THIRD SECTOR ORGANISATIONS AND GOVERMENT POLICY

INTIAL NOTE FOR INDEPENDENCE PANEL (Summary of a longer journal article submission)

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SUMMARY - THIRD SECTOR ORGANISATIONS AND GOVERNMENT POLICY

Rather than protecting voluntary and community organisations from the effects of Government policies and supporting their independence from Government, national Third Sector Organisations have assisted and supported Government initiatives to fashion and develop commissioning and contracting policies under New Labour and the present Coalition Government. This process is now consolidated through current Government policy to reduce numbers of its strategic partners.

A) CURRENT SITUATION

1) London Third Sector Organisations

The 2013 Panel Report rightly highlighted the letter from a range of large London based Third Sector Organisations or "Infrastructure Bodies" to the Treasury on October 19 2012: (Panel on the Independence of the Voluntary Sector, 2013) but then continued:

> *"...We also believe that infrastructure bodies could do even more than just question practices that threaten the independence of the sector - for example by launching judicial reviews of contractual terms which reduce independence.*

However, the reality is that, especially since NAVCA has now changed direction, almost all London Third Sector Organisations are reliable supporters and practitioners of Government policy.

Below this Note shows that these organisations have become active participants in the development of Government policies, often against the interests of the organisations they represent, especially in:

- Payment by Results
- Work Programme Commissioning and Procurement
- Private Philanthropy and Equity Investment - 'Social Investment'

Because of their participation and support for a range of Government policies governing Third Sector Organisations - all of which results in less external controversy - these policies are rarely discussed within any main UK political party. The Panel is correct on Third Sector numbers:

> *"The sector has far more active members than all the political parties; and voluntary organisations individually and collectively provide a voice, a sounding-board and sometimes a counterweight to entrenched public and private sector interests. this is not to subvert the democratic or legal processes, where decisions and judgments must be made, but to ensure that the voice of civil society can be heard".*(Panel on the Independence of the Voluntary Sector and Baring Foundation, January 2012)

Beyond this, very few MPs or Peers take a continuing political interest in Social Enterprise or Third Sector events. This changing relationship between Government and Third Sector was best described Peter Elson, writing on the Canadian situation (Elson, March 2009) (also used in 2012 Panel Report)

> *"Independence once enjoyed by mutual aid and religious organisations has evolved into a complex, embedded relationship with government in which the nonprofit and voluntary sector primarily strives to achieve a productive interdependent partnership rather than an independent or civil society relationship. Retrenchment policies and New Public Management practices initiated in the 1990s continue to define this partnership with the result that contractual obligations dominate, and representative advocacy has been marginalised in favour of policy forums for the generic 'citizen'.*

2) Public Funding

A byproduct of this active participation in Government policy is that smaller Third Sector Organisations now face a desperate funding situation. The Panel's 2012 Report showed their increasing dependence on public funding, especially in more deprived areas: (Panel on the Independence of the Voluntary Sector and Baring Foundation, January 2012)

- *"Deprived areas have a much higher proportion of publicly funded organisations than less deprived areas and funding, where received, is more likely to be important. For example, statutory funding was the most important source for 30% of organisations in Knowsley and Nottingham, against a national average of 13%".*

The latest NCVO Civil Society Almanac for 2010-2011 shows that in the North East, North West, Yorkshire and the Humber and East Midlands this dependence on public sources is over 40% and approaching 50%. Overall, income from these sources represents £14.2bn out of £38.3bn or 37%. (National Council for Voluntary Organisations, 2013)

3) Compact Voice

Third Sector Organisations' active participation in the formulation of Government policies also means that Compact Voice is now effectively neutered. Even its Freedom of Information Requests are widely ignored by local and central government.

Local Government responses showed that 60 Local Councils (17%) did not reply and 39 (11%) refused to reply to Compact Voice Freedom of Information Requests. (Compact Voice, 2012b). For Central Government, out of 15 Government Departments, 5 refused partially or completely, 4 did not respond or supplied no information and only 2 supplied full or nearly full information. (Compact Voice, 2012a). The departing Head of Compact Voice, James Allen, wrote on Thursday 09 May 2013: (Allen and Compact Voice, 2013)

- *"Cuts – no surprises here but clearly set to continue to 2017 and beyond. These cuts, particularly at local level, will start to bite deeper as any remaining easy targets are long gone."*

- *"An era of austerity means more pressure on everyone, with fewer resources. Getting people's attention and persuading them to work with us is getting more challenging than ever".*

Though all this shows that for voluntary and community organisations the Compact process is not working, the Board of Compact Voice includes ACEVO, Social Enterprise UK, NCVO and NAVCA – all organisations in a position to do something about this sad state of affairs.

B) TRADE UNION RESPONSES

Unions, especially Unite, UNISON and PCS, take an increasing interest in these developments. Unite's Community, Youth Workers and Not for Profit Sector now covers 60,000 members in a diverse range of organisations. (Unite the Union - Community Youth Workers and Not for Profit Section, 2013)

As long ago as June 2006, the Public and Commercial Services Union showed concern about contracting out of public services delivery. A paper "Third Sector Provision of Employment-Related Services" by the PCS Union, highlighted growing difficulties caused by a widening array of Third Society organisations. In his Forward to the paper, PCS General Secretary Mark Serwotka highlighted these difficulties: (Davies, 2006)

> *"Even the term "Third Sector" itself seems to be a questionable one. The leading organisation lobbying for contracting out employment services – the Employment Related Services Association (ERSA) – is composed of profit-seeking businesses, long-established charities, hybrid government/charity organisations and non-profit making organisations who aim to increase their "market share" of public contracts.*

ACEVO in "Speaking Truth to Power: Third Sector's Relationship with Government" October 2006, in its response to the PCS report's concern that "third sector involvement in public services would lead to "privatisation" said: (Association of Chief Executives of Voluntary Organisations, 2006)

> *"Greater third sector involvement in public services is likely to occur through formal commissioning processes, in which bids from a variety of organisations are sought and assessed by public sector commissioners. Thus, through contractual arrangements and regulation, the public sector will retain the ultimate control and ownership of those services. This model only involves "privatisation" as defined by PCS, viz. some form of independent involvement in public service delivery. It does not imply any privatisation in the more widely understood sense".*

In 2007, in similar vein UNISON published a Report on "Social Enterprises and the NHS: Changing Patterns of Ownership and Accountability". In his Forward on Page 2, Dave Prentice, UNISON General Secretary, wrote: (Marks et al., 2007)

> *"Furthermore, it is possible that some Social Enterprises may smooth the way for the involvement of the private sector in primary care – whether intentionally or otherwise.*
>
> *"There is little doubt that Social Enterprises are an issue of growing importance for the NHS and those who work in it, and this report signals the need to keep rapid developments under close and constant scrutiny".*

These union concerns in 2006 and 2007 about Payment by Results and private contractors were timely. The 2012 Department of Health "Simple Guide to Payment by Results" in Appendix B shows that as a percentage of Primary Care Trust allocations payment by results doubled in the period 2005-2006 to 2007-2008 - the biggest increase in a decade.(Department of Health, 2012b). The blurring of sector boundaries and Payment by Results (PBR) were thus already serious issues.

C) HEALTH, SOCIAL ENTERPRISE AND PAYMENT BY RESULTS

The foundations for Section 75 Competitive Tendering by Clinical Commissioning Groups under the Health and Care Act 2012 were laid by New Labour in August 2005. The "NHS Purchasing and Supply Agency Procurement Guide: Alternative Provider Medical Services (APMS)", was a detailed guide to a wider range of conditions and circumstances to be taken into account to accommodate Social Enterprises. Page 4 of APMS says:(NHS Purchasing and Supply Agency, 2005)

> *"APMS is a relatively new contracting route for PCTs. Although services may be provided by non-NHS providers, NHS patients treated under APMS arrangements will remain NHS patients. In procuring for services, PCTs will wish to ensure that a range of prospective providers can apply."*

The APMS Guide paved the way for a White Paper 'Our Health, Our Care, Our Say' in January 2006, which included copious references to Payment by Results, including: (Department of Health, 2006)

> *"Payment by Results (PBR) encourages practices and PCTs to commission care safely and more cost-effectively in the places people choose to be treated, encouraging shifts from inpatient to day case and outpatient, and treatment outside the secondary care sector".*

Despite a clear commitment throughout the White Paper to PBR, in February 2006, the Social Enterprise Coalition (now Social Enterprise UK) and the NHS Purchasing Agency jointly published 'A Guide to Procuring from Social Enterprises for the NHS'. The Guide explained on page 4: (Social Enterprise Coalition and NHS Purchasing and Supply Agency, February 2006)

> *"Social Enterprises are also characterised by their ownership structures. Unlike most private enterprises, whose ownership is often determined by shareholder investment in the business, social enterprises can be owned by their users or customers, their employees, the wider community, trustees, public bodies, or a combination of different stakeholder groups".*

In October 2006 a new Social Enterprise Unit in the Department of Health sought applicants to become Social Enterprise NHS Pathfinders, which then received funding. With encouragement of ACEVO and Social Enterprise UK, these developments represented a high water mark of Social Enterprises as potential health and care mainstream suppliers. But these same policies introduced further systems for PBR and more private sector tendering.

Recent events have mirrored these developments. Despite a strong campaign by British Medical Association, Royal College of General Practitioners and Health and Health Care Organisations against Section of 75 of the Health and Care Act 2012, which locks Clinical Commissioning Groups into competitive tendering, ACEVO has been one of the few organisations campaigning for their introduction.

D) WORK PROGRAMME AND PRIME CONTRACTORS

The foundations for the Coalition Government's Welfare Reforms, including Universal Credit, were set out in David Freud's 'Welfare to Work' Report March 2007 (Freud and Department of Work and Pensions, 2007). On page 6 Freud recommended:

> *"And while there is no conclusive evidence that the private sector outperforms the public sector on current programmes, there are clear potential gains from contesting services, bringing in innovation with a different skill set, and from the potential to engage with groups who are often beyond the reach of the welfare state. Therefore this report recommends that once claimants have been supported by Jobcentre Plus for a period of time, back-to-work support should be delivered through outcome-based, contracted support".*

His Report advocated PBR, output based criteria and private prime contractors - which formed a basis for New Labour's Flexible New Deal and the current Government's Work Programme. James Purnell's White Paper "Raising Expectations and Increasing Support: Reforming Welfare for the Future" in December 2008 in "Devolving to Providers" on page 46 said: (Department for Work and Pensions, December 2008)

> *"In February 2008, the Department for Work and Pensions published its Commissioning Strategy, which set out our vision for modernising and strengthening the welfare-to-work market. It opens the way for larger, longer contracts with providers rewarded for their success in helping more people into sustained work; where customers receive a more personalised and flexible service; and where delivery of employment support is integrated into local services. These principles are already shaping the commissioning for Phase 1 of the Flexible New Deal, which starts in October 2009".*

By 2008 Government policies on PBR and private prime contractors were very clear. In the Panel's 2013 Report, (Panel on the Independence of the Voluntary Sector, 2013) the DWP's own research on the impact of its procurement model (Maddock, 2012) showed a trend to award contracts on the basis of financial assets, rather than personal service delivery.

1) ACEVO Third Sector Task Force

In July 2008, anticipating the 'Raising Expectations' White Paper above, ACEVO set up a Third Sector Taskforce on "Welfare to Work Reform: Third Sector's Role", which reported in February 2009. (Association of Chief Executives of Voluntary Organisations, 2009) On page 5 "Reform of Public Service Delivery" the Task Force accepted that the private sector would play a dominant role.

> *"DWP has introduced a new commissioning strategy that firmly establishes the need for contractors to achieve high, measurable, standards of delivery, both in terms of quantity and quality. "This follows publication of the Freud Report, the outcome of which is a new prime contractor model, in which each successful prime will operate in a large geographical area with a big population. It is already clear that most of these prime contractors will come from the private sector and that they in turn will be looking for sub-contractors with a strong, effective and consistent delivery capability".*

One the Role of the Third Sector in Welfare to Work Delivery on page 6, the ACEVO Task Force Report continued: (Association of Chief Executives of Voluntary Organisations, 2009)

> *"The scale of the new contracts and the "reward" mechanism for providers will create a greater opportunity than ever before for the third sector to support prime contractors in the delivery of public services. If that opportunity isn't exploited, it may lead to the unwanted effect of freezing out Third Sector providers, so it is essential that arrangements are in place to encourage strongest possible involvement by the Third Sector"*

2) Pressure for Social Investment Bank

But rather than opposing these policies in principle, London Third Sector Organisations sought to mitigate against their effects through seeking funding from a Social Investment Bank. On page 6, the ACEVO Task Force Report pinned its hopes on assistance from the proposed Social Investment Bank: (Association of Chief Executives of Voluntary Organisations, 2009)

> *"For Third Sector organisations to take part in the DEL:AME (Departmental Expenditure Limits: Annually Managed Expenditure), due to commence in March 2011, it will be essential that the later recommendation in this report re the Social Investment Bank is implemented quickly, as few Third Sector organisations will be able to afford the substantial cash outlay needed to take part in programmes which only produce income 12–18 months later".*

These conclusions and acquiescence in the prime contractor model were reached despite considerable evidence presented about Third Sector difficulties, as shown on page 11 of the Report:

> ***"Expansion of third sector skills and knowledge***
> *... According to the ACEVO survey, just 13% of respondent TSOs have a dedicated contracting team, but 51% believe they would benefit from having one. There is also strong evidence that this is a difficult challenge for the third sector. There is little funding available for such capacity-building. TSOs rarely have the knowledge and resources needed to invest in the necessary training and development"*

Social Enterprise UK similarly supported creation of a Big Society Bank on page 10, in its response to Modernising Commissioning Green Paper 2010: (Jones et al., 2011)

> *"..The Big Society Bank should aim to develop both the supply of and demand for investment within civil society, particularly to Social Enterprises. It should make investments, whether equity or equity-like, use its balance sheet as a guarantee to leverage further private finance, help existing intermediaries raise further finance for investment and help develop new forms of financial products. It should also help with investment readiness and tackle the lack of investment knowledge."*

A December 2010 NCVO submission on the "Modernising Commissioning" Green Paper also said: (Allen and National Council for Voluntary Organisations, 2010):

> *"It is likely that a shift toward a payment by results model would exacerbate these problems if decisive action is not taken. The Big Society Bank is a part of the solution to that problem".*

These submissions all show that while ACEVO, the Social Enterprise Coalition and NCVO all recognised that problems would be caused for Social Enterprises and Third Sector Organisations through prime contractors and payment by results, they did not fundamentally oppose to their introduction.

E) COALITION GOVERNMENT POLICIES

The Coalition Government elected on Thursday 06 May 2010. Following the Coalition Agreement, during its first year the Government rapidly set out its direction of travel.

- Modernising Commissioning: Increasing the Role of Charities, Social Enterprises, Mutuals and Cooperatives in Public Service Delivery October 2010 (Cabinet Office, 2010), projecting further PBR systems
- Growing the Social Investment Market: A Vision and Strategy February 2011 (Cabinet Office, 2011). This paper made clear that an expansion of Third Sector public service delivery would need a range of policies, including tax incentives, to stimulate more direct private investment in the Third Sector.
- Open Public Services White Paper July 2011 (HM Government, 2011), with its presumption in favour of open commissioning

The Growing the Social Investment Market White Paper set out the Government's direction clearly: Section 2.3 on page 17 made the Government's vision clear:(Cabinet Office, 2011)

> *"2.3 We do not underestimate the degree of challenge, or the timescale required to realise our vision. But the opportunity is large. UK charitable investment and endowment assets alone account for nearly £95bn. If just 5% of these assets, 0.5% of institutionally managed assets and 5% of retail investments in UK ISAs were attracted to social investment, that would unlock around £10bn of new finance capacity."*

Section 2.7 on page 17 the White Paper recognised the dilemma for Third Sector organisations: (Cabinet Office, 2011)

> *"2.7 For other voluntary, community and social enterprise (VCSE) organisations, our vision offers opportunity. Our intention is neither to privatise the social sector nor to bring it into the public sector. Social investment is not a panacea. We recognise that some VCSE organisations may prefer not to seek financing of this type. However, we believe that many VCSE organisations will want to consider social investment as a potentially useful tool to help them increase the scope, reach and longer-term sustainability of their activities."*

Though in these publications, the scale of private investment projected for public service delivery was made clear, the responses of ACEVO, Social Enterprise UK and NCVO, while mentioning some difficulties, supported their broad thrust. Responding to the Open Public Services White Paper, ACEVO included: (Association of Chief Executives of Voluntary Organisations, 2011)

> *"In both cases we believe there is a case for Government to promote a health provider market, ensuring that the shape of the provider market is determined primarily by what is in the interests of taxpayers and service users, not what is in the interests of particular providers".*
>
> *" We recently surveyed all third sector subcontractors involved in the Work Programme (with 148 responding, ie. just under a third of all third sector subcontractors) and found" and found that 42% thought DWP's differential pricing would not be adequate to ensure the Work Programme helps harder-to-reach client groups, with 47% unsure and only 9% responding that it would be adequate".*

Social Enterprise UK and Coops UK included: (Social Enterprise UK and Cooperatives UK, 2011)

- *"We therefore welcome the government's desire to focus commissioning on outcomes rather than outputs and encourage government to help build trust between commissioners and providers to facilitate this".*

The July 2011 NCVO Policy Analysis on page 7 under "Finance and Payment by Results" said: (National Council for Voluntary Organisations, 2011)

- *"As PBR is likely to be extended under these proposals, there will be implications for all providers. Whilst PBR has some potential, and as a general principle it is right that high quality work and the right outcomes are rewarded, there remain concerns"*

Though ACEVO, Social Enterprise UK and NCVO all recognised difficulties for their members through prime contractors and PBR in these White Papers, they did nothing to oppose these policies in principle. Surely their analysis might have formed an effective joint submission on these difficulties?

F) TAX INCENTIVES FOR PRIVATE INVESTMENT

Despite pressure from London Third Sector Organisations, the reality of a Social Investment Bank is becoming clear. Despite up to £1bn from Big Society Capital, the Cabinet Office and a proliferation of Social Investment Financial Intermediaries, their own research shows little evidence that this funding meets the real needs of organisations they represent. (Gregory et al., 2012)Though Social Investment has been promoted as a concept since Gordon Brown as Chancellor first asked Sir Ronald Cohen to lead a Social Investment Task Force in October 2000, the first Annual Report of Big Society Capital in May 2013 (Big Society Capital, 2013), showed that so far it had only managed to distribute £5mn - and this to a Social Investment Intermediary, rather than a beneficiary organisation.

As part of its effort to promote a Social Investment Market, the Chancellor is now consulting on a range of tax incentives for "Social Investors". Following their pressure for the Social Investment Bank, these incentives have previously been advocated by London Third Sector Organisations - though there is little evidence that these are sought by most of their members.

An NCVO Commission on Tax Incentives for Social Investment: Analysis and Recommendations in January 2012, which included Social Enterprise UK, supported private investment. On page 22 "Recommendations", the Report says: (National Council for Voluntary Organisations, 2012)

- *"Second, the Government should consider how equity or equity-like investment made directly into enterprises established for community or social benefit should be eligible for CITR, along the following lines:*

In further support of incentives for private sector investment, on January 27 2012 Social Enterprise UK in a "Letter to respond to the Department for Business, Innovation and Skills: Improving Access to Non-Bank Debt – Call for Evidence" sought relaxation of regulations to permit more direct private investment: (Social Enterprise UK and Cooperatives UK, 2012)

- *Reform of tax incentives – We would like to see the government seriously consider the recently submitted policy recommendations from the Commission on Tax Incentives for Social Investment, of which Social Enterprise UK are members*

London Third Sector Organisations still continue their advocacy of tax relief for private Social Investment despite a lack of evidence that this is sought by their members.

G) LATEST EXAMPLES OF SUPPORT FOR POLICY DEVELOPMENT

Despite widespread public concern, the latest example of collaboration by Third Sector Organisations has been shown in the development of current Ministry of Justice policies to implement its "Transforming Rehabilitation - A Strategy for Reform"(Ministry of Justice, 2013a). Social Enterprise UK claims to have improved the Ministry of Justice response to its "Transforming Rehabilitation" proposals for Voluntary Sector and Probation Mutuals. (Ministry of Justice, 2013b)

As a further example, in June 2012 NCVO produced a Joint Code of Practice for Voluntary Private Sector Collaboration with Serco (National Council for Voluntary Organisations and Serco, 2012).

Social Enterprise UK participated in Department of Health Consultations for setting up Local Healthwatch bodies under December 2012 Regulations (Department of Health, 2012a) for implementation of the Health and Social Act 2012, which produce a much disputed definition of Social Enterprise.

H) CONCLUSION

The result of all of this that, rather than influencing Government policies on behalf of their members, London Third Sector Organisations are gradually confining themselves to a role of negotiation with private sector primes to secure better terms and conditions for subcontractors.

In a Brave New World of private sector direct investment, Social Investment, including Social Impact Bonds, PBR and the emerging threats of privatisation of the Third Sector and the financialisation of public service delivery, London Third Sector Organisations have no one to blame but themsleves.

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