

NCIA Inquiry into the Future of Voluntary Services

Working Paper 15

‘More for Less’

**Public sector outsourcing and cuts to
spending:
the impact on voluntary sector workplace
conditions, and the role of Trades Unions**

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Foreword

This paper has been produced as part of the NCIA Inquiry into the Future of Voluntary Services. The Inquiry is specifically concerned with those voluntary organisations that deliver *services* in local communities, especially those that accept state money for these activities. These are the groups that have been particularly affected by successive New Labour and Coalition Government policies regarding the relationship between the voluntary and statutory sectors, and attitudes and intentions towards the future of public services. In this and other papers we refer to these as Voluntary Services Groups or VSGs.

It has long been NCIA’s contention that the co-optive nature of these relationships has been damaging to the principles and practise of independent voluntary action. The nature and scale of the Coalition Government’s political project – ideologically driven - to degrade rights, entitlements and social protections, and to privatise public services that cannot be abolished is now laid bare. This has created new imperatives for VSGs to remind themselves of their commitment to social justice and to position themselves so that they can once again be seen as champions of positive social, economic and environmental development.

Our Inquiry is a wide ranging attempt to document the failure of VSGs, and the so-called ‘leadership’ organisations that purport to represent them, to resist these shackles on their freedom of thought and action. But it is also an attempt to seek out the green shoots of a renaissance that will allow voluntary agencies to assert their independence and reconnect with the struggle for equality, social justice, enfranchisement and sustainability.

This paper is one of a number that has been produced through the Inquiry and looks at the impact of these changes in terms of those who work in VSGs, and the particular role and position of Trades Unions in defending workplace rights and the terms and conditions of work. This paper has been prepared for NCIA by Rosie Walker and Frances Sullivan to whom we offer grateful thanks.

For more information on the NCIA Inquiry please visit our website – www.independentaction.net.

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October 2014

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Public sector outsourcing and cuts to spending, the impact on voluntary sector workplace conditions, and the role of Trades Unions

1. Introduction

The project to outsource public services was begun by the Thatcher government in the 1980s, and has continued on a huge scale. In the early years this focused on internal services such as IT, cleaning, catering, and building, then the utilities (gas, electricity and water supply), together with the sell-off of council housing through the ‘right to buy’ provisions. Except for the last of these, virtually all of this activity was directed towards the private sector and had little effect on voluntary sector organisations. However, the New Labour and then the Coalition administrations both accelerated and extended privatisation into areas where voluntary agencies and especially Voluntary Services Groups (VSGs) have been active for decades.

The entry of privatisation into the VSG world took two forms. Firstly it raised the prospect and promise of a larger role for VSGs in the provision of contracted out public services. Secondly, through the rise of market-based regimes, deemed to be required for the commissioning and procurement of outsourced services and their subsequent performance management, the historic relationships between state agencies and VSGs (based on grants and partnerships), were largely abandoned. Thus VSGs of all sizes have been affected; the larger groups because they are able to compete for large service contracts and the smaller and medium sized groups because of the new fashion that demands **all** voluntary-statutory funding relationships to be based on procured contracts.

The pace of change has been rapid. In April 2011, the annual turnover of the outsourced public services market was estimated to be £82bn¹ and a 2010 study suggested that this might rise to £140bn by 2014.² The largest contracts favour private oligopolies like G4S, Serco, Capita and Carillion, whose share of the total leapt from £9.6bn in 2008 to £20.4bn in 2012³. VSGs only receive a small proportion of these outsourced contracts. NCVO, for example, estimated total voluntary sector income from statutory sources for contracted services to be just over £11bn in 2011/12⁴. The significance for VSGs is, however, not just the scale of their involvement but the effects of moving into a private sector dominated market environment, and adopting the business practices of that sector, often themselves becoming sub-contractors to global corporations. In addition, some VSGs now find themselves fulfilling statutory duties and bearing more risk for the delivery of vital public services in areas such as

¹ Oxford Economics (2011) *The Size of the UK Outsourcing Market – Across the Public and Private Sectors*: Report for the Business Services Association, pp.6-10 www.oxfordeconomics.com/publication/open/224334

² Cited in Social Enterprise UK (2012) *The Shadow State: A Report about Outsourcing of Public Services*, p.13 www.socialenterprise.org.uk/uploads/files/2012/12/the_shadow_state_3_dec1.pdf

³ Gill Plimmer ‘Outsourcing Soars in Public Services’ *Financial Times*, 31.01.2013 www.ft.com/cms/s/0/13a4e68e-6610-11e2-bb67-00144feab49a.html#axzz2vkSAVVY9

⁴ <http://data.ncvo.org.uk/a/almanac14/what-are-the-sectors-different-sources-and-types-of-income-3/>

domestic violence support, fostering and adoption services, social housing, adult social care and children's services. Taking over public services can also mean taking over staff and VSGs now have to deal with TUPE provisions (The Transfer of Undertakings (Protection of Employment) Regulations).

Loaded onto this scene has been the effect of massive cuts in public expenditure; the 2010 Spending Review announced cuts of £35.7bn for public services between 2011 and 2014⁵. All three main parties indicate that these cuts will continue after the 2015 General Election. The pressure to find these reductions is reflected in procurement and competitive tendering exercises as well as general cuts in funding and services. And these pressures have been keenly felt by VSGs. For example in March 2012, Third Sector magazine reported an NCVO estimate of 70,000 voluntary sector job losses in the preceding 12 months, due in large part to local government cuts, but also to outsourcing arrangements in the Work Programme⁶.

Cumulatively the impact of cuts and outsourcing has placed huge pressures on VSGs in a 'race to the bottom'. There is mounting evidence that this pressure has resulted in lowered pay and worsened conditions for workers in VSGs. Pay and conditions have historically been within the domain of Trades Unions (TU). But TU activity within VSGs has long been difficult and problematic and these difficulties have often led to misunderstanding and despondency on both sides.

This paper examines the effects of the outsourcing project on the working lives of the employees involved and the activities of TUs who represent these workers in the voluntary sector. It draws on semi structured, in depth interviews with six union workers – three in official, senior positions and three workplace organisers - as well as personal experience and material from public and voluntary sector journals. It identifies the challenges VSGs and unions face, and suggests directions for the future.

2. The Voluntary Sector, its workforce and pressures on conditions

Understanding the voluntary sector workforce is problematic, as there is no specific consensus on the definition of the sector. Broadly, the voluntary sector can consist of any organisation not in the private or public sector; this definition would include universities, trade unions, faith groups, co-ops and social enterprises as well as charities and community groups. But the boundaries have long been blurred. Social enterprises, including Community Interest Companies (CICs) may make profits – as do some charities – and therefore have more in common with the private sector than the public⁷. Profit (or surplus, as it is often known in the voluntary sector) must be reinvested in the organisation rather than given to shareholders but there are also no limits on what founders, directors and managers can pay themselves, and unlike charities there is no need for a social enterprise to pass the Charity Commission's 'public benefit test.' There is also a growing difference between large, national charities,

⁵ <http://www.radstats.org.uk/no103/Exell103.pdf> f

⁶ www.thirdsector.co.uk/Infrastructure/article/1120432/Spending-cuts-knocking-out-sectors-capacity-support-big-society-NCVO-head-says/?HAYILC=RELATED

⁷ 2002 Dept Trade and Industry report defines a social enterprise as: 'A business with primarily social objectives whose surpluses are principally reinvested for that purpose.' This leaves much open to interpretation.

whose structures and culture share most with the private sector, and smaller VSGs often providing local services.

Many voluntary groups are run partly or entirely by volunteers, with varying levels of formality to their working arrangements. Most of these groups will be very small and not employ paid staff. They comprise just over half of registered charities⁸ (incomes below £10,000 p.a.) This paper is concerned with paid staff and these small groups are therefore mostly excluded from the paper⁹. However, larger VSGs also use volunteers who work alongside paid staff and this complicates workforce estimates. Generally, of course, the larger organisations will have the larger numbers of paid staff. According to NCVO figures there are around 75,000 small and medium sized charities (income between £10k-£1m), over 4000 large charities (income between £1m-£10m) and over 500 major charities (income over £10m)¹⁰.

Overall, NCVO estimates that in 2011/12, 1.9m people were in paid employment for civil society organisations¹¹ (including charities, housing associations, co-operatives, sports clubs, employee-owned businesses and others, but excluding universities). The largest groups of employers are general charities (employing 800,000), sports clubs (270,000), housing associations (176,000), and co-operatives (154,000).

NCVO reported an increase of 41% in voluntary sector employment in the 10 years 2002-2012, with a dip in 2010/2011, so it would seem that some parts of the VSG grew rapidly as the pace of outsourcing and the 'contract culture' speeded up. Confusingly the same publication stated that, between 2010 and 2012 the voluntary sector workforce increased by 18,000, whereas in March 2012, Stuart Etherington, Chief Executive of NCVO claimed that there has been 70,000 voluntary sector job losses in the preceding 12 months¹². It is likely that this latter estimate is closer to the truth. The LVSC Big Squeeze reports (see below) documented that the proportion of London voluntary groups, responding to their survey, who had made staff redundant was 54% (2011), 39% (2012) and 30% (2013)¹³. In the same period (2010/12) private sector employment increased by 715,000 (much of the latter may be totally unconnected to privatisation) and the number of public sector employees dropped by 272,000¹⁴.

A more detailed picture of voluntary sector funding and employment is depicted in the Big Squeeze surveys that London Voluntary Services Council has been producing every year since 2009.¹⁵ Most of the survey questions each year are focused on showing in detail how changes in government policy are pressing ever more harshly on the service users of the 250 or so voluntary organisations who participated in the survey, as well as drawing attention to the difficulties experienced in trying to meet users' needs at a time when the incomes of the VCS themselves has been tightly squeezed. Although the survey does not contain a breakdown of

⁸ <http://data.ncvo.org.uk/a/almanac14/how-big-is-a-typical-voluntary-organisation-3/>

⁹ However, please see NCIA Inquiry Working Paper 8: The impact of commissioning and contracting on volunteers and volunteering in Voluntary Services Groups for a discussion of volunteering issues.

¹⁰ <http://data.ncvo.org.uk/a/almanac14/how-big-is-a-typical-voluntary-organisation-3/>

¹¹ <http://data.ncvo.org.uk/a/almanac14/how-many-people-work-in-civil-society-2/>

¹² www.thirdsector.co.uk/Infrastructure/article/1120432/Spending-cuts-knocking-out-sectors-capacity-support-big-society-NCVO-head-says/?HAYILC=RELATED

¹³ <http://www.lvsc.org.uk/media/132319/bigsqueeze-final-smaller.pdf>

¹⁴ NCVO UK Civil Society Almanac 2014. p71

¹⁵ <http://www.lvsc.org.uk/media/132319/bigsqueeze-final-smaller.pdf>

size a majority of the respondents appear to be small to medium sized organisations with some paid staff. A large proportion of the respondents are VSGs.

The Big Squeeze reports show something of the differential effects of the VSG cuts on different groups: most often highlighted as badly affected is work with children and young people; but services to older people, disabled people, and BME groups had also been lost. The funding cuts impacted more heavily on local organisations (active within one borough), where 66% lost funding, than on the London-wide or national groups, who together lost 55%¹⁶.

Preventative work with any service users had suffered particularly badly and this was demonstrated by the high proportion of cuts for employment and skills development work. At the same time, homelessness and debt were rising, and demand for advice and support around these issues, together with support with mental health, alcohol and substance abuse, domestic and other violence problems, and issues connected with job-seeking and unemployment were all exerting pressure on VSGs, who were having to close services and make staff redundant.

Several local VSGs reported increasing competition for local contracts from national organisations and the private sector, as well as increasing barriers that reduced their ability to bid for contracts¹⁷.

While this only provides a picture of the situation in one city, LVSC has compared its results every year with 8 other large cities across England, where they have found a similar situation.

Further evidence comes from Clinks, a national umbrella body for organisations working in the criminal justice field, in their 'State of the Sector' reports, with many similar findings - widespread redundancies (46% 2011/13), rising use of reserves to cover running costs in excess of contract income (46% in 2011/12; 8% 2012/13; and forecast 64% 2013/14). 82% of Clinks respondents were worried that they had less than 6 months money in reserve, and 13 of them stated that they have no reserves at all. Clinks also observes that the smaller organisations have suffered by far the hardest hits - those with over 50 employees have managed to increase their total incomes by around 2%, while those with fewer staff have suffered overall losses¹⁸.

In terms of information and intelligence about terms and conditions, crucially, VSGs of any kind are not subject to the Freedom of Information Act (although charities must publish annual financial reports), which allows the sector to operate with less scrutiny and greater impunity than the public sector - whether in relation to pay, safety, dubious management practices or anything else.

¹⁶ [http://www.lvsc.org.uk/media/117415/big-squeeze-2012-final\[1\].pdf](http://www.lvsc.org.uk/media/117415/big-squeeze-2012-final[1].pdf) p.51,s.4.4.1

¹⁷ <http://www.lvsc.org.uk/media/132319/bigsqueeze-final-smaller.pdf> p.73

¹⁸ <http://www.clinks.org/file/clinks-state-sector-full-reportpdf>

3. Outsourcing and austerity: the effect on pay, job security and working conditions

There is mounting evidence that outsourcing and cuts in funding have lowered pay and worsened conditions for the front line workers and middle managers who now provide services in VSGs. For workers still in the public sector too, outsourcing has resulted in lower staffing levels, frozen pay and the disruption of frequently repeated internal restructuring combined with increased administrative demands. Redundancies have been high, particularly in the posts, such as grants and youth officers, whose post holders had most contact with, and understanding of their local voluntary sector. And the new breed of commissioners, often recruited from private sector businesses, rarely have experience of, or interest in the services being procured. They concentrate rather on protecting their employers from financial risk and negotiating for the lowest possible cost.

“It’s not just the fact of outsourcing, but the way it’s being done – it maximises the risk for staff. Contractors like Atos win on a payment-by-results basis. They are big companies that can absorb the risk, but instead they pass the risk down the chain, transferring it to their sub-contractors - which then causes the rise of zero hours contracts.”

Union activist

The Barings Foundation’s Independence Panel commented in its 2014 report¹⁹:

“Over successive governments, markets, not social mission have become the driving force...a focus on price, efficiencies of scale, and payment by results is leading to a loss of funding for many small, specialist, often locally based voluntary organisations despite the social benefit they bring.”

Attempts to ameliorate these deficiencies are ineffectual. For example, the Public Services (Social Value) Act 2012 says that commissioners must ‘have regard to’ the effects on ‘economic, social and environmental well-being’ when selecting the winning bidder, rather than simply choosing the cheapest option – but the power is permissive; definitions of the terms are too broad to be of any great value, and the impact is not yet discernable²⁰. The Community Right to Challenge, introduced in the Localism Act 2011 extended the eligibility criteria for organisations bidding to run a public service, but the provision runs counter to the government’s direction of travel, has hardly been used, and, where it might be, is likely only to receive the same result – the transfer of service to large corporate businesses.

A number of issues are of significance in the context of deteriorating working conditions – the impact of TUPE, a growth in the use of zero-hours contracts, other aspects of contracting and pay, job security and other risks and dangers in the workplace. We deal with each of these in turn.

¹⁹ <http://www.independencepanel.org.uk/wp-content/uploads/2014/01/Independence-undervaluedfinalPDF-copy.pdf>

²⁰ Embedding Social Value: Key Findings, ‘evidencing social value – the least developed element’, Alun Severn (BSSEC, Aug 2014)

Transfer of Undertakings (Protection of Employment) Regulations 2006 - TUPE

For outsourced workers, the chief mechanism for their job protection after transfer comes from the Transfer of Undertakings (Protection of Employment) Regulations 2006, or TUPE. These regulations, originally introduced in 1981 to protect employees' rights when the organisation or service they work for transfers to a new employer, were amended in the 2006 Act to reflect the clarification brought about in case law, including the effect of widespread state outsourcing. Employers very often try to find ways round this protection, and fresh amendments introduced in January 2014 have aided their endeavours, as they give employers the right in limited circumstances, to re-negotiate changes to collective agreements only one year after transfer, and to change a work location without it being considered unfair dismissal if the employee loses their job as a result²¹. This reduced period only applies to transfers completed after January 31 2014, so has not yet fully come into force. Government figures estimate that there are between 26,500 and 48,000 TUPE transfers in the UK, across all sectors of the workforce, and given the size of the privatisation project, it is inevitable that quite a large proportion are linked to outsourced public services. VSGs are also finding that they have to follow TUPE procedures when local grant arrangements are transferred into contracts.

"When one organisation buys another one, and the staff get bought and sold, the staff are supposed to have protection, but there are so many ways round TUPE, so many loopholes, that it's not working. There's a catch-all phrase that allows management to override the legal requirements of TUPE, if it's for 'economic, technical or organisational needs' - which means anything, really."

Union official

All respondents spoke of 'constant' or 'frequent' restructures associated with outsourcing. This is at least as much the case in VSGs who take over public services as amongst the private companies. Perhaps it is an indicator of how commonplace they have become that very few are reported in industry journals.

"As soon as it gets a new contract the charity is looking to cut costs straight away because the funding is never enough to cover the costs of the workforce. Obviously if they try to get rid of an individual straight away, the worker is TUPE protected. So what they tend to do is periodically have a general reorganisation of the whole workforce to lower the terms and conditions for everybody. Charities go through frequent restructures, every few years, to get around TUPE protections."

Union official

After a restructure, an employer can attempt to 'dismiss and re-engage' those on TUPE protected contracts. The new contracts will usually offer lower pay, less holiday and/or lower pension contributions from the employer, who hopes to establish that a refusal to accept them will be considered redundancy rather than unfair dismissal. Some employers may use this as a technique for reducing union activism in the workplace, and it is important that trades unions ensure that their members are well informed about all the TUPE protection they

²¹ ACAS, TUPE changes 2014

can bring to bear at a time when restructuring is under discussion, and that reps are well supported by the full time officials.

Restructuring must be 'for genuine business reasons' and transfer of ownership is not one of these. Case law integrated into the 2006 regulations has also established that if some of the new conditions are favourable to employees and some worse, an employee can accept the better ones and reject the worse. Even if the employer and the union have agreed a restructure, TUPE protection remains in force, and any dismissal may well be judged to be unfair if the employer is trying to enforce unfavourable terms on an individual employee.

In some organisations employees admit to being confused as to when one restructure has ended and another begun. One respondent working for a housing association described restructures as 'constant'.

"It's restructuring for the sake of power, that's the impression I get. You get whole departments that just change hands from one director to another. They give justification for it, but it's hard to tell whether that's genuine or just for power play."

Union activist

These moves can create fear or despondency among remaining employees who might otherwise have considered more involvement with the union. In turn, this lowers the levels of political awareness among those who do come forward as union reps. For example, in one large advice charity that has successfully pushed out anyone perceived by management to be troublesome over the last two years (including a union activist who was 'restructured' out of a job while on maternity leave), one employee's bid to become a union rep had been based on nothing more than 'working with' management to ask them to supply fresh coffee. The prospective union rep did not dare to raise anything more challenging.²²

Zero hours working

The massive increase in zero hours (ZH) working has crept up on the labour market and it is only recently that it has achieved any widespread media attention. It is an issue that implicates VSGs, but goes far beyond them and demands regulatory action across the entire labour market.

In its discussion paper *Give and Take: Unravelling the true nature of zero hours contracts* (May 2014), ACAS states:

"There is no legal definition of zero hours contracts, [resulting in] some understandable confusion as to what they are."

A government consultation paper provides the only reasonably 'official' description of this enigmatic work contract. It states:

"In general terms, a zero hours contract is an employment contract in which the employer does not guarantee the individual any work, and the individual is not obliged to accept any offer of work"

²² Personal correspondence, 2014

The numbers of ZH contracts in use is still contested, although it is now apparently accepted to be over 1 million, The Office of National Statistics is now suggesting 1.4m 'definite' and another 1.3m people 'registered with employers' but not working any hours during its 2-week count²³. However the trades union Unite has commissioned research indicating that the true figure is nearer 5.5m²⁴. The trades union Unison says that 41% of all home care staff are on ZH contracts, and that all areas of public services are now seeing a rise in ZH contract use²⁵.

The Chartered Institute of Professional Development (CIPD)²⁶ reports that:

- Voluntary sector agencies are using ZH contracts in the highest proportion (34%) followed by the public sector (24%) and the private sector (17%);
- Using NCVO figures for the principal voluntary sector employment segments²⁷, totaling 1.4m workers, one can, therefore, estimate that the number of people in VSGs on ZH contracts will be in the region of 476,000;
- Across all sectors most of the employers using ZH contracts have more than 250 employees;
- Across all sectors the age groups with the largest proportions on ZH contracts are under 25s and over 55s.

ACAS explains that as *'there is no mutuality of obligation, no formal employment relationship exists'*. In most cases the individual is a 'worker', but not an employee. The only employment rights that apply are the National Minimum Wage, Working Time Regulations, and the Equalities Act 2010. This means that workers on ZH contracts do have some rights (being paid for travelling time between jobs for example). However, these rights can only be claimed if the individual worker concerned is prepared to challenge their employer, and to take it as far as an Employment Tribunal. Many workers are not aware of the rights they certainly do have, let alone those they may have, and even if they know that their pay or conditions are unlawful, people are very often afraid to speak out, in case they are 'zeroed down' (offered no work).

Some of the most serious, and also widespread abuses within the system, bear down especially hard on domiciliary care workers:

- shifts are often organised without taking account of travelling time, so that either care service time is shortened or working hours extended unpaid;

"I've stayed extra time at client's houses with no pay, as I couldn't leave someone who needed me there, but I only get paid for the [time allocated to this client]"

Union member

- many are not paid for time spent travelling between clients, nor compensated for essential expenses incurred, including petrol and car maintenance costs, mobile phone

²³ ONS, Lab Force Survey & Analysis of employee contracts that do not guarantee a minimum no of hours

²⁴ www.unitetheunion.org/news/research-uncovers-growing-zero-hour-subclass-of-insecure-employment/
(8.9.14)

²⁵ Unison, Zero Hours Fact Sheet, pp1&2

²⁶ <http://bit.ly/1f4Y8h2>

²⁷ <http://data.ncvo.org.uk/a/almanac14/how-many-people-work-in-civil-society-2/>

expenses, or childcare costs if a shift is arranged or cancelled with very short notice. Rest periods are frequently omitted in contravention of the Law;

"The job would be a lot better if we didn't have to rush. We should get paid travel time as we are still working – we are losing out on money all the time, and some weeks we can spend as much time travelling as caring"

Union member

- although workers are expected to be on-call, many are not paid for that time;

"I am on call from 7am to 10pm. I work 6 days on, 4 days off...on the 6 days I can't do anything else in case there is extra work. So I'm always available in these hours, but we are only paid for the work we do, not for the hours we have to spend by the phone."

Union member

- some outsourcing managements, keen to avoid the danger of turning workers into employees, ensure that staff on ZH contracts are frequently moved from client to client. This means that there is no continuity of care, nor that vulnerable people get the quality of care that they are entitled to receive;

"My contract is zero hours and I am not guaranteed any work. I am less likely to have a regular flow of work on regular days with my clients. This affects their continuity of care – a client cannot be guaranteed regular carers.....low morale is common amongst both carers and clients"

Union member

Even though so much has changed since the 'job for life' assumptions of the 1950s and 60s, this is no excuse for returning a section of our workforce to poor and insecure conditions. There may well be a case for developing a more flexible employment contract but, even in the absence of a better system, it is possible for responsible employers to use ZH contracts in ways that ensure that the people affected are contracted as 'employees' who have all the usual rights and benefits this status confers.

Turning Point, for example, a major health and care VSG, came under media fire last year, when the Mirror²⁸ alleged that the charity had slashed 2,400 jobs and put staff on ZH contracts instead. In an interview with the Guardian²⁹, however, Turning Point explained they had consulted with all levels of staff, and the recognised TU, Unite, about their need to undertake some reorganisation. Only the 12% who were casual workers – no permanent staff – were moved onto ZH contracts, as employees, not 'workers'. This was an improvement in their working conditions. Although they could not be offered guaranteed hours, in all other respects they would now have the same employment rights as other employees, including continuity of employment, access to pensions, and redundancy pay. Turning Point stated that they recognised that zero-hours should not replace permanent contracts as a default position³⁰.

²⁸ Mirror on-line, 'Princess Diana charity re-hires 351 staff on zero-hours contracts. 4 Aug 2013

²⁹ Guardian Professional, 'Zero hours contracts: the truth behind the controversy', 8 August 2013

³⁰ Though it may be reasonable to describe Turning Point as a responsible employer in the context of its approach to zero hours contracts, its approach to the remainder of its workforce is more debatable. The 2013 dispute involved the sacking of all 2,600 staff who were then re-employed on new contracts in a bid to reduce

Other voluntary organisations apparently using these contracts responsibly³¹ include Debra, a national health care charity, and Orinoko, a small charity who runs arts workshops in Oxfordshire.

The current ZH system is manifestly unsatisfactory -- open to abuse, and inherently exploitative. Even a Cabinet Office briefing paper refers to people on these contracts 'living in a climate of fear'³². Some oversight and regulation is needed for even the most flexible employment. It is scandalous that this situation has been allowed to continue for so long. The government undertook some fact finding and 'informal' consultation in mid-2013, and must have been well aware of abuses. Yet no action at all was taken until media publicity on the use of unlawful exclusivity clauses by well-known high street retailers become a political embarrassment. The government finally stated its intention to legislate against such clauses, and a bill is currently making its way through Parliament. It is too soon to say how effective or comprehensive the final legislation will be.

Most commentators, including all the relevant TUs, agree that a better solution should be found for staff and employers who need flexible work hours: less open to abuse. This could involve minimum hours of work, calculated over a monthly or even annual period, plus strictly implemented regulations to ensure that all these workers enjoy proper employment rights. Nothing less can form a basis for creating fair and just employment conditions for workers in the voluntary sector.

Other aspects of contracting and pay

When forced to compete for contracts, many organisations are forced to underbid on costs to remain competitive. One respondent, a union official, estimated that most organisations will bid for a contract – such as a social care contract from the local authority, at 15% less than the amount they need to cover full running costs. A Clinks State of the Sector Report (October 2013) found that 50% of respondents within the criminal justice field said that their contracts did not cover full costs and 65% were relying on reserves to cover the gap between contract payments and the cost of delivery³³. This is clearly unsustainable in the long term – if the organisations are unable to find alternative funding to subsidise their services, they are forced to cut costs. And as staff costs are such a large item of expenditure for human support services, it is likely to be staffing costs that they look to reduce, either by cutting the number of employees, paying lower wages, or both. Any of these choices are likely to impact badly on service quality.

NCVO estimates³⁴ that over the last decade the proportion of the voluntary sector's total

costs. Unite claimed that some staff had lost up to £6,000 a year from their wages. Even according to Turning Point the changes were made to reduce *"various enhancements, including those for unsociable hours, much of which is no longer paid within the market"*.

³¹ Third Sector, 'Charities adopt zero hours contracts', 29 Oct 2013

³² BIS Press Notice, <https://www.gov.uk/news/cable-announces-plans-to-boost-fairness-for-workers> also quoted in ACAS discussion paper, Give & Take: unraveling the true nature of zero hours contracts

³³ http://www.clinks.org/eco-downturn?utm_source=Newsflash&utm_medium=Email&utm_content=textlink&utm_campaign=StateofSectorOct2013

³⁴ <http://data.ncvo.org.uk/a/almanac14/how-much-does-the-voluntary-sector-spend-on-staff-costs-3/>

expenditure applied to staffing costs has fallen – from 43% in 2001/02 to 38% in 2011/12. They also point out that 82% of the VCOs total spending on staff is incurred by large and major organisations. Large organisations spend 44% of their total expenditure on staff. On the contrary, only 5% of small, and 1% of micro organisations employ any one at all.

With respect to comparative pay levels, according to Third Sector Workforce³⁵, voluntary sectors workers are the least well paid, earning gross (before Tax and NI deductions) hourly pay of £12.02, compared to £12.60 and £14.20 in the private and public sectors respectively. However the NCVO Almanac, which measures ‘median’ take-home pay, puts the voluntary sector in the middle, at just under £11 an hour, higher than the private sector rate of £10, but well below the £13 of the public sector³⁶. Quite apart from the difference between wages before and after deductions, median and average are not the same, and there is also a likely difference in the spread of organisations sampled – some surveys may include universities, public schools, and research specialists such as the Wellcome Trust, while others exclude them.

This confused picture is continued in respect of internal workplace differentials. In May 2014 Guardian Professional examined pay ratios in the course of an article about fair pay in the charity sector.³⁷ This found that in medium and large charities the average pay differential is 1:8. In organisations with 100-250 employees it is 1:5; while in those with 1000 or more it is 1:11 (the position in smaller organisations was not stated, where differentials are likely to be less). Third Sector Workforce stated an overall differential of 1:6 in 2011 (median earnings for a trainee non-professional staff on £14,363 compared to CEO pay of £90,147). This was an increase from the previous year’s figure of 1:5³⁸.

On the other hand, in 2011 Civil Society Finance published a report on some research looking at pay in the voluntary sector³⁹ in which the author concluded that the pay gap within the voluntary sector was narrowing, and reported figures of a 1:4 gap bottom to top earners in 1997, falling to a 1:3 gap in 2010.

The Association of Chief Executives of Voluntary Organisations (ACEVO)’s annual pay survey provides another source of information. The 2014 reports shows the overall median pay figure for a CEO in 2013 to have been £60,000. This is the same as it was in 2011. It dropped by 3%, to £58,651 in 2012, then rose again by 3% in 2013. The median figures hides the wide differentials, however, between large and small voluntary agencies – groups turning over less than £1m per year have a spread of £17,000 (lowest salary) to £92,000 (top salary) whilst equivalent figures for groups turning over more than £5m are £75,000 and £185,000⁴⁰.

Though overall, CEO and other top salaries can be seen to be relatively modest by the standards of the most highly paid in both the public and the private sectors, if the Guardian piece quoted above is near the mark, then it has to be said that pay ratios between 1-8 and 1-11 can hardly be described as egalitarian.

³⁵ <http://www.3rdsectorworkforce.org.uk/what-is-the-state-of-pay-in-the-voluntary-sector/>

³⁶ <http://data.ncvo.org.uk/a/almanac14/what-is-the-state-of-pay-in-the-voluntary-sector-3/>

³⁷ Becky Stack, Charity ratios: how charities are approaching fair pay, Guardian Professional, 15.5.2014

³⁸ <http://www.3rdsectorworkforce.org.uk/what-is-the-state-of-pay-in-the-voluntary-sector/>

³⁹ Alasdair Rutherford, (Univ. of Stirling,) *Professionalisation of the voluntary sector should draw the line at executive pay*, Civil Society Finance, 27 June 2011

⁴⁰ ACEVO Pay Survey 2013/2014

Rewards at the very top are, of course generous. According to Third Sector magazine⁴¹ the top 100 highest paid employees in the sector now have an average salary of £210,000, with nine people earning more than £300,000 and the highest paid earning over £860,000. It is fair, however to point out that many of these top earners work for organisations that are outside the orbit of what are normally regarded as ‘charities’ – such as Nuffield Health, the Wellcome Trust, the London Clinic or the Royal Opera House.

What is more alarming is the mounting evidence that the pressures of outsourcing and contracting, together with austerity cuts, are forcing pay rates down amongst frontline staff, whilst top management pay remains protected or even increased:

- In 2013 frontline workers at substance abuse charity Equinox Care saw their pay cut by between £4,000 and £6,000 in the same year that the chief executive received a performance-related bonus. The charity refused to talk to ACAS despite the workforce carrying out repeated strikes. The chief executive told Third Sector magazine that the charity would ‘go out of business’ without the cuts, but that his bonus was for ‘growing the charity’⁴²;
- One Housing Group also saw strikes after they imposed pay cuts on 200 frontline workers of £2,000 each on average in the same year that the chief executive saw his overall pay increase by £31,000 to £176,000, as performance related pay for the group making a profit of £13m. £1.2m of this profit came from care and support contracts. Again, the charity turned down an offer of conciliation from ACAS. Councillors from Islington Council joined strikers on the picket line⁴³;
- In October 2014, staff at the homelessness charity St Mungo’s Broadway are being balloted over possible strike action in response to proposed changes to conditions that would see the starting salary of a new project worker cut from £25,000 to £20,000, take pay out of collective bargaining, new HR policies and procedures that breach the recognition agreement with the union.⁴⁴

“Every single year, housing association executive pay goes up and lower pay decreases. It gets reported, but nobody bats an eyelid.”

Union activist

“You can’t have good quality care services when the staff aren’t being adequately paid. It makes for a low skilled workforce, because people who have got the skills and years of experience - it’s not that they don’t want to carry on working in those roles, it’s that they can’t afford to. So it becomes an unskilled workforce without commitment, which leads to low quality services.”

Union official

⁴¹ <http://www.thirdsector.co.uk/nuffield-health-chief-executive-tops-sector-pay-list-860k/finance/article/1175004>

⁴² <http://www.thirdsector.co.uk/Management/article/1178882/Equinox-Care-employees-hold-demonstration-pay-cuts/>

⁴³ <http://www.thirdsector.net/Management/article/1191868/One-Housing-Group-staff-vote-second-three-day-strike-five-weeks/>

⁴⁴ See NCIA newsletter No 40 - <http://ymlp.com/zG1gqj>

Many of these abuses are in direct contravention of the National Minimum Wage, and Working Time Regulations which, for example, stipulate that care workers who visit homes must be paid for travel-time. The recent government inquiry into the minimum wage, which concluded in March this year, found non-compliance in nearly half of the social care organisations they investigated⁴⁵. The report suggested a 'minimum wage watchdog' should be established⁴⁶, but it remains to be seen whether there is sufficient political will to make this a reality.

Job Security

Job security within VSGs is poor and getting worse. The sector has the lowest proportion of employees on permanent contracts. The most recent workforce almanac for the sector⁴⁷ found 11% of employees were on temporary contracts, compared to 5% and 8% in the private and public sector respectively. Of those employees on temporary contracts, 31 per cent were on a contract lasting less than one year, and turnover within the voluntary sector was 18 per cent, the highest level recorded since 2003.

According to a recent Third Sector magazine article⁴⁸ the Chartered Institute for Personnel and Development (CIPD)⁴⁹ puts the figure higher, at 25% of voluntary sector workers on temporary contracts. More importantly, the CIPD found that use of short term contracts (6-12 months) is on the rise, with 35% of new jobs in the voluntary sector set up this way. Over the previous year, 31% of voluntary sector employers had increased the number of fixed term contracts. It is quite possible that ZH contracts were not even included in these figures as this category of workers are not considered to be employees. The true figures for insecure employment in the sector may well, therefore, be much higher. The same Third Sector article quoted employment policy experts as saying that this increase is caused by VSGs having to bid for public service delivery contracts.

However it is deceptive to use only length of contract as a measure of job security, as many VSGs are adopting management practices that take advantage of employees having reduced employment rights and access to employment tribunals. Since April 2012, when the government brought in several changes to employment law, a worker must be employed for a full two years, (rather than the 12 months it had been since 1999) before they can claim unfair dismissal, unless this falls within a small number of 'protected characteristics'. Until they have fulfilled this 'qualifying period' there is no legal requirement for a written statement from the employer setting out the reasons for an employee's dismissal.⁵⁰ In practice, this means that any staff, whatever their contract arrangements can be dismissed within the first two years without stated reason.

Aware that staff no longer have recourse to law, some employers - such as Citizens Advice - now use opaque practices to dismiss staff. One such is the so-called 'extended probation period' which employees can then 'fail' without any need for evidence or independent

⁴⁵ <http://www.uniteforoursociety.org/blog/entry/low-pay-the-scandal-in-social-care/>. These figures include private sector as well as voluntary sector providers.

⁴⁶ <http://www.theguardian.com/society/2014/mar/12/minimum-wage-low-pay-commission>

⁴⁷ <http://www.3rdsectorworkforce.org.uk/how-secure-are-jobs-in-the-voluntary-sector/>

⁴⁸ <http://www.thirdsector.co.uk/analysis-rise-rise-short-term-contracts/careers/article/1299762>

⁴⁹ <http://www.cipd.co.uk/hr-resources/survey-reports/labour-market-outlook-spring-2014.aspx>

⁵⁰ <http://www.acas.org.uk/index.aspx?articleid=3733>

judgement beyond the personal choice of a manager, who is not called on to justify their decision.⁵¹ 'Performance management' can also be used in this way - subjecting employees to an arbitrary period of observation and assessment, without being told exactly what they are being assessed on – at any point within the employee's first two years. Again, the decision as to whether the employee has 'passed' or 'failed' the test is made privately by management, with no need for evidence or justification. Such practices are against the recommendations in the ACAS Code. Within Citizens Advice, Unite, the union, is aware of the practice but turns a blind eye to it – perhaps because it knows the employee now has no defence in law.

Even before April 2012, when the qualifying period for an employment tribunal was one year rather than two, other large charities were known to be placing unreasonable requirements on staff. Great Ormond Street Children's Charity, for example, threatened to dismiss an employee for taking up a jury summons in 2011. The Jury Central Summoning Bureau was aware of the practice, which it said was widely used, but did not choose to act. Providing there are sufficient alternative jurors, Summoning Bureaux will usually allow deferment, so the employee was forced to defer the jury summons until after the end of their fixed term contract.⁵² In fact being called for jury service is a so-called 'protected characteristic' where the employee can claim unfair dismissal from the first day of employment. This did not stop the employer threatening the worker however, who sought advice from the National Union of Journalists (NUJ) and was advised by them to defer their jury summons on the grounds that they would be unable to defend the right at a tribunal.

Other deterioration in the working environment

In July 2013, three housing association employees from Metropolitan Housing Trust attempted to evict a tenant who was £8,000 in rent arrears after losing his job. The tenant had been in his home for 27 years and had developed mental health problems that his landlord, for one reason or another, had been unable or unwilling to address. The tenant, who had built up a collection of weapons in his flat, shot at the team, seriously injuring two, shouting at them to 'get another job.'⁵³ Metropolitan Housing Trust said full risk assessments had been carried out before the home visit, and afterwards offered to provide its employees with bulletproof vests (the employees declined).

Thus, many voluntary sector workers, now delivering frontline public services, are, for many people, the face of unpopular welfare cuts and changes. In an online survey of nearly 3,000 Unison members in the voluntary sector, workers delivering services reported rising levels of violence and aggression towards them.⁵⁴ The report pointed to understaffing and a fear of whistle blowing about poor safety measures. One respondent for this paper, who had recently moved to a housing association from another part of the voluntary sector that also made home visits, noted a difference in culture – and a frustration that unions were not taking a more direct approach to tackling it.

"It's been interesting coming to a large housing association and finding such poor health and safety procedures. We had so much in place when I worked with [xxx],

⁵¹ Personal correspondence; emails from management seen

⁵² personal correspondence; letters from Great Ormond Street management seen

⁵³ <http://www.insidehousing.co.uk/home/analysis/shot-for-doing-their-jobs/7003933.article>

⁵⁴ <https://www.unison.org.uk/upload/sharepoint/On%20line%20Catalogue/21929.pdf>

visiting their homes and taking them out. But these housing officers get no training and go into people's homes on their own. Somehow that culture of safety measures just never came about. But the union's response is to do a survey asking workers if they're getting harassed more often, and they say yes, so they just put a report out saying that. It's embarrassing."

Union activist

All our respondents spoke of increased bullying, stress and heavy-handed management - often from repeat 'offenders' known within an organisation for bullying - and some felt that unions are not able or willing to deal with it appropriately. Outside observers sometimes point to a misplaced belief that people working for charities are automatically 'nice', suggesting that people are less likely to recognise or report bullying as a result.

"The voluntary sector has always had a higher prevalence of bullying than other sectors. I think that's increasing. The reasons are different depending on the organisation – there's the 'do-gooding' type, where people expect that everyone will have exactly the same ethos as them, and they use a big stick to get it. In other organisations it's sheer ignorance of policy and the right procedures – people might think they're doing the right thing, but have no knowledge of what good HR practice is."

Union official

One respondent described a known bully who had caused several members of staff to leave, over several years, before management took action. She thought the cost of a tribunal was the cause for their reluctance to acknowledge the problem.

"People don't expect it in the voluntary sector but part of the union's job should be pointing out that it does happen."

Union activist

4. Changes in the culture of voluntary action - interest and involvement in campaigning, political and policy work - attitudes towards opposition and dissent

The primary effect of outsourcing on VSGs who would once have spoken out against government policies is obvious: organisations are unwilling to bite the hand that feeds them. Service providers are specialists, with firsthand experience of the people on the receiving end of particular policies - yet they're only too often afraid to campaign for policy change if they are being paid by the people who make those policies, and if that the contracts involved are up for re-tendering in a year or two.

The Barings Panel on Independence, stated, in its 2014 Report⁵⁵:

[We] "remain concerned about self-censorship in the sector as a whole amongst all organisations, large and small, receiving statutory funding or seeking to maintain good

⁵⁵ Independence Undervalued: the voluntary sector in 2014 (Barings Foundation, Independence Panel, 3rd Report)

relations with the public sector. Much of this problem, by its very nature, remains invisible but we can point to concrete evidence that this is widespread and is likely to be deepening.

...."we do still see many local groups who are fearful that if they speak up against an action taken by their local authority, their funding will be withdrawn...."

....The fear of the consequences of speaking out may well extend beyond individual organisations to infrastructure bodies: the Panel has heard of at least one local infrastructure organisation that has lost its local authority funding because it failed to be sufficiently constructive about funding cuts."

The Barings Panel is also concerned that contractors of outsourced services are being subjected to 'gagging clauses' in contracts, either by the commissioning authorities, or by the 'prime' contractors at the top of supply chains in large, multi-purpose contracts. As an example, they give details of evidence submitted to them by the Volunteer Centre of Kensington & Chelsea. The organisation had withdrawn from the Work Programme because the contract prevented them from working with clients in the way they thought best, and their concerns about this were ignored. While contractually bound they had felt constrained by the gagging clauses from publicly voicing their concerns, but having withdrawn, they now felt free to do so. More evidence of these practices was given the Barings Panel on 9th October 2014 by Polly Neate, of the Women's Aid Federation of England⁵⁶.

Even amongst campaigning organisations there is often stifling of criticism – partly for funding reasons, but also to gain influence. Many big charities that would once, earlier in their history, have fiercely criticised and campaigned against unfair government policies, now take a much softer approach, fearful of losing favour, carefully selecting which campaigns politicians might like to see. If this approach is ever questioned, the defence is that much of their influence lies in lobbying behind closed doors, and that strong criticism risks shutting them out of negotiations with policy makers. But the craving for insider status can overshadow and eventually eclipse the reason for wanting influence in the first place – particularly when it may be mixed with parliamentary ambitions on the part of the individuals involved.

Other contributors explained that any kind of activism outside of work is treated with suspicion and contempt by management. One described a job offer she had received from a service providing charity, which was withdrawn after the employers discovered she was vegan. A member of the royal family was a patron of the charity who had made the offer, and the respondent thought – although could not prove – that the charity had associated veganism with a kind of activism considered to be 'risky'.

"They thought it meant I was politically dangerous somehow. They were afraid of the tabloids, really, because of a member of the royal family being a patron. Somebody else who already worked there had also been told she had to give up activism or her job. They just denied that they'd made me the job offer; I got the impression they'd googled my email address or something. Really, it's the denial of a private life. In the charity sector we're not civil servants!"

⁵⁶ <http://www.thirdsector.co.uk/public-bodies-intolerant-domestic-abuse-charities-speak-out-claims-polly-neate/policy-and-politics/article/1316631?DCMP=EMC-CONThirdSectorDaily&bulletin=third-sector-daily>

One respondent spoke of someone who had lost their job at an advice charity – a junior job that required no public presence and was not linked with the employee's name anywhere in the public domain – after they mentioned that they were part of a tenants' rights group that runs housing law workshops, does media work and stages legal, peaceful protests.⁵⁷ The irony is that members of mainstream political parties do not lose their jobs in voluntary sector campaigning organisations for political activities outside of work - even when their charity roles *are* public-facing.

Another respondent had felt able to mention to colleagues going to an anti-fascist demo, but also felt that one had to choose carefully what subjects could be discussed.

"Knowing what I know about the glass ceiling, I know it would be detrimental to my career if they knew about some things, like being in a local anti-cuts group that criticises local authorities. I'd have to keep it a secret. So I can see my managers being scared of me being in the same room as someone from the local authority. They would have no faith in my professionalism or my ability to keep my work life separate."

Union activist

The word 'activism' appears to conjure associations with violence and danger in the minds of some. But to others, it means voluntary action - getting together informally with others to campaign about something without being paid to do so. This might involve running public workshops, giving stories to journalists, helping each other with specific problems, setting up a stall with banners and leaflets or organising non-violent direct actions; entirely legal behaviour which many people would encourage and support. Yet several respondents explained that it is feared and distrusted by managers even in campaigning charities - perhaps because they cannot understand why someone would do such things outside of a professional context.

Though the direction of travel in discouraging dissent, or even plain speaking, is evident within the voluntary sector, examples which buck the trend illustrate that this phenomena is neither inevitable nor irresistible. Hundreds of voluntary groups have joined the Keep Volunteering Voluntary campaign⁵⁸, opposing the use of charities to enforce workfare programmes. Children England, working with the TUC has launched a 'Declaration of Interdependence'⁵⁹ which asserts the value of a public sector ethos and campaigns, amongst other things, for resistance to the entryism of the private sector in work with children and families. The Trussell Trust has spoken out against threats it received from government ministers to stop criticising the benefits system⁶⁰. And many Councils of Voluntary Services and other local service providing groups continue to expose the catastrophic effect of government policy on vulnerable people and communities⁶¹

⁵⁷ Personal correspondence, 2014

⁵⁸ www.kvv.org.uk

⁵⁹ <http://www.childrenengland.org.uk/declaration-of-interdependence/>

⁶⁰ <http://www.civilsociety.co.uk/governance/news/content/17632/trussell-trust-chair-told-the-government-might-try-to-shut-you-down>

⁶¹ See for example <http://www.cvsnewcastle.org.uk/representinginfluencing/our-research>

5. Voluntary Services Groups and the Trades Unions

Trades Unions and the VSG workforce

Trades union (TU) representation in the sector is low. Although TUs themselves arose from the campaigning and mutual support tradition that has always characterised parts of the sector, not all today's VSGs have developed from this strain of voluntary action, and do not have a history or culture of collective bargaining or action. Union density (membership among those in paid work) is far lower in VSGs than in the public sector: a 2011 report found only 17% of the workforce were union members. This is slightly higher than in the private sector (12%) but much lower than in the public sector (55%)⁶².

In the 1970s and into the 1980s, TUs were just beginning to be a significant factor within voluntary organisations – again mainly in urban areas. From the 1980s onwards many TUs merged, and today, among voluntary organisations with a union presence, 63% recognise Unite while 42% recognise Unison.⁶³

It is important to recognise that TUs were designed for the large workforces in the industrialised sector that came to dominate private business in the late 19th and first half of the 20th centuries. They have never been able to organise very effectively in small and dispersed workplaces such as those found in the catering, garment, and building industries where sub-contracting and frequent business failures were commonplace. With respect to VSGs, the difficulties have not only been the result of small size. The voluntary sector, in its diversity, has always presented a challenge to the TUs as organisational structures and cultures didn't match the traditional union approach. For example, although one set of large voluntary organisations at or near the top of the outsourcing pyramid may have adopted managerial styles mimicking private sector business models, all (outside of so-called social enterprises) have management committees whose members are unpaid, often drawn from the communities served, and many including service users ("customers"!)

Some VSGs such as housing co-ops are entirely controlled by users. Given also the social purposes for which VSGs are established, many aspects of the culture of the voluntary sector remain quite different to that in the private sector, where profit is always the chief management pre-occupation, or the top-down bureaucracy of government agencies.

TU officials, who might know how to deal with the most intransigent of bosses or the most intimidating bureaucratic structures, find themselves not knowing who to negotiate with, or what kind of approach to take.

"Voluntary sector employers are the worst employers of all when it comes to unions. Even big corporations like Virgin have better union representation."

Union organizer

Union density alone is not necessarily a measure of strength: it tells us very little about the bargaining power or influence of unions. For example, studies carried out by the International Labour Organisation show that in countries like France, union densities are comparatively low

⁶² Xpert HR, 2011, in UK Voluntary Sector Workforce Almanac 2013

⁶³ Xpert HR, 2011, in UK Voluntary Sector Workforce Almanac 2013

yet collective bargaining plays a significant role in regulating terms and conditions of employment. In contrast, the UK has, in the words of one respondent, “*the most draconian anti-union laws in the western world*”, limiting the scope for collective bargaining regardless of membership levels⁶⁴.

As directly managed public services – with their relatively high union density - are outsourced to the voluntary sector, union membership might be expected to rise in new providers large enough to absorb unionised workers from the outsourced service. But respondents described techniques employers use to prevent this. A new employer taking over a service, for example, will retain existing staff temporarily, while recruiting new employees – who are far less likely to be in a union - on inferior terms and conditions. This results in a workforce on three or four different types of contract. While the original staff are protected in the short term, when protections expire employers may try to ‘harmonise’ contract types – usually by bringing them all down to match the most inferior contracts, or, at best, those in the middle. Those on the most inferior contracts have an interest in encouraging those on the best to accept mid-range terms and conditions, and if they are union members they may pressure their better-off colleagues through the union’s meetings and mechanisms. TU reps, however, should be aware, and ensure that their members are aware, of ACAS guidance, which states that:

*“TUPE protects against change/harmonisation for an indefinite period if the sole or **principal** reason for the change is the transfer. Any such changes will be void . . . [and if] the changes are challenged at Tribunal, they are unlikely to be upheld, because .. the TUPE [rights] cannot be signed away. This is so even if both parties have agreed”⁶⁵.*

The quotes below suggest that TUs need to take care to ensure that their workplace reps are properly advised and supported to defend the interests of transferred workers in these situations, and to seek workplace harmony by bringing newly employed workers up to the standard of those protected by TUPE.

“ ‘Harmonisation’ means bringing those on better terms down to the middle, never bringing up those on the worst terms or the middle to the top. So then you get union members under pressure from other members to accept a worse deal. Union reps don’t always have the training or skills to deal with it very well.”

Union activist

“When outsourcing happens with new employers they try one way or another to get rid of staff – there is a decline in number of TUPE-transferred staff who remain, then new starters get taken on, on inferior terms and conditions, and they’re then less likely to be unionised.”

Union official

However, even when a unionised workforce is successfully transferred, it can create other problems:

“It should be a benefit for the voluntary sector when unionised public sector workers bring their culture with them. But management often responds badly. They’re not used

⁶⁴ <http://laborsta.ilo.org/applv8/data/TUM/TUD%20and%20CBC%20Technical%20Brief.pdf> p.3

⁶⁵ ACAS, Guide to handling TUPE transfers, 2014

to it - management aren't used to proper negotiation, and they are fearful. They want complete control and they don't trust the staff, don't trust the workforce, who actually do all the work, who know what they're talking about. Management are suspicious of people who know their own profession."

Union official

Some parts of the voluntary services sector, with high executive pay, involvement with competitive bidding processes, perceived high levels of influence, and association with 'sexy' causes are now very competitive places in which to carve out a 'high flying' career. Competition usually weakens solidarity, and in organisations where management frowns upon unions, people with aspirations to climb career ladders are unlikely to get involved with the TU.

'Managerialist' tendencies are now well embedded in many VSGs, strengthening hierarchies and viewing management as opportunities to control and exploit staff, rather than to encourage and support. In addition, some parts of the voluntary sector - usually the large campaigning charities that align themselves closely with government policy - are increasingly seen as a 'training ground' for future MPs and government advisers - many of whom see the chance to practice 'power play' as training for the power games of Westminster. In contrast with the past, those with ambitions to be frontbench Labour MPs are rarely seen joining unions today.

Difficult political positions

The outsourcing of public services to VSGs has always posed a dilemma for unions - their role is to represent the interests of their members even if those members work for organisations complicit in a project that remains fundamentally at odds with core union perspectives.

All respondents were clear about the political position of their union: although VSGs can excel at providing niche or supplementary services, unions fundamentally oppose outsourcing and believe that mainstream public services are best provided and controlled by the public sector. But the compromises they are forced to make are not unique to unions; many organisations on the left, opposed to the marketisation of society, find themselves designing and advocating policies that, in trying to mitigate its worst effects, strengthen and validate the neoliberal economic framework. The decisions and activities of an individual organisation cannot change the economic climate - even the social policy of an entire country can only tinker with an economic machine that transcends national boundaries.

Respondents described pragmatic approaches that concentrate on getting better legal protections built in to procurement arrangements, such as allowing workers to take their union recognition with them when they move to the next contract, and ensuring collective bargaining agreements are already in place when a new employer wins a contract.

Unions are anti-privatisation but we have to live in the real world and take a twin track approach. Our members are being outsourced, so we need to put systems in place to protect them"

Union official

The increasingly unclear boundaries between some of the large VSGs and the private sector service providers do not alter the political position of unions, respondents said. Although outsourcing fragments the sector, employment rights must remain the same and all providers are best treated as a whole, in this respect. One official suggested that co-ops and mutually owned organisations had the potential to offer better workplace democracy and more egalitarian structures - though this type of voluntary organisation is still rare, and would be unlikely to wield sufficient economic power to prevent the 'race to the bottom' that outsourcing encourages. Rather, it risks giving it a new credibility.

What are the TUs doing about this situation?

All respondents agreed that unions need to do more to change practices and attitudes within VSGs to prevent outsourcing from causing further damage. However, they did not all agree on how this should be done. While most felt that increasing union membership is important, they agreed that this alone will not be effective unless unions themselves change their own practices, whether structurally, culturally or both.

One strategy against the race to the bottom is to build voluntary accords - agreements to protect employment standards in the commissioning process - with charities. The TUC has recently launched such an agreement with Children England, the umbrella body for voluntary organisations providing children's services⁶⁶. They are now building one with disability charities.

Another strategy is to target councillors, putting pressure on them as local commissioners to choose, for example, only service providers that can guarantee their workers the Living Wage when outsourcing. Although this helps workers at the very bottom of the pay scale, rather than those who are paid slightly more, it at least offers basic protection to the most vulnerable.

Unison retains formal links to the Labour Party, allowing it to work closely with Labour-run councils to secure commitments like these. Islington and Southwark Councils were the first to sign up to Unison's Ethical Care Charter, which contains agreements about the minimum length of care visits, for example.⁶⁷ The Public Services and Social Value Act - weak legislation as it only obliges commissioners to 'consider' social and environmental effects of procurement decisions, rather than act on them - at least gives unions grounds to discuss these considerations with local authorities.

One respondent pointed out that local authorities still have the power to bring services back in house, where there is the political will to do so, and that the role of unions should be to make the case for 'insourcing.' Recent research from the Association of Public Service Excellence documents many examples of insourcing producing better services.⁶⁸ Another respondent suggested working with service users as well as service providers, to build

⁶⁶ <http://www.tuc.org.uk/industrial-issues/public-sector/trade-union-involvement-public-service-improvement/tuc-and-third>

⁶⁷ <http://www.unison.org.uk/news/islington-southwark-sign-care-charter>

⁶⁸ <http://www.apse.org.uk/apse/index.cfm/research/current-research-programme/insourcing-a-guide-to-bringing-local-authority-services-back-in-house/insourcing-a-guide-to-bringing-local-authority-services-back-in-house/>

awareness of the effects of outsourcing.

However, some union activists were frustrated by the way unions themselves operate.

"I sense a real lack of will amongst the senior officers in the unions; a real resistance to upsetting the apple cart. I think they feel that they're more important than they really are. There's not much will among workers for industrial action, but then there's not much organising for an alternative, or educating or mobilising around anything. These marches are such a waste of time and money and energy, and they're never going to have any result. So many people turn out, take time off work, come to London and march in the rain, get the speeches from the usual suspects at the end. It's such a misuse of union resources."

Union activist

One respondent mentioned that after she became a workplace rep it had taken several months of asking those further up the 'chain of command' just to get a list of existing union members in her workplace. Another described a campaign – when Unite was electing a general secretary in 2010 - to ask prospective general secretaries to commit to set wage ratios within the union (other voluntary sector groups have done this: The Quaker Society of Friends has a ratio of 1 to 4, for example and others such as Reprieve, Medecin sans Frontieres, Mary's Meals have addressed the issue⁶⁹). Two of the four candidates ignored the request – one of whom was Len McCluskey, who was re-elected.

"Unions don't know what their purpose is – they don't want a purpose! The general secretaries have their five year term, they're very well paid, they're at the end of their careers anyway, so they're not really bothered about what they do or don't achieve in their roles."

Union activist

Another contributor described the ways in which unions ape the very management styles and hierarchies they should be fighting against.

"At workplace meetings, you'd think the reps were just the mouthpiece of management. They just announce management decisions and we're not allowed to ask any questions about it or talk about our experiences. When one member started to talk about how she had been unfairly managed out of her job and was going to become unemployed, the reps silenced her."

Union member

All agreed that unions need to increase membership to resist the worst effects of outsourcing. VSGs should be useful allies to the TUs, as their own aims should put them on the side of social justice, and many people choose to work for charities specifically because they believe them to be on the side of poor and disadvantaged communities. It was suggested that the reason many workers don't join is not that they can't see the benefit of acting collectively, but that unions themselves don't do enough to demonstrate their commitment to it. When workers see individuals being treated badly – being bullied, mismanaged or unfairly dismissed - without any challenge from the union, it's not surprising that many will decide not to join.

⁶⁹ Charity rates: how charities are approaching fair pay', in Guardian Professional, 15.05.2014

And if union reps don't question their own effectiveness or awareness, or make sure that they have the training they need to understand workers rights and good practice in the workplace, as well as discovering and making use of strategies to ensure compliance, things will continue in a downward spiral.

Low morale was identified as the problem – both inside and outside the union. This is understandable, considering the harsh restrictions going right back to the Thatcher government of the 1980's - restrictions that were not lifted by New Labour or the Coalition government and could become even more repressive under a post-2015 Tory government. And with some of the weakest employment rights in Europe, UK workers are not in a strong bargaining position – particularly in times of economic insecurity.

"The courts have shown in the past that they're willing to sequester unions' assets if they break the law. So we're operating in a very restrictive legal framework. We have to campaign to change that, but also try to organise workers better."

Union official

Apart from the financial risks, workers in health and social care are repeatedly told that industrial action - or even questioning their employer - neglects the clients they care for. Often, they believe it. So it is essential that TUs find ways to communicate effectively with the people who work in the VSGs, showing them how better working conditions for them, will also assist them to serve their clients more effectively and provide far superior services. Unions also need to find good ways of communicating with VSG managements, starting with those medium or smaller organisations who are themselves unhappy about the situation they have found themselves in. And divisive attitudes across the public and voluntary sectors will get no good results for anyone. It is important that TUs, the workers who are still employed in the public sector and those who work in outsourced services, come together to resist the marketisation and commercialism that is degrading access to and the quality of services provided.

There are also issues relating to the position of full-time officials and in-service TU reps. Some argue that to be truly effective, negotiations need to be handled by representatives who are outside the workplace of those they are defending; using only in-service TU reps poses too many risks and stifles any real resistance. In other words, whilst TU reps remain employees of the organisation, they are more likely to be weak or compliant, fearing for their own jobs:

"It's in the employer's interests, not the employees', to give employees who are also union reps working time and facilities."

Union activist

However, there appears to be plenty of scope for improving the training and support available to TU reps working in VSGs. For example, in relation to probationary reviews, an issue that led to the dismissal of one respondent. A probationary period presupposes a probationary review - it's all part of the ACAS good practice code - and thus has some status in a unionised workplace, or one where senior management and trustees would want to be seen as upholding good practice. Therefore the union could insist on proper minutes of the review, and the opportunity for the employee to appeal and have an appeal hearing before dismissal was effective. The union should certainly support any employee through all of this, including

providing help in drafting the appeal and representation or assistance at the appeal hearing. Though a determined management could still go ahead with dismissal, there would be a better chance for the aggrieved employee to take successful action for wrongful dismissal (no qualifying period required), and an opportunity for the union in question to publicise the case, which would not be desired by management.

On the other hand, the stretched resources of the TUs and the fragmented, often small, nature of VSGs can make it virtually impossible to get the attention of full-time officials:

"In my last place we had a full time officer who didn't have any other role. I think that was effective. He had been there for years, so was able to build up lots of knowledge. But if there are 5 staff for a branch with 107 organisations in it? They don't even answer their emails."

Union activist

All these factors can operate in a downward spiral. Union membership is low and morale is low. If TU representation is then seen as poor and ineffectual, it is less likely to attract new members. In contrast, if staff morale and motivation is improved by having an effective TU in the workplace, both management and service users will benefit and commitment to TU membership will increase.

Lastly, it is also relevant to refer to the role of 'community organising' in the context of VSGs and TU activity. Many in the union movement now look to community organising as a way forward. A term not much used in the UK before 2008, when President Obama - who began his working life as a community organiser - was elected, these methods of organising within local communities go back to the work of Saul Alinsky in the USA. Alinsky's reputation was high-jacked by David Cameron in justification of 'Big Society' funding for community organisers offered to the second tier agency Locality. But at the same time a number of TUs - principally Unison and Unite - became interested in extending workplace principles and activities into local communities. For TUs this means taking organising principles and messages of solidarity to community groups outside the workplace: churches, mosques, children's playgroups, credit unions, community centres etc. It is argued that workplaces, especially VSG workplaces, have already become too fragmented to organise effectively, that people identify more strongly with their neighbourhood than with their job, and that strengthening solidarity in the community will in turn lead to stronger solidarity at work.

"People will always come together around their own self interest if they feel it's worthwhile. So we just need to find more organic ways of working together. The old style of workplace organising is OK for something like a hospital with a large workforce, but not necessarily for other types of workplace."

Union activist

Not all respondents were wholeheartedly positive about community organising, however:

"The old way was for unions to say 'we are the professionals at this, come to us'. It was more like an insurance company than a political organisation. Sticking up for individuals has become too risky and unpopular, but people are up for just talking to each other, or sharing skills, or being church leaders."

Union activist

Some argued that this style of organising offers no leverage against an unfair employer. Believing in solidarity is one thing but being able to act on it – being able to *force* an employer to change an unjust decision - is quite another. These respondents stressed the importance of building *alliances* with community groups rather than setting up union branches inside them.

“As a trade union we need to make sure workplaces are well organised, and then build alliances with local campaigns. There’s a power that organised workers in a workplace can have that’s different from the power a community can have.”

Union official

Community organising is a relatively new trend. So far, there is little evidence that it has any meaningful effect on workplace conditions. Perhaps it is best viewed as education rather than political action; a longer term project to promote knowledge and commitment to civil and workplace rights and the benefits of solidarity and collective action.

6. Conclusion

The voluntary services sector, which has expanded rapidly over the last thirty years, is seen by its defendants as the ‘best of both worlds’; free from the supposed rigidity and bureaucracy of the public sector, yet driven by ‘social values’ – however loosely defined – rather than by the need to maximise profits for shareholders. Held up by Conservatives and New Labour as an antidote to the conflict between market and state and the inadequacies of both, it is seen by many as high minded, principled, professional and able to offer high quality services. Criticism of the outsourcing of public services as an erosion of accountability and service ethos is met with the defence that these services are outsourced to *charities*, not businesses, as if this is enough in itself to ensure a happy, contented workforce, with trustees, managers and staff all working only for the good of society.

But a growing body of evidence shows that this is not an accurate picture of the voluntary services sector. Operating increasingly like commercial businesses charities are lightly regulated by the Charity Commission - and social enterprise by the Office of the Regulator of Community Interest Companies. Though these bodies do offer some check on fraud, misconduct and other kinds of wrongful activity, many of the practices highlighted in this paper are beyond their remit. Indeed many are now so widespread that they are considered entirely normal. This includes lowering pay at the bottom while increasing it significantly at the top, the casualisation of contracts, the exploitation of weaker employment rights and heavy-handed managerialism that frowns upon union activity, political activism of any kind and even, in some cases, on professionalism - if that means putting the human needs of service users first.

And yet commissioners know that thousands of people choose to work for VSGs because they are committed to ‘the cause’ – whether it be social care, public health, decent housing, or action on poverty. This commitment is seen as a value to be tapped – just like creativity, ambition or knowledge. Managers and commissioners know that people will continue to work in these areas on ever worsening terms and conditions, and will even be persuaded to shy away from industrial action, if they are committed to their clients. Whether this goodwill is a

finite resource remains to be seen, but part of the union's role should be to defend it from exploitation.

TUs, too, benefit from assumptions made about them. Individuals in workplaces with union representation might feel that they are safe, and will happily pay their subscriptions – until they are bullied or 'managed out' of their jobs and discover, to their disappointment, that their workplace reps know nothing about employment law, can't read between the lines of an announcement from management, have no political awareness or don't record the basic information they need in order to be effective. They might wonder why their reps are content to meet only twice a year, to turn a blind eye to mistreatment, or why workers must fight their way through several tiers of union management to be granted even an application form to apply for legal advice (which will be given 'at the union's discretion'⁷⁰). Some unions even suggest to members that should they need an employment tribunal, they will cover the prohibitive fees (£1,200) recently introduced by the Coalition government - when in fact this support is not always available.

The assurance that the union is 'fighting for a better deal' behind the scenes is not always convincing when workers can see no evidence of it, and when the only real resistance to marketisation is an annual march. Of course, many workplace reps and union officers work tirelessly and beyond the call of duty. But if working as a union rep risks detriment to a career, then the unions must look for people who are courageous as well as skilled to take these roles. Trades unions may have been hobbled by anti-union legislation, but even now they are not without resources, and the anti-union legislation cannot stop them from using the law themselves, to ensure that their members are well represented, at internal proceedings, Industrial Tribunals, EATs, and County Courts. And by adapting their structures to suit modern workplaces, building links outside them, making the case for solidarity and showing real resistance to managerialism, they could really demonstrate their value. If Trades Unions show that they are prepared to stand up for the values they believe in, then workers will most certainly come forward to join them.

⁷⁰ Unite legal advice application form, 2013

The authors



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Frances Sullivan has been involved in voluntary action for most of her adult life, both as an unpaid activist and as a paid worker. This has included civil rights activism, squatting and homelessness campaigning, and working in advice, advocacy and community work. For 10 years she was convenor of an advice centre in Bermondsey, and in the late 1980s and 90s CEO of a small '2nd-tier' consortium of homelessness charities. She resigned from fulltime work as the new century began, but the fight for a better world for us all to live in still goes on; she has no intention of resigning from that.