that he had also been threatened by a local authority and was told that if his organisation continued to speak out about the way the council was treating the voluntary sector 'the funding would no longer flow to us, it would flow to other organisations.'<sup>78</sup>

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Going forward, we need to hear more diverse, louder and more confident voices from the sector.

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Going forward, we need to hear more diverse, louder and more confident voices from the sector, a point made to us by David Robinson, founder of Community Links, who gave evidence to us in October. He described how, for different reasons, civil society has been losing its voice in recent years. Within the voluntary sector, he cited the 'disappointing' response to George Osborne's criticism about the sector being anti-business. Instead of defending its right to challenge poor business practices such as failure to pay the Living Wage, the voluntary sector's response was largely to argue that it is a supporter of the private sector. The relationship to government, he argued, has become one of subservience. 'My first and biggest plea ... for the coming years,' he writes in a *Making Good* essay, is 'recover the mojo, raise the voice, revive the anger.'

Part of the way forward will be for the voluntary sector to build coalitions to strengthen its voice. 38 Degrees were part of the alliance that opposed the Lobbying Bill and Blanche Jones, in her evidence to us, spoke of the effectiveness and vibrancy that resulted from forming alliances of organisations representing diverse interests such as the Countryside Commission and Friends of the Earth. 'It is civil society at its best,' she said. The question remains how to build those relationships again, especially when such issues that affect the entirety of the civil society movement are infrequent, but the voluntary sector needs to be 'fleet of foot,' looking for opportunities to build alliances whilst using people's first-hand experience and their public support.

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## Infrastructure bodies are important in giving voice to the needs of the voluntary sector

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Infrastructure bodies are important in giving voice to the needs of the voluntary sector and those they serve. The reduction in financial support for local infrastructure bodies is a negative step for the voice of local voluntary organisations. NAVCA's Commission into local infrastructure support recommended that funders offer longer-term funding to such bodies provided they adapt to become much 'leaner enablers, brokers and catalysts' rather than necessarily a deliverer.<sup>79</sup> NCVO also announced in late 2014 that, following the general election, it will carry out a review of the environment for campaigning. The review is expected to draw on international comparisons and will publish recommendations intended to help secure the environment for charities' advocacy work.

### 3. LACK OF CONSULTATION AND INVOLVEMENT

**Our verdict: this has been getting worse in every year since we have been monitoring independence.**

**Previous recommendations:** In its last report, the Panel expressed concerns about lack of consultation on key proposals, most notably the Lobbying Bill, and called on the Government to restore the minimum 12-week consultation period in the Compact.<sup>80</sup> No action has been taken to restore the consultation period and the National Audit Office has reported that the proportion of Government consultations that are less than 12 weeks had doubled to over 80 per cent, compared to 2011. Nor do we see any greater willingness on the part of the Government to engage, although there are some examples of good practice elsewhere in the public sector.

In our last report, we raised our deep concerns about the Government's decision to remove the minimum 12 week consultation period. At the end of 2013 Compact Voice and other organisations wrote to the Cabinet Office minister, Francis Maude, illustrating a number of occasions in which the government had failed to adhere to the 12 week consultation timeframe.<sup>81</sup> A National Audit study published last year found that the percentage of consultations running for less than 12 weeks has doubled. In 2011, 40 per cent of consultations across the nine departments that gave information were run for less than 12 weeks but by mid-May 2013 this had risen to 81 per cent. It also found that most departments did not have arrangements for monitoring and reporting the length of consultations.<sup>82</sup>

Consultation and genuine engagement is becoming, if anything, more challenging because of the proliferation of new local state bodies, some of which have no Compact in place at present.

As the government tries to do more with less, there is a major opportunity for the public sector to draw on the distinctive strengths of the voluntary sector in prevention, knowledge of different needs and innovation to help reshape public services.

As the government tries to do more with less, there is a major opportunity for the public sector to draw on the distinctive strengths of the voluntary sector in prevention, knowledge of different needs and innovation to help reshape public services. There are pockets of emerging good practice.

For example, we heard in October about attempts to create a co-operative council in Lambeth, both from John Kerridge in the local authority and Richard Bridge from the 'other side of the table.' The ambition is considerable but it is clear that a profound culture change is required to put it into practice, which in Richard Bridge's view is a 10 year exercise.

#### **Lambeth Council: developing a co-operative Council model**

Lambeth Council is actively seeking to work with the voluntary sector to help shape services as well as to manage them. John Kerridge, Assistant Director, Communities and Commissioning, outlined to the Panel how a cooperative council delivers this model. Essentially the borough aims to share power when delivering public services through the belief that this will deliver better outcomes at lower cost, especially important in the context of a 45 per cent reduction in borough funding. It began by consulting widely with the sector.

The Council has developed the commissioning cycle with each step involving residents and the voluntary sector both in terms of decision making and the delivery of commissioned services. The aim is to put citizens into the driving seat, using the voluntary sector as one conduit for their views. Inevitably the process has come with challenges, and councillors and officers have had to learn to become enablers rather than power-holders. 'We embrace the voluntary sector as an important thread of the democratic fabric, we want to be lobbied on a daily basis, otherwise we are not doing our job,' we were told.

Another example is the NHS, where there are some interesting developments, as explained below.

#### **The NHS**

**NHS Citizen:** In March 2014, NHS England also launched a new project called NHS Citizen, which aims to enable engagement and communication with the public, patients and voluntary and community sector (VCS) organisations. NHS Citizen intends to help these groups and individuals to participate in NHS England as citizens - not just as consumers of its services. NHS Citizen hopes to become a participatory body, where citizens and organisations can have a direct voice into NHS England.<sup>83</sup> The NHS's Five Year Forward View also calls for stronger partnerships with charitable and voluntary sector organisations as 'often they are better able to reach underserved groups, and are a source of advice for commissioners on particular needs.'<sup>84</sup>

The NHS's Five Year Forward View also calls for stronger partnerships with charitable and voluntary sector organisations as 'often they are better able to reach underserved groups, and are a source of advice for commissioners on particular needs.'

**Consultation with the voluntary sector:** There is some evidence from NAVCA that voluntary and community organisations are beginning to influence local health organisations, but it is a mixed picture. In surveys carried out by NAVCA almost half of respondents either strongly agreed or agreed that the voluntary sector was actively engaged by the local Healthwatch organisation. There were a number of good examples of practice quoted, including work to share voluntary sector intelligence on service user needs with Healthwatch.<sup>85</sup>

There are a number of examples of good practice and of organisations successfully working with the Joint Strategic Needs Assessment process, with examples of organisations having a voice in setting the local agenda, but there are also a number of common problems around communication. There is a sense that some organisations feel left out of the loop, or that involvement has been largely symbolic.<sup>86</sup> A considerable proportion of organisations had been engaged at least to some extent with their local Clinical Commissioning Groups (CCGs). However, responses also highlight that there remains a significant share of organisations who have not been able to engage and that feel that their beneficiaries' needs and views are not taken into account.<sup>87</sup> Mind ran a campaign through CCGs directly and MPs to improve the quality of crisis care services. When contacted later, 65 per cent of CCGs said they were aware of the campaign, of which just under half (47 per cent) said they wanted to make improvements.<sup>88</sup>

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'We need genuine collaboration between the voluntary sector and the state on the creation of effective, scalable solutions to societal problems. This requires a new framework and a move away from the set-piece world of carefully commissioned research and over-managed consultative processes.'

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As Chris Mould says in his *Making Good* essay: 'We need genuine collaboration between the voluntary sector and the state on the creation of effective, scalable solutions to societal problems. This requires a new framework and a move away from the set-piece world of carefully commissioned research and over-managed consultative processes.' As a number of *Making Good* essayists have stressed, including John Tizard and Richard Bridge, this way of working requires a new working relationship between the voluntary sector and the state, in which greater respect is shown for the sector's independence and there is more assertiveness by the sector of that independence too. Both sides need to move on from negative experiences in the past.

Local voluntary groups could be entrusted with executive responsibilities and resources to implement their own agendas, in partnership with others, Nicholas Deakin advocates in his *Making Good* essay. Of course, it takes two to tango and David Robinson suggests in his *Making Good* think piece that 'the next government should introduce a local authority 'Duty to collaborate' with a matching 'Right to lead' empowering other local service providers to require the cooperation of the council if it fails to step up.'

#### 4. STATUTORY FUNDING AND CONTRACTING ARRANGEMENTS

**Our verdict: after reporting a declining picture up until January 2013, we have seen no significant improvement in recent years.**

The Panel has expressed concerns that statutory funding is not supporting a strong, independent and diverse sector, with particular problems for smaller, local organisations.

In previous reports, the Panel has expressed concerns that statutory funding is not supporting a strong, independent and diverse sector, with particular problems for smaller, local organisations. The Panel has been concerned about poor commissioning and procurement practices that failed to draw on the distinctive strengths of voluntary organisations, particularly in working with people with complex, specialist needs. The use of Payment by Results in the Work Programme came under particular criticism. The Panel called on the Government to ensure that funding and commissioning processes support independence and are not biased against small, specialist organisations.

Since then, there have been positive developments, particularly implementation of the Social Value Act 2012 and the new EU Procurement regulations, but we see no sign of the scale of change that is needed. We note that the pattern of letting large prime contracts to the private sector continues with recent Rehabilitation Service contracts.

We remain concerned that the existing funding model deployed by the state for working with the sector does not sufficiently support a fully independent, diverse sector. As a Centre for Social Justice report published in September concluded, 'the process of commissioning is largely unsatisfactory for the social sector; excluding small providers and failing to make use of the sector's skills and expertise.'<sup>89</sup>

The Public Services (Social Value) Act 2012 is welcome but it only applies to larger contracts, is largely discretionary, and is only having patchy impact.

We acknowledge Government efforts to try to correct the bias against the social sector. The Public Services (Social Value) Act 2012 is welcome but it only applies to larger contracts, is largely discretionary, and is only having patchy impact. The announcement in September of a Government review is welcome. But there remains no consistently applied or agreed definition of social value. Interpretations of social value can be superficial - for example, the offer of employee volunteering - rather than integral to the contract. Moreover, as we were warned by Cathy Pharoah from the CASS Business School when she gave evidence to us in October, there is the danger that the Act could be used to encourage voluntary organisations to use their own reserves to subsidise public services in order to compete to win contracts. Independent reviews suggest that implementation of the Act is patchy - as explored in the box on the next page.

The NHS in England has publicly recognised that the voluntary sector provides a rich range of

activities, including information, advice, advocacy, and that they deliver vital services with paid expert staff. To develop stronger partnerships says in its Five Year View that it will seek to reduce the time and complexity associated with securing local NHS funding by developing a short national alternative to the standard NHS contract where grant funding may be more appropriate than burdensome contracts, and by encouraging funders to commit to multiyear funding wherever possible.<sup>90</sup>

### **The Social Value Act: making a difference?**

The Public Services (Social Value) Act 2012, effective from January 2013, requires public bodies to demonstrate how the services they commission might improve the economic, social and environmental well-being of the area. Commissioners are required to factor social value in at the pre-procurement phase, the aim being to embed social value in the design of the service from the outset. However, there is no statutory obligation for a commissioning authority to engage the voluntary sector in the design of commissioning and the Act only applies to larger public service contracts.

The Government has announced a review of the Act to consider whether it should be extended to cover contracts for goods and works as well as services, and how it might be extended in a way that continues to support small businesses and voluntary, charity and social enterprise organisations to bid for public contracts. The review team aim to report on findings in early 2015.<sup>91</sup>

A House of Commons Select Committee examined the progress of the implementation of the Social Value Act in February 2014.<sup>92</sup> Findings were mixed. Overall 65 per cent of local authorities in England and Wales had changed their processes and practices as a result of the Act; across London the proportion rises to 86 per cent. Examples of good practice provided included Lambeth's checklist for councillors to identify which social and economic benefits they wished to generate from specific contracts and Halton Borough Council's weighted tender exercise to assess how contractors would add social value in delivering a contract, such as by engaging with the local workforce.

But some councils were not maximising opportunities to embed social value in their procurement approaches. The Chartered Institute of Purchasing and Supply reported that nationally the focus remained on savings and that there was little evidence that social, economic and environmental considerations were duly regarded in the award of contracts. Solace reported that clients and providers frequently expressed frustration that contracts were too focused on the 'mundane' and that their impact on strategic outcomes was unclear. The NCVO identified a range of barriers to delivering value for money, including a 'disconnect' between those commissioning services and procurement/ finance teams, a failure to involve all relevant actors (providers, commissioners, procurement and contract managers) in the design stages of commissioning, and limited engagement of procurement and finance teams directly with providers.

The EU Procurement Directives will contain measures to encourage public sector commissioners to break up procurement into smaller contracts or explain why they have not done so, and will also include a 'most economically advantageous' rule, intended to encourage public sector bodies to give more regard to social value when tendering out contracts.

Changes to EU Procurement Regulations will raise the threshold for a requirement to go out to tender, cut red tape for voluntary sector bodies and may encourage the use of smaller contracts - see below.

**Changes to European Procurement rules:** The EU Procurement Directives will contain measures to encourage public sector commissioners to break up procurement into smaller contracts or explain why they have not done so, and will also include a 'most economically advantageous' rule, intended to encourage public sector bodies to give more regard to social value when tendering out contracts. The rules will also raise the threshold over which some types of contract, including social and health services, must go out to tender across the EU. The present threshold is €200,000, and this will rise to €750,000.<sup>93</sup> And they will create a protected period, initially for three years, for charities and social enterprises spun out of government during which they will not have to compete with other companies. The UK plans to adopt the changes ahead of the two year schedule as it pushes ahead with plans to outsource more services.<sup>94</sup>

## Payment by results

The experiment with Payment by Results in the Work Programme is now widely regarded as a failure for channelling support to those most in need and involved the passing on of significant levels of financial risk to a sector unable to cope with it. A report by CESI has found that overall Government funding for ESA claimants on the Work Programme will be £380 million lower than planned, at around £350 million between 2011 and 2019 instead of £730 million.<sup>95</sup> The result is poor outcomes for users with specialist needs. One research project found that disabled people and young lone parents experienced relatively lower job outcome rates than their 'non-disadvantaged' peers and concluded that 'the Work Programme at present may ... be reinforcing, exacerbating and making systemic the negative impacts of employment disadvantages.'<sup>96</sup>

There have also been some modifications to the payment by results system of the new Rehabilitation contracts as a result of lessons from the Work Programme, though concerns remain; and new standards for better contract relationships between prime and sub-contractors have been put in place. The Ministry of Justice hailed the strong involvement of the voluntary sector in the contracts awarded but ACEVO and others have raised concerns about the dominance of private sector providers amongst prime contractors.

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Barriers to the social sector are still considerable - and especially so for smaller organisations.

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### **Competition between large and small voluntary organisations**

Barriers to the social sector are still considerable - and especially so for smaller organisations. Competition between large and small voluntary organisations is one part of the problem, as we noted in our last report. At the CSV's annual conference in Shropshire we heard at first hand about conflicts of interest between large and smaller organisations and difficulties in making partnerships and consortia work where there were different agendas and lack of involvement. Representatives of the community sector argue in a NCIA report that the support of and collusion by national Third Sector organisations in England for the Government's policies for outsourcing public service delivery has served to marginalise the majority of smaller voluntary and community organisations.<sup>97</sup>

As we said last year, there are signs of very real damage to an important 'eco-system' of independent support in communities that is often undertaking vital work to tackle complex and social problems - and saving the public sector costs as a result.

### **The need for a new model of public service reform**

A much more fundamental change is needed if the full value of the voluntary sector is to be unlocked. As Sir John Elvidge has said in his *Making Good* essay, 'In this emerging 'enabling state,' charities and voluntary organisations have a key role to play. Not just in delivering public services, but in supporting the public sector to rethink its relationship with communities and citizens.'

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The current model of public service reform - based on competition - is failing to unlock the potential of the voluntary sector to deliver positive social change.

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The current model of public service reform - based on competition - is failing to unlock the potential of the voluntary sector to deliver positive social change. Indeed, a report published by Locality in 2014 has suggested that the public sector may well be wasting vital resources in simply recycling social problems between agencies, rather than tackling problems at source. Part of the problem is standardisation of services and the push to economies of scale and lower prices, when individual support within communities, sometimes facilitated or delivered by the voluntary sector, might be more effective.<sup>98</sup>

Sir John Elvidge has commented in his *Making Good* essay, 'It would be doubly a mistake if the sector increased further efforts to substitute for public bodies in the delivery of traditional public services at a time when the inherent effectiveness of some of those services is under question.'

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'Charities have a lot to offer public services over the next decade but only if they deliver to their strengths, rather than trying to be just another provider, and focus as much on service and contract design as on trying to win contracts.'

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Looking forward, a fundamental shift is needed in how the voluntary and public sectors work together. Many of the essayists in *Making Good* call for a new collaborative model, based on shared goals, with a focus on reshaping public services to foster prevention and early action. This may in some cases involve the voluntary sector delivering public services directly. But its voice may be just as if not more important in articulating the needs of different groups and helping to reshape services. As Dan Corry says: 'Charities have a lot to offer public services over the next decade but only if they deliver to their strengths, rather than trying to be just another provider, and focus as much on service and contract design as on trying to win contracts.'

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A presumption of 'local first,' rather than 'big is best' might help counter the current bias in the other direction.

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Where it does deliver public services, much greater care needs to be taken to provide funding that fosters innovation and a long term perspective and which measures real value, as Kate Bagley writes in her essay, based on her experience at Participle. Strong connections into communities can help voluntary organisations understand and respond to needs and a presumption of 'local first,' as one of our members, Joanna Holmes, advocates in her essay, rather than 'big is best' might help counter the current bias in the other direction.

### **New models of financial support**

New models of financial support also need to be developed alongside the other sources of funding currently provided by the Government or under consideration, including the Contract and Readiness Fund and a proposed £40 million fund for voluntary organisations working with disadvantaged groups in danger of closing. As Cathy Pharoah explained to us in her evidence, core funding and ways of encouraging local donations from businesses and others are important, especially for local organisations at risk. The contribution of independent charitable trusts and foundations are also important, as Debbie Pippard explained when she gave evidence alongside Cathy in October. They have a long term perspective and can provide core funding as well as support for leadership and independent voice. However, as Richard Jenkins and Keiran Goddard from the Association of Charitable Foundations explained in their *Making Good* essay, foundations and trusts must carefully guard themselves against attempts by the Government to direct their funds toward government priorities.

David Robinson called for unspent assets in banks to be used to help support the sector, in his evidence to us. Less than £0.5bn has surfaced so far for Big Society Capital out of an estimated £10bn. 'Potentially this money represents a really significant untapped pot for a voluntary and community sector that has struggled in recession but is so important to so many in the UK. The next government should go back for more and spread the reach - insurance companies, share holdings, and building societies for instance are as yet untouched.'

Alongside funding for specific organisations, infrastructure bodies should not be forgotten - many have lost funding in recent years, particularly locally.

## 5. INEFFECTIVE SAFEGUARDS AND REGULATION

### **Our verdict: This continues to get worse.**

Previous recommendations: In last year's report, the Panel called on the Government to 'Compact proof' new policies and ensure that the Charity Commission is equipped to carry out a strategic role. Our concerns about the effectiveness of the Charity Commission persist, with two voluntary sector led inquiries into its independence announced in November, and we are concerned that it is insufficiently focused on protecting its own and the sector's independence. The Compact has not to date been effective in protecting the voice of the sector or adequate consultation and needs more teeth.

### **Charity Commission**

Our concerns about the leadership shown by the Charity Commission on the independence of the sector have deepened over the last year. The Commission is giving the impression of being politically driven. Its focus seems to be on an agenda determined by the Government, despite its statutory independence. Its own independence and the independence of the sector it regulates should be at its heart. The first statutory objective of the Commission is to increase public trust and confidence in charities and safeguarding the independence of the sector, as well as supporting and defending it, where appropriate, is central to this. Yet, as noted earlier, it is sending ambiguous signals about the role of political campaigning which may well have a chilling effect and may lead, as already hinted, to changes in its guidance on campaigning after the election.

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Our concerns about the leadership shown by the Charity Commission on the independence of the sector have deepened over the last year.

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The Commission said in December 2013 that its annual budget would fall to about £20.2 million by 2015-16, a budget cut of almost 50 per cent in real terms compared with 2007-08. However, more recently the Government has announced £9 million of new funding over three years, primarily to tackle terrorism and tax evasion, and the Commission is to be given new powers to tackle tax avoidance and terrorism in the Protection of Charities Bill.

A new CEO took up her post in June 2014, Paula Sussex, who has extensive private sector experience and only limited experience of the voluntary sector, having been a trustee of a charity in the past. The current Board of the Commission have been criticised for their lack of voluntary sector knowledge and suspicions have clearly been aroused about its political independence, with two voluntary sector led Commissions set up to explore this:

- The NCVO have announced they will review the Charity Commission's governance structure and appointments process to find ways for the regulator to 'put questions about its political neutrality to rest for good.' It will investigate potential alternative models of governance for the Commission, and ways to strengthen perceptions of its independence. The review will report in the summer of 2015.<sup>99</sup>
- ACEVO set up the Low Commission in November to assess whether the Charity Commission is fit-for-purpose, what changes could be made to improve the regulatory framework and remove red tape, and whether the sector as a whole is over regulated. It has a wide remit and not simply a review of the Charity Commission.<sup>100</sup>

We note that, in January 2015, eight months before his reappointment was due and three months before an election, the current Chair of the Commission has been reappointed.

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The political independence of the regulator is critical to an independent sector and active steps must be taken by the next Government to demonstrate that the Commission is indeed fully independent.

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Since criticism of its ineffectiveness by the Public Accounts Committee and others, the Commission has become highly interventionist and most recently has attracted attention for alleged targeting of Muslim charities in a crackdown on extremist abuse<sup>101</sup> and been criticised for practising 'zero tolerance machismo' rather than 'openness and sensitivity.'<sup>102</sup>

The political independence of the regulator is critical to an independent sector and active steps must be taken by the next Government to demonstrate that the Commission is indeed fully independent.

## The Compact

As we have noted in earlier reports, surveys by the National Audit Office of the national Compact and by Compact Voice of local Compacts suggest widespread non-compliance, despite some inspiring examples of good practice.

A follow up review by the National Audit Office found that, although the prominence and quality of the Compact statement in departments' Business Plans has improved, progress in implementing the recommendations of a previous January 2012 report into the effectiveness of the voluntary agreement has been slow, for example in relation to strengthening arrangements for monitoring Compact complaints.<sup>103</sup>

Compact Voice's 'Satisfaction Survey' found respondents evenly divided in their views on the usefulness of the national Compact. Positive comments included the legitimacy it gave to local Compacts, for example: 'its implementation at a national level sets a precedent for local Compact working,' and 'it is still important as it gives a national context to a local agreement, and prevents local authorities from disregarding the local agreement.' But other respondents argued, for example: 'It needs to be promoted more,' 'It's difficult to say that it is directly helpful, but it does keep things on the agenda that we want kept,' and 'the principles are still relevant, but we need to move away from talking about the 'Compact' as such, to 'working with the voluntary sector' and promoting an understanding of the mutual benefits this brings when done properly.'<sup>104</sup>

Government funding for Compact Voice continues until the end of March 2015 and its future beyond then is currently unclear.

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'An independent organisation accountable to neither the Cabinet Office nor Compact Voice should be created. It should be accountable directly to Parliament.'

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One of our Panel members, Sir Bert Massie, has written in an essay in *Making Good*: 'Two of the principles on which the Compact is based, the agreement of government to allow time to consult the voluntary sector, and to recognise that the sector has a right to campaign, have been so undermined that a new structure to support the Compact is required. An independent organisation accountable to neither the Cabinet Office nor Compact Voice should be created. It should be accountable directly to Parliament.' He also called for the Compact to be rewritten. We share his view.

## 6. GREATER PROTECTION FOR INDEPENDENT GOVERNANCE

**Our verdict: no overall improvement since our last report.**

**Previous recommendations:** The Panel has called for the introduction of regulations of the kind in place in Scotland to reduce the capacity for interference by the state in independent governance. No change has occurred since our last report. There remains an issue in relation to a whole category of public functions, including museums and galleries, which are nominally charities but remain tightly controlled by the government. The Panel also continues to hear of instances where local authorities seek to exercise control over local voluntary organisations, which receive some state funding or support such as use of premises.

Threats to independent governance are a symptom of a wider lack of respect for the distinctive mission and independence of the sector.

In Scotland, in contrast, an organisation fails the charity test if 'its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities.

There remains an issue in relation to a whole category of public functions, including museums and galleries, which are nominally charities but remain tightly controlled by the government. In Scotland, in contrast, an organisation fails the charity test if 'its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities.'<sup>105</sup>

The Department for Culture, Media and Sport awarded a total of £85 million to create a new charity arm of English Heritage to manage England's precious historic sites. Part of the reason for spin outs seems to be to raise additional funds. The new charitable status will give English Heritage freedom to raise funds - with a target of finding a further £83 million from third parties.<sup>106</sup> Elsewhere the use of charity status to raising funds becomes more explicit. The Northumberland National Park Authority is planning to establish a charitable foundation to raise funds to cover cuts in government funding. The Authority is anticipating a real-terms cut in government grants of 40 per cent between 2010-11 and 2016-17.<sup>107</sup>

The Panel also continues to hear of instances where local authorities seek to exercise control over local voluntary organisations.

One positive development is that the Department of Health is to allow NHS charities which are bound to NHS bodies and governed by both charity law and NHS legislation to operate away from NHS legislation by setting up new charities and transferring their assets and activities to the new entities. This will give them greater independence and allow them to operate more flexibly: 'The new charity, regulated solely by the Charity Commission, would be free to set its own constitution including objects, legal form and trustee appointments appropriate to its needs' while retaining the relationship with NHS bodies.<sup>108</sup>

The Panel also continues to hear of instances where local authorities seek to exercise control over local voluntary organisations which receive some state funding or support such as use of premises. Richard Bridge, for example, in his *Making Good* essay, writes as follows:

'Time and again [Community Matters] find the same attempts by councils to use these documents (which should only deal with the rights and responsibilities of occupying a building) to control the day to day operation of the independent community group in general. Common egregious clauses are ones which specify the opening times of a building (an entirely operational matter which the council has given up the power to decide when they choose to give up the running the building), rights to break the lease if certain specified service outcomes and outputs are not achieved (nothing to do with rights and responsibilities of occupying a building; put them in a service level agreement to run alongside), and clauses which require the community group to seek council permission before changing their governing document - in this latter case the council is thereby actually requiring the trustees of a charity to break their legal statutory duty to maintain the independence of the charity from all outside, and especially from political interference!'

# 5 Conclusion and recommendations

Our concerns about the six key challenges to the independence of the voluntary sector have been set out in the previous section. The independent voice of the sector has come most visibly under fire but independence of purpose and action are also at risk, when mission follows money.

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The voluntary sector can add considerable value when it works with the state but the current model is failing to release it fully.

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At the root of these threats to independence, we believe, is an implicit and growing view that the voluntary sector should be at the service of the state, rather than of its own independent mission. This has partly taken hold because of a public service reform agenda under successive governments that has a competitive model at its heart. In this model, all sectors are seen as interchangeable, competing on the basis primarily of price. The voluntary sector can add considerable value when it works with the state but the current model is failing to release it fully.

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Remove constraints on independence of voice and protect the legitimate right of voluntary organisations to campaign, repealing the Lobbying Act, reversing changes to judicial review and removing ‘gagging clauses.’

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Whichever Government comes into power in the UK in May 2015, there will be a need for it to re-evaluate the relationship between the state and the voluntary sector. We recommend specific action in these five areas:

- Remove constraints on independence of voice and protect the legitimate right of voluntary organisations to campaign, repealing the Lobbying Act, reversing changes to judicial review and removing ‘gagging clauses.’
- Establish formal mechanisms for dialogue and collaboration between government and the voluntary sector, at national and local level.
- Reform commissioning and procurement to get the best out of the voluntary sector and to recognise the value it creates. We recommend the voluntary sector be involved, including in drawing up new contracts.
- Provide targeted financial support to the voluntary sector, particularly for smaller organisations working with disadvantaged groups who are most at risk, to support it to deliver common social goals.
- Introduce stronger support to protect independence, including a recast Compact with teeth, enforced by an independent body reporting to Parliament, and ensure that the Charity Commission is politically independent with a clear role to protect the independence of the sector, including its right to campaign.

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These changes will only be effective if they are underpinned by a clear, shared understanding of the distinctive value of an independent voluntary sector.

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These changes will only be effective if they are underpinned by a clear, shared understanding of the distinctive value of an independent voluntary sector. From the witnesses we have heard and the different views of voluntary sector leaders expressed in the essays in *Making Good*, we have gained a clearer sense of what is distinctive and important about an independent voluntary sector.

First, the way in which it generates social value by bringing people together, not to make money or to pursue individual agendas, but for a common cause. Second, the empowering and transformational relationships that can be forged through mutuality and reciprocity. And, finally, the independent voice that can help make a better world.

In *Making Good*, we have also seen the beginnings of a debate about a common mission and direction of travel for the voluntary sector, with these ingredients under discussion:

- Strong, inclusive leadership by the voluntary sector around an ambitious agenda for change in society.
- A mission focused on prevention, not just the alleviation of problems, acting as an enabler of people and communities, rather than treating them as passive recipients of charity.
- Collaborating within and beyond the sector to make change happen for the common good.
- Promoting the distinctive social value and social capital generated through people coming together in voluntary activity.
- Celebrating the ability of activities located within communities to generate this value - with 'local first' as a new default switch, rather than 'big is best.'
- Speaking with a more confident voice, backed by a Compact with teeth.
- Seeking better public services, not just through delivery, but through co-operation, collaboration and co-design.
- Looking for funding that better supports social value, locally based activity, innovation and the longer term.

This is only the beginning of what must be a wider and deeper debate about the future of the voluntary sector, in which all views and interests must be heard. Last year, we called for a new Commission on the future of the voluntary sector and we are pleased that the Baring Foundation is now funding-raising to make this happen.

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Some key areas for any Commission to consider are whether the increasingly diverse sector can develop more of a common sense of mission and identity; articulating the importance of the sector's voice in a modern democracy and creating funding and support for it; putting forward a new model for working with the public sector to achieve better social outcomes; fostering innovation; looking at how to promote collaboration within the sector and beyond around common goals; identifying a

new funding model for the sector that works for organisations that currently rely on state funding, including smaller organisations, and which supports independence; and strengthening regulation, including regulation of independence.

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For the voluntary sector's independence to be protected over the coming years, it must seize the agenda, confidently pursue its independent mission and find new ways to work with the state and others for the public good.

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In conclusion, for the voluntary sector's independence to be protected over the coming years, it must seize the agenda, confidently pursue its independent mission and find new ways to work with the state and others for the public good. Only by strong and inclusive leadership by the sector itself will its future independence be protected. The role of infrastructure bodies is crucial. We hope the sector will rise to this challenge.

This report is our final one. Since we were established in 2011, we have heard from many organisations and individuals who have helped us prepare our annual assessments; and we would like to end this report by thanking them for their invaluable engagement and input.

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