

**Better
Regulation
Task Force**

Better Regulation for Civil Society

Making life easier for those who help others

November 2005

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Foreword

The voluntary and community sector (VCS) is characterised by an ethos that blends public benefit, a response to unmet needs, a desire to help and an interest in neighbours and communities. It is a large and significant sector, employing some 569,000 people with a further 16 million volunteers. It contributes over £7bn to our GDP and more than £25bn to society. Large charities dominate the headlines (1.6% of them have 68% of the sector's income), but the majority of the VCS are small, local groups. While professionals are increasingly employed, many within the sector are volunteers - social innovators and those just trying to do some good. Their work helps correct the local impact of market failure and they provide the glue that binds society together.

Regulation is necessary to protect the public from the excess of the market and to protect standards in public services. However, we believe that the Voluntary and Community Sector and those working within it need a more proportionate approach to regulation in line with our Five Principles of Good Regulation. One size does not fit all.

We undertook this study because we want regulation to help the voluntary and community sector continue to be a dynamic, flexible and informal force for good in society. It should not be tied up in red tape. Many public services we now take for granted, such as hospitals for those in need, originated as social innovations from the VCS. Good regulation must encourage the creativity of the sector in designing and delivering more imaginative and effective approaches to society's problems. Regulation should not try to co-opt, organise or homogenise this intrinsically non-conformist activity simply to make it easier for the regulators. Instead, we call on regulators to understand and respond positively to the different needs of the voluntary and community sector and ensure that their regulatory interventions, where necessary, are proportionate and targeted. We aim to be a catalyst for regulatory change so that the sector can continue to offer responsive, flexible and cost effective services alongside the public and private sectors.

While we are strong supporters of the sector, our recommendations are not about special pleading. The VCS needs a level playing field with the public and private sectors – no more, no less. Our recommendations are designed to help voluntary and community organisations obtain that level playing field but they should also help all those working in the private and public sector undertaking similar activities. If our recommendations are implemented, the regulatory situation for those working with the most deprived will be a great deal better than it is today, freeing time and money for those most in need.

We would like to thank those within the sector and the government who have given so much of their time to help us prepare this report. We hope that, on reading the report, they will feel that it was time well spent.



Sir David Arculus
Chairman



Sukhvinder Stubbs
Sub-Group Chair

Executive Summary and Recommendations

Introduction

The Task Force is concerned about the burden of regulation on the Voluntary and Community Sector (VCS) because of the value the VCS brings to society and its importance to our economy. Our study therefore focuses on the VCS and our recommendations are designed to help improve the regulatory climate for VCS organisations. Nevertheless we do not, at any point, make a case that the VCS should be treated differently from the private and public sectors when providing the same service. We would like to see a level playing field and all sectors of the economy benefiting from better regulation.

The government's drive to increase the role of the VCS in service delivery is increasing the interaction between the state and the VCS. For example, all charities are now subject to higher reporting standards and VCS organisations that tender to deliver services face new contractual requirements. Giving the VCS a greater role in providing support and delivering services needs to be done without exposing the sector to poor or excessive regulation that can easily damage voluntary and community organisations (VCOs) and undermine the contribution they can make to public service delivery and addressing social problems.

Our study has focused on three priorities:

- a) *The Volunteer* - Volunteers are important and are especially vulnerable to some aspects of regulation. We make recommendations to the Charity Commission, Criminal Records Bureau and government departments to reduce the burdens faced by volunteers and the organisations that depend on them.
- b) *Social Innovation* – We are concerned that poor, unresponsive regulation may hamper social innovation, especially in poorer areas where residents are more dependent on VCS activity. Sixty one percent of those who responded to our survey believed that regulation inhibits social innovation. Prescriptive and overly protective approaches to regulation are leading to loss of diversity in the sector and greater conformity in the ways people and organisations operate. Our recommendations on the regulation of endowed trusts, waivers from prescriptive regulations and reducing contractual burdens are designed to support the sector's ability to innovate in the future.
- c) *Meeting Need* - Nearly 450,000 of those working in the VCS provide social care. The quality of their services depends on direct contact with service users and a flexible response to individual needs. These can be threatened by regulations that impose standard models of public sector provision. We support regulations that protect vulnerable people from poor quality services but regulations are not always well targeted. Our recommendations on classic regulation and regulation through funding streams should assist those VCOs providing services.

Reforming VCS Specific Regulation

Charity Commission Regulation

We have been impressed by some improvements that the Charity Commission has made, such as its new trustees guide¹, which clearly separates legally binding obligations on trustees from guidance on how trustees should fulfil their role. We would like the Charity Commission to take a similar approach in all its correspondence to help reduce the administrative burden on charities of understanding what regulations require them to do.

The Charity Commission has already worked to identify regulations which could be removed to reduce burdens on trustees. Annex D lists the reforms it has proposed. This is a good initiative and we hope that the Home Office will find ways to implement these proposals.

One of the recommendations of the Prime Minister's Strategy Unit's report "Private Action, Public Benefit" was that information about charities should be more readily available to the public. While this is a good objective, it means that many charities now have to provide two reports to the Charity Commission and may also wish to provide information to Guidestar, itself an information providing charity. There is a strong case for amalgamating these reports.

Regulation of Endowed Charitable Trusts

Endowed charities make grants to other charities to carry out activities. These grants may be the only way for social entrepreneurs to try out new ideas or kick-start projects that would otherwise never see the light of day. Inappropriate regulation is discouraging the setting up of new trusts. To help encourage the wealthy to increase their contributions to charitable trusts, we propose reforming the rules on charitable diversification and producing authoritative guidance on what regulations will apply to a charitable trust over the medium to long term.

Corporate Sponsorship

Many companies sponsor charities for various reasons, including publicity, hospitality and as part of corporate social responsibility. This sponsorship is often regarded as the provision of advertising services, which creates problems for the charity because advertising services are likely to be liable for direct tax. Charities often need to run separate trading companies to legitimately avoid this tax. Allowing charities to provide low risk advertising for corporate sponsors without incurring direct tax would reduce regulatory burdens.

VAT and Charities

Charities do not have a level playing field for VAT. For example, unlike local authorities, when charities provide social care services at no charge to the client, they cannot reclaim VAT. Many businesses outsource non core services such as Information Technology and facilities management and can reclaim VAT on the outsourced services. Under the EU's Sixth VAT Directive, charities are treated as the final consumers and cannot reclaim VAT. We hope that HM Treasury and HM Revenue and Customs will continue to work with interested parties to review how this current unsatisfactory situation can be improved.

¹ *The Essential Trustee – What you need to know*

Recommendation 1

The Task Force recommends that the Charity Commission, when giving written advice to charities, provides greater clarity as to which parts of its advice are legally binding and which parts are best practice suggestions. Its good work in some areas should be extended to all advice.

Recommendation 2

The Task Force recommends that, by the end of 2007, the Charity Commission review the Summary Information Return (SIR) and the Annual Report and Accounts with a view to integrating them so that charities only provide one set of information once a year. Following this integration, it should consider abolishing the other parts of the Annual Return. The Charity Commission should also work with other information providers (such as Guidestar) to remove duplicate requests for information and improve information sharing.

Recommendation 3

The Task Force recommends that the Department for Constitutional Affairs work with the Home Office to consider reforming the Trustee Act 2000 to remove the obligation on endowed charitable trusts to diversify any gifted (as opposed to purchased) assets against the wishes of the settler while alive. If this requires primary legislation and no suitable legislative opportunity is on the horizon, it should consider including any necessary amendments in the Deregulation Bill expected in the next session of this Parliament.

Area for Further Work 1²

The Task Force recommends that the Charity Commission produces a guide for those considering endowing trusts, setting out what regulatory constraints they will face and what freedoms endowed trusts will enjoy.

Recommendation 4

The Task Force recommends that HM Treasury and the Home Office should work with HM Revenue & Customs and the Charity Commission to reform or clarify the regulations surrounding charitable trading so that charities need not set up separate trading arms to receive corporate contributions where limited advertising is provided in return for a donation.

² We have made recommendations about areas where we believe specific action should be taken. We have asked for further work on areas where we think this would be useful.

Area for Further Work 2

The Task Force recommends that HM Treasury and the Home Office review the work that the Charity Commission and HM Revenue and Customs are doing to produce clear guidance on when a charitable trading arm is required. If the underlying case law is so complex that any guidance would be difficult to follow, they should consider using primary legislation to simplify it. The extent to which trading arms are required purely for tax reasons should be minimised.

Recommendation 5

The Task Force recommends that HM Revenue & Customs provides guidance on what structures might assist charities to manage VAT liabilities which would otherwise arise as a result of outsourcing non core activities.

Reforming General Regulation

Here we consider regulation that has an impact on the activities being undertaken rather than on the type of organisation undertaking them. Such regulation affects the private and public sectors as well as the VCS, although it can have a disproportionate effect on the VCS.

Housing Associations

Housing associations are a diverse group of organisations that have changed immensely over recent years. In England, they are funded and regulated by the Housing Corporation. Schedule 1 of the Housing Act prohibits housing associations from granting any non-contractual payments or benefits to staff, board members or their families. Whilst sound in intent, it has become a bureaucratic exercise for both the associations and the Corporation and is ripe for reform. Further, private developers will become eligible for funding from the Housing Corporation in the future but will not be subject to Schedule 1, potentially creating an unlevel playing field. A high quality code of practice to replace Schedule 1 for VCS housing providers would address this inequality while maintaining high standards and encouraging innovation and competition in the housing sector, leading to better outcomes for residents.

Beyond this, we commend the Office of the Deputy Prime Minister (ODPM) for commissioning a review of social housing regulation to find opportunities for simplification or removal and look forward to seeing the results of this in its simplification plan.

Criminal Record Bureau (CRB) Checks

Many VCOs that provide social and caring services make frequent use of the CRB to provide assurance about people they are considering employing or using as volunteers. Most VCOs do not question the need for some checks but many have complained about the bureaucracy surrounding them and the need to check so many people. We support the reforms the Bichard Inquiry recommended but believe there is potential to take further action to alleviate other burdens associated with the CRB.

Representation

As VCOs have become increasingly involved in providing services to victims of domestic violence or those with a drug addiction, a question has arisen about whether they can represent those they are helping in court. We believe it would make sense to review the law so that VCS organisations (and others fulfilling similar functions) can, where appropriate, represent their clients in court. This could be, for example, when they have had far more involvement with the client than other workers or where alternative representation is unavailable.

Employment Law

VCOs sometimes experience difficulties with employment law because, when they use volunteers regularly, a de facto employment contract can arise with rights and obligations that some VCOs are ill equipped to cope with. Employment law is complex and Volunteering England³ has produced a helpful guide that could be useful to many VCOs.

Inspection, Risk & Waivers

VCOs have told us that that inspection visits are sometimes more about ticking boxes than helping organisations to improve. One major proposal of Philip Hampton's report⁴ is that regulators should adopt a risk-based approach to inspection. We support this proposal and would like to see government departments and public service regulators working together to develop risk-based regulation. The way Ofsted deals with pre-school childcare inspection is an example of good practice that might usefully be shared with other regulators dealing with vulnerable people.

Risk based approaches can be difficult to implement where regulators and inspectors cannot exercise discretion because of the way a regulation is worded or implemented. There is a strong case for allowing regulators and inspectors to make intelligent judgements based on individual circumstances, without losing essential regulatory protection.

The Financial Services Authority (FSA) offers a possible model. Under its waiver system, if a firm wants to do something differently, it can apply to the FSA for a waiver from particular regulatory requirements. This allows the FSA to give responsible firms considerable latitude to innovate. Giving public service regulators a similar power of waiver would help move inspection away from a one-size-fits-all mentality while ensuring, through transparent, accountable decisions, that important safeguards are not dropped by default.

Self Regulation

We believe that self regulation and co-regulation should be more widely used to complement classic regulation, as they can provide more targeting, proportionality, consistency, and flexibility. However, self-regulation can also have unintended consequences. It can itself become an additional regulatory burden where organisations feel they have to participate because of market pressures. To reduce this risk, government should avoid making self-regulation overtly or indirectly mandatory.

There are ways in which co-regulation (a combination of statutory and self regulation) could assist in delivering better regulation for the VCS:

³ www.volunteering.org.uk

⁴ p. 33 Reducing Administrative Burdens: Effective Inspection and Enforcement

- Government could recognise “kitemarks” as a way of defining service levels under contractual agreements with service providers.
- Regulators could identify regulatory requirements that become unnecessary once a self-regulatory standard is achieved and these could then be removed.
- A “kitemark” could, in the absence of other aggravating risk factors, automatically place a provider into a lowest risk “grade”.

Regulation – Less is More and the VCS

The government is now implementing the recommendations on simplification and administrative burden reduction that we set out in our study *Regulation – Less is More*⁵. We are delighted that the Government has included the VCS in these exercises, as this provides an incentive for departments and regulators to work together to eliminate multiple and overlapping burdens. The Better Regulation Executive in the Cabinet Office has launched an online service where stakeholders can submit simplification proposals to government (<http://www.betterregulation.gov.uk>). We would like to see VCOs and umbrella organisations submit suggestions for unnecessary regulatory burdens that could be simplified or eliminated.

Recommendation 6

The Task Force recommends that the Office of the Deputy Prime Minister (ODPM) abolishes paragraph 2, Part 1 of Schedule 1 of the Housing Act 1996 and replace it with a code of practice. ODPM should consider using the Deregulation Bill expected in the next session of this Parliament or a Regulatory Reform Order (RRO) as a vehicle for delivering this reform if no other suitable legislative opportunity is on the horizon.

Recommendation 7

The Task Force recommends that the Home Office work with the Department for Education and Skills (DfES) and the CRB and Bichard Implementation Group to ensure that the principles of Good Regulation are fully reflected in a simplified and co-ordinated system of checks on suitability and that the system integrates well with the CRB and other mechanisms. Specifically they should:

- Produce a guide setting out when checks should be considered for different sorts of workers and whether these are mandatory.**
- Review the proportionality of the CRB checking process by the end of 2007. In the light of experience, review which categories of individual are least likely to pose a risk to the vulnerable and seek to modify the law to make a risk based approach to CRB checks possible.**
- Ensure that fee changes take place once a year, and are advertised at least six months in advance, to allow VCS and other organisations sufficient time to include the impact of changes within their budgets for the next financial year.**

⁵ www.brtf.gov.uk

- d. **Establish a system which would allow small VCOs to request checks easily.**
- e. **Issue guidance to employers on what previous criminal convictions should debar an individual from being allowed to work with vulnerable adults or children, what convictions should not debar an individual and what convictions necessitate judgement on the part of the employer.**

Recommendation 8

The Task Force recommends that the Department for Constitutional Affairs review whether the regulations covering the representation of individuals in court need to be modified so that VCS and other organisations may represent individuals when they are best placed to do so.

Area for Further Work 3

The Task Force recommends that the Home Office work with Volunteering England to make its employment law guidance to charities more widely available or work with other departments to produce guidance in this area.

Recommendation 9

The Task Force recommends that the Department of Health and Office of the Deputy Prime Minister work with the Commission for Social Care Inspection, the Healthcare Commission, the Housing Corporation and other public service regulators on further developing their risk-based approach to regulation. As some of these bodies are reconfigured, we recommend that a risk-based approach be confirmed in legislation.

Recommendation 10

The Task Force recommends that the Home Office work with the Department for Education and Skills, the Departments for Constitutional Affairs and of Health and the Office of the Deputy Prime Minister to:

- a. **Review the balance between regulation (which is inflexible) and rules and guidance (which are more flexible) so that public service regulators can more quickly recognise and respond to changes in an organisation's circumstances. This could usefully apply to the Charity Commission, the Commission for Social Care Inspection, the Healthcare Commission, the Housing Corporation, the Legal Services Commission and Ofsted.**
- b. **Give public service regulators authority to consider waiving specific rules and guidance in individual cases for particular organisations, using a formal waiver process such as that developed by the Financial Services Authority.**

Area for Further Work 4

The Task Force would like the Home Office to encourage all government departments and regulators to give positive consideration to proposals from the VCS and other organisations for self-regulation, particularly:

- **The possibility of granting collective waivers from some regulations for bodies that hold “kitemarks” or other appropriate self-regulated status that provides a similar level of protection or reassurance to current statutory regulation; and**
- **The possibility of incorporating “kitemarks” or other self-regulatory systems into risk assessments such that they could then influence the level of reporting and inspection required.**

Area for Further Work 5

The Task Force recommends that the BRE and Government departments work together to ensure that Voluntary and Community Organisations know how to make simplification proposals and are encouraged to submit suggestions of regulatory burdens for simplification or elimination.

Reforming Funding

Growth in state funding of the VCS, while welcome in many ways, has caused concern in the sector as organisations discover that the greatest burdens come not from classic regulation but rather from the bureaucracy or “quasi-regulation” associated with government funding streams.

The National Audit Office (NAO) published ‘*Working with the Third Sector*⁶’ in summer 2005. It makes several recommendations to help reduce regulatory and quasi-regulatory burdens on the VCS. We support these recommendations. The NAO assembled evidence that, in many instances, VCOs were subject to discrimination relative to private sector contractors. Unfortunately what we have learnt suggests that there has been little improvement in how the Government contracts with the VCS.

Some departments are trying to make improvements. For example, the Department of Health intends to establish a taskforce to look at how administrative costs for VCS providers of health services can be reduced. However, more needs to be done to translate government’s high-level commitments into practical results.

We believe that, building on the Government’s current work to tackle the excessive administrative burdens of regulation, *a specific programme is required to reduce the administrative burdens associated with funding*. Such a programme would ensure that real advances are made in:

- reducing inequalities in the treatment of the VCS relative to private sector providers;
- simplifying funding streams by reducing the number of organisations public money is filtered through;

⁶ Home Office - *Working with the Third Sector*

- providing longer-term contracts which have lower administrative costs for both the funder and the service provider;
- more risk-based and proportionate monitoring;
- helping funders to focus on outcomes not process; and
- freeing up organisations to deliver diverse public services in new, innovative and cost-effective ways.

Recommendation 11

The Task Force recommends that, in line with the Government's drive to reduce administrative burdens, the Office of the Deputy Prime Minister, the Department for Education and Skills, the Department for Work and Pensions and the Department of Health respectively ensure that upper tier local authorities and the Housing Corporation, the Learning and Skills Council, Jobcentre Plus and Primary Care Trusts work to measure and reduce the administrative burdens arising from contracts with the VCS, drawing on the expertise of the Cabinet Office's Better Regulation Executive and the existing administrative burden measurement process. These public bodies should:

- **undertake a systematic measurement of the administrative burdens associated with VCS contracts by April 2007; and**
- **develop simplification plans or input into an existing simplification plan to reduce the administrative burdens on VCS service providers by November 2007.**

Each department should ensure that appropriate targets are set and that the public bodies concerned have incentives to meet the administrative burden reduction targets.

Process for Government Response to the Report

Paul Goggins, the minister responsible for the voluntary and community sector at the Home Office, has agreed to lead the Government's response to our report. We hope ministers in other departments will lend their support and ensure that the recommendations affecting their departments are implemented. If they do so, the regulatory situation for those working with the most deprived in society will be a great deal better than it is today, freeing up time and money for the assistance of those most in need.

Summary

These recommendations are intended to help the diverse VCS and others providing similar services, to improve volunteer participation, to encourage social innovation and to meet more social need. We would like the Government to tell us when it expects to be able to implement our recommendations. We suggest that, unless we have put a different date in the recommendation itself, all our recommendations should be implemented by the end of 2007 at the latest.

I Introduction

The Voluntary and Community Sector (VCS) brings enormous value to society by encouraging and enabling activity between the state and the family, activity which we undertake voluntarily rather than through any obligation to family or state. This bringing together of communities (including communities of interest) creates what some would call “social capital”, others “civil society” or even just a sense of belonging. Of course, creating these social goods is not the exclusive preserve of the VCS but,

“VCOs play an important part in the life of communities, enabling people to come together for their own purpose and take part in community activity – for example to engage in social or leisure pursuits, help themselves and/or others, to promote or defend a cause they feel strongly about. ... The very existence of many voluntary and community organisations is based on people getting together because they share common features (values, goals, problems, experiences, interests, localities etc) which help create bonding social capital.”⁷

As well as being a valuable source of social capital, the VCS plays a very important role in our economy. It employs 569,000 people, controls assets worth over £70 billion⁸ and is said to contribute more than £32bn to the economy each year.⁹

The Task Force is concerned that the burden of regulation on the VCS may undermine this contribution. Both the Home Office and the Joint Parliamentary Committee scrutinising the Charities Bill have expressed similar concerns over the potentially excessive burden of regulation the sector faces.

Recent government reports on the VCS, such as *Private Action, Public Benefit* (Cabinet Office) and HM Treasury’s *Cross Cutting Review* as well as the National Audit Office’s *Working with the Third Sector* have made proposals to facilitate the work of the VCS and cut red tape. Our recommendations build on this previous work to help create an improved regulatory climate for the VCS.

Scope

Our recommendations focus on improving the regulatory climate of the VCS. We define the VCS as charities and other organisations (such as social enterprises) working towards “charitable” ends that reinvest surpluses rather than distributing them as profits to shareholders. Naturally, our recommendations will, if implemented, do most to assist this sector. However, we do not believe that the VCS should be treated differently from the private and public sectors when providing the same service. Accordingly, some of our recommendations will also help these other sectors and nothing we propose should put them at any disadvantage relative to the VCS. The Task Force’s overall aim is to ensure that there is better regulation for all parts of the country.

This report does not attempt to cover every aspect of charitable regulation. For example, fundraising for voluntary donations has not been raised with us as an area of concern and is out of scope. We met a

⁷ Jochum, Veronique, Pratten, Belinda, Wilding, Karl - *Civic renewal and active citizenship, a guide to the debate*

⁸ *The UK Voluntary Sector Almanac 2004* by NCVO. We believe the overall contribution, including that from social enterprises and housing associations is much greater than this figure. We understand these figures relate to the whole of the UK.

⁹ This figure is based on the summing on the £7.2bn contribution to GDP with the £25.3 billion which the Home Office’s Citizenship Survey suggested that formal volunteering for clubs, groups and societies may be worth (this is not captured in GDP figures). We understand these figures relate to the whole of the UK. We believe the overall contribution, including that from social enterprises and housing associations, is much greater than this figure.

broad range of organisations when preparing this study and are conscious of the sector's diversity. However, a vibrant and effective VCS is most critical for the poor, as they often have few alternatives, so we have focused on those Voluntary and Community Organisations (VCOs) that work with the most vulnerable.

When discussing any sector, some use of specialist language is inevitable. We have tried to avoid jargon in this study and we have attached a Glossary at the end of the document defining less usual terms.

1. Change in the VCS and its Regulatory Consequences

The VCS contributes significantly to the production of social capital that enhances society in its broadest sense. The Government manifesto stated that "In a range of services the voluntary and community sector has shown itself to be innovative, efficient and effective. Its potential for service delivery should be considered on equal terms."¹⁰ Ministers perceive the VCS as potentially adding great value to some public services and the manifesto signals a move towards greater Government involvement with the VCS. However, there is a tension because,

"Social capital is autonomous and spontaneous in nature and cannot be engineered or controlled. Social capital starts with and belongs to individuals and communities. People join voluntary and community organisations out of choice, exercising their right to free association, not to meet government targets. ... Voluntary action is ... 'undirected and unprogrammable': it is driven by people's choices and concerns."¹¹

The dynamic between the VCS and the state has changed over time. In the nineteenth and early twentieth centuries, charities met many social needs rather than the state. Many charitable services then became public services as the state expanded its role in welfare provision and nationalised charitable services¹². In the post war years, there was less reliance on charitable activity in the UK as universal state services came into being. More recently, society has been struggling with the perceived failure of state run public services to meet the growing demands of the public. This has led policy makers, on both sides of the Atlantic, to look again at the role which the VCS can play in the provision of public services.

The following charts illustrate the evolution of the role of the VCS in social care showing how patterns of care have changed and may change yet further.

¹⁰ p. 106 Labour Manifesto 2005

¹¹ Jochum, Veronique, Pratten, Belinda, Wilding, Karl - *Civic renewal and active citizenship, a guide to the debate* quoting William Plowden in "England five years after Deakin" in *Next Steps in Voluntary Action*.

¹² Blackmore, Ann - *The reform of public services: the role of the voluntary sector*

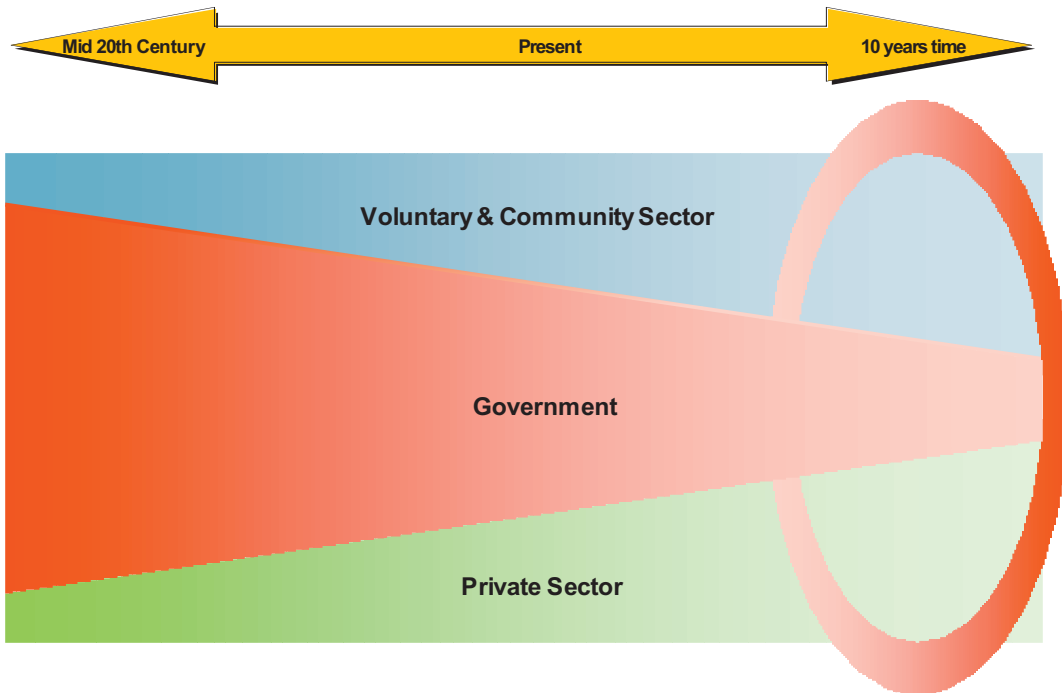
The social sector has continually evolved, and looks set to continue changing in future

Different sectors have led the provision of social care at different times



Trends	
<ul style="list-style-type: none"> Industrial revolution changed society substantially and led to the rise of organised charities supplementing the Church 	<ul style="list-style-type: none"> Second World War led to a command economy Voluntary sector stepped back from domestic welfare provision
<ul style="list-style-type: none"> Dependency culture recognised by both the Left and Right Problems with consumer perceptions of public sector provision 	<ul style="list-style-type: none"> Responsibility for the social sector handed to voluntary organisations and business VCS adopts more business practices
Examples	
<ul style="list-style-type: none"> Charitable institutions carried out most social functions such as education and health care in the late 19th Century Literacy rates rose to highest ever levels and standards of living for the poor improved State provided only most basic subsistence under poor laws with workhouses 	<ul style="list-style-type: none"> NHS introduced with other aspects of cradle-to-grave welfare state along the principles of the Beveridge Report Prime Minister targets social exclusion through non-state bodies Development of new commercial institutions which finance social enterprise as a means of combating deprivation encouraged by tax incentives

The voluntary and private sectors' role in social care is likely to increase, traditional differences may blur while government binds all through funding



This evolving situation creates tensions because, “as the role of the state has changed from providing public services and utilities directly to ensuring that these are provided, so the focus of regulation has shifted from relatively simple questions of probity to more complex questions of performance.”¹³ There are mixed views in the sector on this evolution, as the following quotes illustrate:

- “Whilst some organisations feel that an advocacy role (campaigning) strengthens their hand as a service deliverer (provider of services), others believe that their advocacy role may be reduced if their service delivery role expands.”¹⁴
- Getting more involved in public service delivery could create tensions. For example, an organisation may find it harder to be representative of its clients or may spend less time on campaigning and more time on service delivery. This is something that could be managed by a good strategic plan.¹⁵
- “Engaging with government does not automatically undermine the sector’s independence, it is a question of how the relationship (and the contract) is managed.”¹⁶
- “The third sector plays a dual role in public service reform. At its best, the sector articulates the views and needs of the communities and citizens who receive public services, helping to inform

¹³ p. 2 Bolton, Margaret - *The Impact of Regulation on Voluntary Organisations*

¹⁴ Blackmore, Ann – *The reform of public services: the role of the voluntary sector*

¹⁵ Gutch, Richard - Futurebuilders

¹⁶ Blackmore, Ann – *The reform of public services: the role of the voluntary sector*

service design and delivery through powerful advocacy. Second, where the sector has specialist expertise or strong community links, it can also drive up service quality through direct involvement in delivery.”¹⁷

- “There are ... potential threats in terms of independence, mission drift and trust i.e. the lack of trust towards national and local politics could trickle down to anything to do with government funding.”¹⁸

These perspectives form an important backdrop to our study. The Task Force does not take a view on the increasing role of the VCS in providing public services. However, we are concerned that any increasing state interaction with the VCS does not bring with it poor quality or excessive regulation that damages VCOs or gets in their way as they bring their added value to public service delivery.

2. Survey Results

To supplement our interviews with key members of the VCS, we undertook a survey to obtain empirical evidence about regulation affecting the VCS. Detailed results are set out in Annex E but, in summary, it suggested:-

- Charity Commission regulation can be a significant burden for smaller charities (turnover <£100,000) but less so for larger charities.
- The regulatory burden falls most heavily on VCOs working with the elderly or in housing.
- Local authority funding tends to be more burdensome than central government funding. The accounting and audit requirements for state funding bring greater burdens than bidding for funds.
- 61% (of our respondents) believe that regulation inhibits social innovation designed to help those most in need.

Case Study 1 - CESSAHA¹⁹

CESSAHA operates a charitable housing association providing sheltered housing for older ex-service men and women, as well as a registered charity that offers cafes and shops for active service personnel and their dependants in the UK and Sovereign Bases in Cyprus. The list below sets out some of the recent changes to regulations that it has faced and CESSAHA’s comments on the effects these have had.

1. **The Housing Corporation Regulatory and Statistical Return:** ever changing format.
2. **Best Value:** would have cost us more to analyse than we could ever possibly save. This was a bureaucratic approach to running a business sensibly; fortunately it seems to have lost favour.
3. **Performance Standards:** more paper and returns.
4. **Tenant Participation:** a good principle but do 80-year old sheltered housing tenants really want to sit on Health and Safety Committees?
5. **Supporting People:** this is very bureaucratic - the requirements are not realistic for the elderly.

¹⁷ Aldridge, Nick – *Communities in Control: The new third sector agenda for public service reform*

¹⁸ Jochum, Veronique, Pratten, Belinda, Wilding, Karl - *Civic renewal and active citizenship, a guide to the debate*

¹⁹ CESSAHA stands for Church of England Soldier’s, Sailor’s and Airmen’s Housing Association Ltd

6. **Health and Safety Risk Assessment:** good basic principles are overwhelmed by the bureaucracy of having to have reams safety documents for items kept under every domestic sink in the country.
7. **Fire Risk Assessment:** unloading fire brigades' costs onto us.
8. **Financial Risk Assessment:** not bad but basically just common sense.
9. **Housing Benefit Applications:** dire for an eighty year old.
10. **Rent Restructuring:** above inflation rent rises with lower pension rises for the elderly in our case. We refused to comply and declared this to the Housing Corporation.
11. **Criminal Records Bureau:** chaotic admin and spiralling costs for users.
12. **Charity Commission Summary Information Return:** considerable extra work with no benefits for those who do not seek bequests.
13. **Training Agency Returns:** more data collection for government.
14. **Revised Electrical Installation Regulations:** we can no longer use our own ex-RN maintenance staff even though they are I.E.E. qualified.
15. **Data Protection Act Registration:** now annual instead of triennial bureaucracy, more costs.
16. **Housing Efficiency Returns:** out of touch with reality; punishment for the already efficient, unclear requirements.
17. **National Register of Social Housing - Housing database project:** No notice of extra workload, more costs for us; assumption of surplus IT staff or extensive database knowledge.
18. **Financial Services Authority:** £30 per sheet photocopying; more bureaucracy.
19. **Local Authority Business Alliances:** devoid of understanding of small business
20. **Housing Corporation Added Value Study:** no notice, short return time.
21. **Financial Services Authority:** new records return on charitable status.
22. **New Tax Return:** HM Revenue & Customs prefer this in a complex IT format
23. **Decent Homes Standard:** good principle buried by bureaucracy
24. **Financial Services Authority requires registration of Housing Association trustees through the Charity Commission even though the data is already held by the Housing Corporation:** bureaucratic duplication of returns.
25. **Statement of Recommended Practice (SORP):** ever increasing requirements; more work.
26. **Government web sites:** The following public bodies appear to assume we have time to search websites hoping to prevent penalties for not finding and complying with new legislation announced online only to save costs:
 - **The Housing Corporation**
 - **Charity Commission**
 - **Office of Deputy Prime Minister**
 - **Health & Safety Executive**
 - **Audit Commission**
 - **Department for Work and Pensions**
 - **Department of Trade and Industry**

3. The Volunteer

The voluntary sector is not synonymous with volunteering. VCOs are “voluntary” in that they are independent entities, not statutory public bodies. Many are run largely by professional staff, but involve volunteers at different levels in the organisation. The Government has designated 2005 the ‘Year of the Volunteer’ because of the importance it places on volunteering as a means of encouraging a healthy society.

Trustees

Most (though not all) VCOs have Boards that are filled with volunteer trustees, who generally give their time without remuneration because they believe in a cause. We have heard numerous concerns about increasing burdens being placed on these volunteer trustees:

- Problematic regulation and processes are particularly felt by unpaid staff such as board members.
- The plethora of regulation is a real barrier to finding trustees when they realise what they may be liable for in an increasingly litigious society.
- Regulations relating to trustees are onerous and trustees are often difficult to find because they are “in the firing line” if things go wrong.
- Trustees feel they spend too much of their time discussing how to comply with requirements while what they want to do is to discuss innovative ideas and “blue sky thinking”.

Other Volunteers

We have heard concerns from regulators and others about how regulation is affecting volunteers fulfilling other roles in VCOs. These include:

- The Housing Corporation reports receiving valid complaints from small volunteer run organisations who feel they cannot comply with regulatory requirements.
- The Commission for Social Care Inspection (CSCI) finds it challenging to regulate volunteers effectively without inadvertently professionalising them.
- Greater accountability brings more transparency but also requires more control mechanisms that can reduce participation.
- Volunteers who used to provide food for elderly people have stopped because they cannot face new hygiene regulations. As a result, the service has declined.

The risk that over-regulation may make volunteers reluctant to participate and cause some VCOs to depend less on volunteers is worrying because participation can provide fresh answers to many of society’s ills. Participation and the social capital that it produces leads to strong shared values and improved quality of life. We have heard that large membership organisations that become “professionalised” and no longer depend on the active participation of volunteers tend to contribute far less social capital than associations that are driven at the grass root level by their own constituents. The best VCOs get much closer to solving poverty and exclusion than the state or the private sector. Local knowledge, direct experience, empathy and trust enable them to be innovative and effective in meeting local needs.

Case Study 2 - Carers Sitter Service (CSS)

The CSS is a small charity providing respite services for carers of elderly people. But because tasks like helping someone out of a chair to go to the bathroom are classified as 'personal care', the charity was told by the Commission for Social Care Inspection (CSCI) that it needed to register as a 'provider of personal care' and therefore came within the scope of the Domiciliary Care National Minimum Standards. This basically meant that volunteers would have to undertake NVQ training, amongst other things, to continue helping those in need because CSCI originally thought CSS fell within the regulations of a full domiciliary care agency and the requirement to meet the relevant regulations and national minimum standards. The charity reluctantly decided to withdraw their personal care assistance – a change which clearly benefited no one.

The BRTF encouraged the CSS to re-contact CSCI. CSCI agreed to help to find a solution. In order to apply a proportionate approach and deal more sensitively with such cases, CSCI met with CSS, listened to their views and the details of the service they delivered. The complex case took several months to resolve. However a solution was arrived at which involved taking a proposal to the Commission for endorsement of a policy change which would apply to all voluntary services. By registering the CSS as an Introductory Employment Agency (an agency that solely acts as introducers of workers employed by the user) rather than as a Domiciliary Care Agency, the CSS was able to continue providing its valuable service in its current form.

Because we are convinced that volunteers are important and are especially vulnerable to some aspects of regulation, we are making recommendations to the Charity Commission, Criminal Records Bureau and several government departments to help reduce the burdens faced by volunteers and those using volunteers.

4. Social Innovation

“Social innovation” refers to the VCS’s ability to adapt and respond quickly and flexibly to emerging social needs. The Task Force is particularly concerned that regulation does not hamper this social innovation, especially in poorer areas where imperfections in public and private service provision often mean that residents depend on VCS activity.

Regulation is often based on standard service models and can therefore threaten social innovation by those VCOs that provide innovative services, for example to people with complex and multiple needs that other organisations frequently cannot meet. For example, social care is regulated because of market failure. This means that people receiving social care often have imperfect information on what care is available and its quality. They also have little purchasing power to exercise choice. It would clearly be unwelcome if some kind of “one-size-fits-all” social care regulation were to prevent VCOs from developing and providing innovative care and greater choice.

Endowed charitable trusts are free from the discipline of fundraising and have often been particularly well placed to support social innovation. For example:

- School Home Support was piloted in 1985 with a grant of £10,000 from the Gatsby Charitable Foundation to the then East London Schools Fund. It is now national practice.
- Home Zones helps planners reclaim local streets from domination by cars. The Children's Play Council piloted the idea in 1998 with funding from the Mark Leonard Trust. Home Zones can now be found across the UK.
- The British Social Attitudes Survey was founded over 20 years ago, entirely with charitable funding.

Regulation and Damage to Social Innovation

The Playbus case study below shows an example of positive social innovation which its founders believe could not happen today because of the increase in prescriptive regulation.

Case Study 3 - Playbus

Community Links, founded in 1977, is an innovative inner city charity running community based projects in east London. It helps over 50,000 vulnerable children, young people and adults every year. Its work has influenced community-based organisations nationwide and government policy. Eighty percent of their staff live in east London and many of these are former users of its services.

One of Community Links' first ventures was a play bus that travelled around Newham providing recreation facilities to communities that may not otherwise have them. However, the charity believes that today's regulatory environment would make many of their early schemes, such as the playbus, considerably more difficult to set up. The playbus scheme, for example, would be subject to health and safety regulations, Ofsted inspections, CRB checks for workers and training for people working with children. Whilst the protection of children has to be paramount, it is also important that regulation does not quash innovative schemes in disadvantaged communities before they have even started.

It is obviously difficult to find examples where social innovation has not happened because of regulation, including the rules associated with public sector funding. However, our research has shed light on several aspects of rules and regulations that can discourage such innovation:

- There are rules about how to compare the value for money (VFM) of different proposals. They usually involve specifying a particular service model as the 'norm' and assuming that it will produce a certain outcome. Even though a more innovative model might produce a better outcome, it might be difficult to fit within the specified norm, especially where it is more expensive, as is likely at the trial stage before economies of scale can be realised.

- Some small housing associations feel stifled by too much regulation. Administration and regulatory processes take up too much time and people within these organisations become risk averse and less willing to try out new ideas²⁰.
- Expectations by government and local authorities that the VCS will work and behave in the same ways as a former state provider can cause organisations to lose their innovative sparkle.²¹
- “Too much senior time and leadership is devoted to compliance at the expense of service development. People who are good at checking and form filling (useful but not necessarily creative skills) assume relatively greater prominence in the organisation.”²²

While VCOs clearly maintain their ability to innovate, there is a risk that prescriptive or overly protective regulations lead to a loss of diversity and greater conformity in the way these organisations operate. There is a trade off between encouraging more ambitious and innovative services and making sure that services are more carefully monitored. If we accept Nick Aldridge’s view that “The only reason to use the [VCS] is because of its focus on users, its freedom to be innovative and the fact that it is driven by its mission,”²³ then there is a danger that over regulation could defeat one of the Government’s key objects in inviting the VCS to undertake much work previously conducted by the public sector.

5. Meeting Need

Nearly 450,000²⁴ of those working in the VCS provide social care. Their organisations differ from public and private sector providers by depending more on volunteers and being motivated by gaps in provision rather than by professional requirements or profit. Their ability to provide flexible, need based services makes them valuable providers of social care. However, these advantages can be threatened by regulations forcing them to adopt standard models of delivery. The Task Force is particularly concerned with how VCOs cope with regulation while still providing high quality services.

Some work by VCOs is done under contract to public bodies. Some is supported by private fundraising or under contract between the service user and the VCO provider. There is no single model but how VCOs are regulated can determine whether they add value by providing new ways of meeting need rather than mimicking standard public sector service provision.

We have uncovered several examples of damage as a result of poor regulation:

- “Some voluntary organisations have incurred extra expense because regulators (particularly new regulators) change their mind about, for example qualification and training requirements.”²⁵
- Inspectors require each care home (however small) to have its own statement of purpose. This is an expensive tick box exercise that encourages care home providers to run organisations which are “process perfect, outcome deficient.”²⁶

²⁰ Barry Smith – Housing Consultant, talking about Dartford and Gravesend Women’s Aid

²¹ Birmingham voluntary organisations in conversation with the BRTF

²² Survey respondent

²³ Aldridge, Nick – *Communities in Control: The new third sector agenda for public service reform*

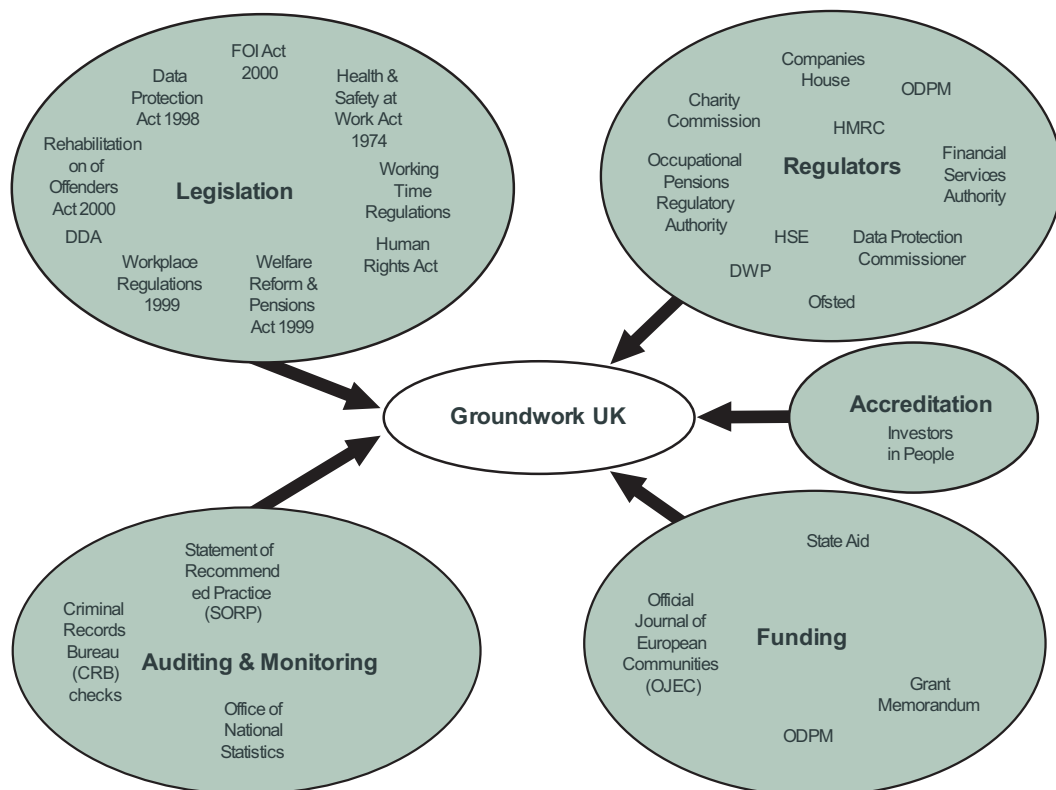
²⁴ Office of National Statistics and *Bridging the Gap – Participation in Social Care Inspection – September 2004*

²⁵ Bolton, Margaret – *The Impact of Regulation on Voluntary Organisations*

²⁶ Sayer, Su United Response

- Many groups lack the resources to alter their buildings in line with Disability Discrimination Act (DDA) regulations on access. Projects become more expensive as adaptations are made to ensure access for all.²⁷
- Monitoring requirements overwhelmed the capacity of a small Citizen’s Advice Bureau (CAB). The CAB in Rugby has been forced to cut its opening days from five to four to create enough time to cope with the burden of regulation imposed by the Legal Services Commission.²⁸
- A training course was closed down because, in order for the voluntary organisation to get funding, those who attended had to be registered unemployed. Although all the women who attended were unemployed, many were not registered as unemployed.²⁹
- “In effect, half of the trustee and governing body is removed from school governance to regulatory compliance.”³⁰

Case Study 4 - Groundwork UK



These examples suggest that regulations are interfering with how VCOs attempt to meet community needs. While it is legitimate and necessary for regulations to disrupt poor quality activity, our work has convinced us that the regulations in question are not sufficiently well targeted.

²⁷ Birmingham voluntary organisations and Stephen Dolphin, Groundwork UK

²⁸ Wharton, Nicholas and Clevely, Neil - NACVS

²⁹ Birmingham Womens' Advice and Information Centre

³⁰ Duffy, Anne – Head Teacher, Hamilton Lodge School for deaf children

6. Summary

Our recommendations are designed to help reduce burdens on volunteers, encourage social innovation and enhance the VCS's ability to meet needs, particularly the needs of the most disadvantaged in society. We present our recommendations under three headings:

- a. *Reforming VCS specific regulation* – Chapter 2 examines regulation overseen by HM Revenue and Customs, the Charity Commission and the Community Interest Companies Regulator. These regulations are likely to affect only the VCS.
- b. *Reforming general regulation* – Chapter 3 examines regulation that private and public sectors as well as the VCS. This is regulation that depends on the activity being undertaken rather than the type of organisation undertaking it. We have focused on regulatory areas where the VCS is disproportionately affected, though several of our recommendations will benefit other sectors as well. All aim for a more level playing field.
- c. *Reforming funding* – Chapter 4 suggests ways to make Government funding of the VCS less bureaucratic, challenging the quasi regulation associated with bidding and accounting for public funds.

II Reforming VCS Specific Regulation

7. The Role of HM Revenue & Customs, the Charity Commission & the Community Interest Company Regulator

Charities make up the bulk of the VCS and are regulated mainly by two bodies, the Charity Commission³¹ and HM Revenue and Customs. All but the smallest charities are required to register with the Charity Commission and many have to submit a tax return to account for their activities. In addition, those charities that are incorporated as limited companies also have to provide accounts to Companies House. Fortunately, the Charities Bill is expected to allow charities to become Charitable Incorporated Organisations, eliminating the need for dual registration with and reporting to Companies House and the Charity Commission.

The Charity Commission regulates charities to:-

- “ensure that they meet the legal requirements for being a charity and are equipped to operate properly and within the law;
- to check that they are run for public benefit and not for private advantage;
- to ensure that they are independent and that their trustees take their decisions free of control or undue influence from outside; and
- to detect and remedy serious mismanagement or deliberate abuse by or within them.”³²

It also acts as a source of advice to charities on what they may do and if it suspects wrong-doing, it has powers to investigate and prosecute.

We know that “one-size-fits-all” regulation is problematic because large and small charities have different capacities to handle regulation. The Charity Commission acknowledges this when it states that it will have, “greater expectations of larger charities due to their size and impact.”³³

The Charity Commission’s own survey of the sector acknowledges that, “Some believe the Commission has been dominated by legal views of what is acceptable at the expense of a flexible approach towards genuine behaviour.”³⁴ The Charity Commission is undertaking a programme of reform to become less legalistic, but we have heard criticism that some letters they send out require lawyers to separate those parts that are legally binding from those that are best practice advice.

It is important that the Charity Commission avoid the risk of regulatory creep that occurs when advice is not clearly separated from legally binding obligations.³⁵ They have made an important move towards greater clarity with the publication of their new guide for trustees³⁶, which separates legally binding obligations on trustees from guidance on how they should fulfil their role. We would like the Commission

³¹ The Charity Commission only operates in England and Wales. Scotland and Northern Ireland have separate systems which are not covered in this report.

³² *The Charity Commission and Regulation*

³³ *Charity Working at the Heart of Society – the Way Forward 2005-8*

³⁴ *The Charity Commission: Regulating for the Future*

³⁵ See our report *Avoiding Regulatory Creep* (Nov 2004) for further analysis of the dangers of mixing best practice advice with legally binding instructions.

³⁶ *The Essential Trustee – What you need to know*

to take this approach in all its correspondence with charities to help reduce the administrative burden on them of understanding what the regulations require.

Recommendation 1

The Task Force recommends that the Charity Commission, when giving written advice to charities, provides greater clarity as to which parts of its advice are legally binding and which parts are best practice suggestions. Its good work in some areas should be extended to all advice.

The Charity Commission has already done a lot of work to consider what regulations could be removed to reduce burdens on trustees. In Annex D we list the reforms it has proposed to the Home Office. We are encouraged by this initiative and trust that the Home Office will ensure that Parliamentary instruments are found to implement these reforms at the earliest opportunity, possibly as part of the Deregulation Bill expected in the next session of this Parliament.

8. Summary Information Return

The Prime Minister’s Strategy Unit’s report *Private Action, Public Benefit*³⁷ recommended that information about charities should be more readily available to the public. In response, the Charity Commission developed a Summary Information Return (SIR), which is being introduced this year as part of the annual return charities are required to complete. In parallel, the requirements for the separate Annual Report and Accounts that charities need to submit are being reformed through the introduction of Statement of Recommended Practice (SORP) 2005. The table below³⁸ shows the similarities between the information required by the two reports.

Trustees Annual Report and Accounts	Summary Information Return
<p>Purpose To explain the areas that the accounts do not explain. Focuses on internal and external influences and outcomes. It is the equivalent of a directors’ report in a set of company accounts. That said, a trustees’ report is often far more comprehensive than a directors’ report.</p>	<p>Purpose The SIR is designed to enable charities to provide an easily accessible summary of key aims, activities and achievements that can direct readers to the more detailed information contained in their trustees’ annual report and accounts, their annual reviews, their websites and other published information. It focuses on external outcomes and activities only.</p>
<p>Areas Covered</p> <ul style="list-style-type: none"> • Reference and administrative details of the charity, its trustees and advisers • Structure, governance and management • Objectives and activities • Achievements and performance • Financial review • Plans for future periods • Funds held as custodian trustee on behalf of others 	<p>Areas Covered</p> <ul style="list-style-type: none"> • Aims • Beneficiaries • Strategy • Charitable activities • Income and expenditure • Financial health • Future plans • Governance

³⁷ *Private Action – Public Benefit – A Review of Charities and the Wider Not-For-Profit Sector*

³⁸ Prepared for the BRTF by Carol Sellwood of Baker Tilly

In addition to these two official reports, in March 2003 a charity called Guidestar was established (partly funded by HM Treasury) to, “Promote and support the work of all UK charities by creating a comprehensive and easily accessible source of information about their activities and finances, made available free to the public through a website.”³⁹ Much of Guidestar’s information is captured directly from documents filed by charities with the Charity Commission but charities can contribute additional information on a voluntary basis.

As a result, some charities will now have to provide the Trustees’ Report and the SIR (which forms one part of an annual return to the Charity Commission) and, in addition, may feel they need to contribute to Guidestar. Advisors to charities have told us that the burden has risen out of all proportion to the public benefit of providing more information. We believe that there is a strong case for amalgamating these reports to help reduce the reporting burden for registered charities. Obviously any additional requirements placed in the Annual Report and Accounts should not apply to the charities with an income below £1 million which are exempted from filling in the Summary Information Return.

Recommendation 2

The Task Force recommends that, by the end of 2007, the Charity Commission review the Summary Information Return (SIR) and the Annual Report and Accounts with a view to integrating them so that charities only provide one set of information once a year. Following this integration, it should consider abolishing the other parts of the Annual Return. The Charity Commission should also work with other information providers (such as Guidestar) to remove duplicate requests for information and improve information sharing.

Another potentially relevant regulator, established in July 2005, is the Community Interest Companies (CIC) Regulator. It regulates Community Interest Companies, a new legal form established under the Companies (Audit, Investigations and Community Enterprise) Act 2004 to offer social enterprise an additional corporate vehicle designed specifically for them. Unlike a charity, CICs do not enjoy tax privileges and, in addition to the Companies’ House returns that all companies must complete, CICs will have to prepare a report annually for the regulator.

The CIC Regulator and Charity Commission are currently negotiating to agree that charities which set up CICs or which choose to become CICs will not have to submit two sets of reports. We trust that the CIC Regulator (John Hanlon) will be successful in this bureaucracy-reducing proposal. He is also conscious of our guidance that it is not good practice to set up new regulators where existing bodies might be used. He has told us that he intends to recommend that the Department of Trade and Industry conducts a review of his organisation in two years time with a view to incorporating it into another regulator (such as Companies House) if the volume of, or activities of, CICs are not sufficient to warrant retaining an independent body. Again, this is a potentially important bureaucracy reducing measure that we support.

We would like the Charity Commission to ensure that the introduction of the Charitable Incorporated Organisation (CIO) will lead to a reduction, rather than an increase, in burdens. We appreciate that it is designed to prevent the need for dual registration with Companies House and the Charity Commission but concerns have been expressed to us that adopting this status will be more onerous than continuing to register with Companies House. Neither a new charity wanting to set up as a corporate body, nor an

³⁹ www.guidestar.org.uk/

existing charity already established as a corporate body will be required to convert to a CIO form. It will be left to the market to decide which type of registration is most advantageous / least burdensome but it would be a missed opportunity if the CIO was not adopted because it failed to reduce charities' burdens.

9. Regulation of Endowed Charitable Trusts

Endowed charities make grants to other charities to carry out activities. Endowed charitable trusts are often established by wealthy individuals or families to manage their charitable giving. While the same tax advantages can be obtained from giving money through Gift Aid, endowed trusts facilitate longer-term investment, often in innovative or less well-known charities. For social entrepreneurs wishing to try a new concept, such trusts may be the source of funding to kick start a project that would otherwise never see the light of day.

Having spoken to the Association of Charitable Foundations (ACF) and others running endowed trusts, we believe that the setting up of new trusts could be discouraged by inappropriate regulation. The study, *Why Rich People Give*⁴⁰ states that a fifth of those questioned were concerned about setting up a trust due to the way that regulations are currently structured. As one trustee put it, *"We fervently believe that our civil society would lose something of real value if this small but distinctive element of it is slowly strangled by over zealous and inflexible regulation."*

We suggest some reforms below.

Asset Diversification

Historically trustees have had considerable freedom concerning the investment of a trust's assets. However, concerns about diversification following decline in the asset value of some trusts that were not diversified led to the Trustee Act 2000, which requires trustees to consider the need for diversification.

This obligation may act as a deterrent to those considering transferring assets to a charity. Many of those establishing a trust will wish to endow it with shares in companies they control. They may well be discouraged from doing so if it appears that the Trustee Act 2000 requires the trustees of the charity to sell the shares as soon as they are gifted so as to diversify the charity's asset base. Selling a large block of shares could undermine control of a company, damage its share price or be a poor investment decision in the light of the growth prospects of the company. Section 4 of the Act requires a trustee to review the investments of the trust from time to time and consider, "the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust." This seems quite balanced but concerns have been expressed to us that trustees who fail to diversify assets may be called to account by the Charity Commission.

In one sense, the obligation to diversify may be useful in helping to protect the asset base of a particular charitable trust. But if the overall effect on the sector is to discourage new charitable giving, it may be a case of "the tree being protected at the expense of the wood."

⁴⁰ p. 163 *Why Rich People Give*

We recognise that charitable trusts can be misused for personal gain rather than charitable ends, but we do not believe that enforced diversification makes abuse materially more difficult for the ruthless operator. As counsel puts it, “I do not myself doubt that there are real possibilities of abuse; but the fact that the trustees will have to put forward accounts ought to make it clear either to the Charity Commission or to the Inland Revenue that all is not as it should be, and in an appropriate case, even without the new powers intended to be conferred by the Charities Bill, the Commission will have the necessary power to counter the abuse; for they could institute an inquiry and remove the trustees if they think it necessary so to do to protect the public benefit.”⁴¹ That said, the arrangements whereby a gift of shares to a charity leads to repayment of tax to the donor rather than the charity, do provide scope for abuse and HM Revenue & Customs (HMRC) advise that the requirements for an asset portfolio discourage some of the worst excesses and the casual avoider.

On balance, we believe that, with respect to charitable trusts, legislation may have been introduced according to the precautionary principle with inadequate risk assessment or consideration of the potential adverse consequences on the charitable sector, particularly on small, radical charities which often benefit most from charitable trust income. We think the Trustee Act 2000 may require amendment to make clear that trustees of endowed charities should not, within the lifetime of the settler, be obliged to diversify holdings gifted by the settler against the wishes of the settler.

Recommendation 3

The Task Force recommends that the Department for Constitutional Affairs work with the Home Office to consider reforming the Trustee Act 2000 to remove the obligation on endowed charitable trusts to diversify any gifted (as opposed to purchased) assets against the wishes of the settler while alive. If this requires primary legislation and no suitable legislative opportunity is on the horizon, it should consider including any necessary amendments in the Deregulation Bill expected in the next session of this Parliament.

We understand that HMRC have concerns about the current arrangements whereby a gift of shares to a charity leads to HMRC paying a cash tax rebate to those who have gifted them and we recognise that the proposed change might exacerbate this problem. If HMRC finds this a real problem we suggest that it considers whether the money paid to the donor should be paid to the charity instead to eliminate the possibility of the abuse of charitable gifts.

Trustee Appointments

Those who establish charitable trusts will often expect to continue to exercise a considerable degree of control over which good causes benefit from the trust. They may appoint their family and close advisors to be trustees. Not being able to do so would provide a strong reason not to set up a trust.

The Charity Commission is working to improve the induction of new trustees. While this initiative does not require any formal training and should not deter those wishing to establish trusts, misunderstandings may arise from the recommendation in *Private Action, Public Benefit*⁴² that annual reports should include a

⁴¹ Christopher McCall Q.C.

⁴² Recommendation 34 - *Private Action, Public Benefit*

statement of the procedures for recruitment, induction and training of new trustees. There is a lack of clarity as to what is required of endowed trusts now and what is likely to be required in the future.

We believe that those considering setting up charitable trusts would be encouraged if, in addition to reform of the Trustee Act, the Charity Commission worked with the sector to produce simple guidance explaining which regulations apply to endowed trusts, with respect to things such as trustee selection and training. We believe that the production of such a guide would also act as a catalyst for the Charity Commission to consider some other issues, including:

- the ease with which the objects of an endowed trust can be altered to ensure that it continues to focus on areas of need; and
- whether reporting requirements, currently based only on a charity's income, could be modified to reflect the lower risks and staffing levels of endowed trusts relative to other charities with similar incomes.

Area for Further Work 1

The Task Force recommends that the Charity Commission produces a guide targeted at those considering endowing trusts setting out what regulatory constraints will be put on them and what freedoms endowed trusts will enjoy.

10. Charitable Trading Arms

The Rationale For Charitable Trading Arms

Charities are established to achieve specific ends such as poverty alleviation or education provision. The objects of a charity define its primary purpose and are set out in its founding document. Sometimes trading will be necessary to achieve a charity's objects. For example a charity providing care to the elderly may accept payment for the provision of care. Likewise, a charitable school may charge its pupils fees. This is primary purpose trading and can be conducted by the charity itself, regardless of whether it is an incorporated company or a trust.

If a charity wants to undertake other activities that raise money to support its primary purpose, it may not be able to do so within the charity itself, but may be required to set up a separate company, known as a charitable trading arm. Whether this is it required or not is a complex area of case law, depending on:

- The risk associated with the trade. If there is a high probability that the trade loses money and endangers the assets of the charity then it cannot be conducted within the charity.
- The size of the trade – If this is under £50,000 or 25% of the charity's gross income (whichever is less), it can be conducted within a charity without a tax liability arising.
- Whether the trade is ancillary to the primary purpose of a charity. For example, a theatre that is a charity can sell drinks during the interval because this is ancillary to the primary purpose of the charity (public entertainment).

Running a charitable trading arm brings with it new regulatory burdens. The company will need directors, legal agreements between the company and charity to ensure staff and premises are provided on commercial terms and that capital is properly transferred between the two entities. It would reduce regulatory burdens on charities if there were fewer circumstances in which they had to set up separate trading arms.

Requirements Connected with Corporate Sponsorship

Many companies sponsor charities and a charity can accept corporate donations to support its primary purpose. Sponsoring companies often want some publicity for their charitable donations so that their customers know about their corporate social responsibility. However, such publicity is often regarded as the charity “providing advertising services” and this creates problems for the charity, as advertising services are not part of primary purpose trading and are likely to be liable for direct tax.

Primary purpose trading is exempt from income and corporation tax but there is no generally available exemption on the profits of a non-primary purpose trading. Trading arms may provide tax advantages, as they can Gift Aid all their profits to the charity and so avoid corporation and income tax on their profits. Thus charities can realise significantly greater revenue if they use a trading company rather than the parent charity to receive sponsorship from companies.

This has implications for charities that rely on non-primary purpose trading for a significant part of their income. They often feel that they have to establish a separate trading arm even for low-risk “trades” such as receiving corporate funds, which could be conducted by the charity itself were it not for the tax liabilities that would then arise.

Reforming charitable regulation so that charities could provide limited, low risk advertising services to corporate sponsors within the charity itself (rather than through a separate trading arm) without incurring direct tax would reduce the regulatory burden on charities. This reform would not threaten private businesses, as they do not compete with charities for corporate sponsorship. By limited advertising, we mean advertising whose cost, were it to be purchased commercially, would be a small fraction of the amount donated to the charity. The reform could be similar to the specific exemption granted to charitable lotteries under Section 138 of the Finance Act 1995, which meant they could be run within charities without direct tax arising.

Recommendation 4

The Task Force recommends that HM Treasury and the Home Office should work with HM Revenue & Customs and the Charity Commission to reform or clarify the regulations surrounding charitable trading so that charities need not set up separate trading arms to receive corporate contributions where limited advertising is provided in return for a donation.

This reform is desirable, irrespective of any reforms to the VAT payable by charities.

A charity's need for a trading arm is dictated by a combination of case law and tax considerations. HM Revenue and Customs and the Charity Commission have been working together to develop new guidance to increase clarity as to what is possible and necessary as the law currently stands.

Area for Further Work 2

The Task Force recommends that HM Treasury and the Home Office review the work that the Charity Commission and HM Revenue and Customs are doing to produce clear guidance on when a charitable trading arm is required. If the underlying case law is so complex that any guidance would be difficult to follow, they should consider using primary legislation to simplify it. The extent to which trading arms are required purely for tax reasons should be minimised.

11. VAT and Charities

Charities do not face a level playing field with respect to VAT and regulatory reform is needed. Some social and caring services currently provided directly by local authorities are being outsourced to the private and voluntary sectors. When private companies and VCOs provide these services at no charge, they cannot reclaim the VAT they pay on the goods and services they buy to provide the services. This might not matter, were it not for the fact that Local Authorities, under Section 33 of the VAT Act 1994, can obtain a full refund of their VAT incurred for non-business purposes such as providing social care. This creates a problem for the private and voluntary organisations tendering for Local Authority services. They have to tender at considerably cheaper rates than the local authorities' in-house services simply to cover their VAT costs. This is a complex issue where we are not making a specific recommendation. We hope that HM Treasury and HM Revenue and Customs will continue to work with interested parties to review how the current unsatisfactory situation can be improved.

Many businesses outsource non core services such as Information Technology (IT) or facilities management and are able to reclaim the VAT which those providing the services charge. Charities, under the EU's Sixth VAT Directive, are treated as the final consumers which means that they cannot reclaim VAT. To quote a director of The Children's Society,

“If we follow a common and well tried route of outsourcing support services, the cost of those services immediately increases by 17.5%. To be effective an outsourcing operation has to deliver a guaranteed 20% efficiency saving to make the transaction viable.”⁴²

Given this VAT issue, two large charities, the NSPCC and the Children's Society have created CharTyshare, a joint venture company, owned by the two charities and acting as an agent for both, to deliver their IT services. The underlying concept is that, as a joint venture company, CharTyshare should not have to charge its owners VAT when providing a service to them. CharTyshare would like to invite other charities to become joint owners to enhance efficiency across the sector but we understand that it is constrained by the lack of guidance from HM Revenue & Customs as to whether its structure is an appropriate way of managing VAT liabilities.

⁴² Nall, Charles – The Children's Society

Recommendation 5

The Task Force recommends that HM Revenue & Customs provides guidance on what structures might assist charities to manage VAT liabilities which would otherwise arise as a result of outsourcing non core activities.

If HM Revenue & Customs says that CharTyshare is not a suitable structure, then other charities will not waste resources constructing similar models. Conversely, if HMRC accepts this model, it will offer a way forward to other charities seeking to manage VAT liabilities and improve efficiency.

12. Reforming Charity Law

We want the Charities Bill, currently before Parliament, to reduce the regulatory burdens on charities.

Changes to definitions mean that new types of organisation will have to register with the Charity Commission. About 12,000 charities that are currently excepted or exempted, including some churches and universities, will now be required to register and this will increase their regulatory burden. The Charity Commission will need to ensure that those who register for the first time can do so easily and swiftly. We hope that Parliament will give the Commission scope to apply the new law proportionately so that charities, particularly the smaller ones, have time to adapt to the new requirements.

One way to reduce the burden on smaller charities would be to raise the income threshold for compulsory registration from £1,000 to £5,000, though we appreciate that some smaller charities may wish to retain their registration.

It is unclear in what form the new requirements (which may require charities to prove that they provide public benefit) will leave Parliament. To the extent that Parliament grants the Charity Commission discretion, we trust that the Commission will implement any new requirements with a light touch, so that charities can meet their obligation to provide public benefit without having to provide onerous administrative proofs that they are doing so.

We are aware that the European Commission is consulting on a possible Code of Conduct for non-profit organisations with particular emphasis on transparency and accounting best practice. Given the existing level of financial regulation and reporting obligations on the VCS, and the difficulty of reflecting the diversity of non-profit sectors across Member States, the Task Force trusts that any new EU Code will take into account, and avoid overlap with, existing regulation and avoid imposing, either structurally or through broad definition of risk factors, new obligations.

III Reforming General Regulation

Broader regulations which can affect public and private sector organisations as well as the VCS may have a disproportionate affect on the VCS. In this section of the report we discuss some of those regulations, making recommendations for reform which would assist the VCS and as well as private and public organisations involved in providing similar services. Where we make recommendations relating specifically to the VCS (Recommendation 6, Areas for Further Work 3 and 5), it is because we believe it is not at the same level as other sectors at present. In other instances our recommendations (Recommendations 7, 8, 9 and 10, Area for Further Work 4) should prove of equal value to private sector organisations. At no point do we seek to improve the regulation of the VCS while leaving the private sector with inferior regulation.

13. Housing Associations

Housing Associations have changed immensely over recent years and are diverse. In the 1960s and 1970s there were a few housing trusts which received soft loans from local authorities. The sector has grown significantly, particularly during the last 10 years due to the registration of new associations and the voluntary transfer of stock previously owned by local authorities. Now the sector consists of some very large, national associations at one end of the scale and a very large number of small organisations at the other.

Most provide rented housing for families and single people whilst others cater for groups with particular needs. Many smaller niche organisations are set up as a result of a specific community-level need. Several associations provide training and support services alongside “traditional” housing provision.

Regulation of Housing

The Housing Corporation is a Non Departmental Public Body sponsored by the Office of the Deputy Prime Minister (ODPM). Its role is funding and regulating housing associations in England.⁴³

The Corporation is the main regulator for housing associations. The Housing Corporation originally carried out its own inspections, but the Audit Commission has taken over this function for those associations registered with the Corporation.

The Housing Corporation received mixed reviews from the people we met. Whilst the Corporation is generally perceived as moving in the right direction, there is still work to be done. As Barry Smith - a housing consultant - said, “The Housing Corporation is moving towards a more risk-based approach to regulation yet it is still too focussed on processes and not best practice”.

One of the complaints we heard time and time again was that the Corporation adopts a “one-size-fits-all” approach in relation to the regulation of housing associations. This model does not fit well with niche providers e.g. women’s refuges, such as Women’s Aid⁴⁴, or housing projects offering packages of housing, support, care and training or employment opportunities, such as Look Ahead Housing and Care.

We were also told that the Housing Corporation requires a lot of information from Registered Social Landlords (RSLs). Whilst some paperwork is necessary for accountability and probity in the sector, some of the people we spoke to said that at times it is difficult to understand the purpose and benefit of the information collected.

⁴³ Other arrangements exist for Scotland, Ireland and Wales

⁴⁴ www.womensaid.org.uk

Schedule 1

Schedule 1 of the Housing Act applies specifically to Industrial and Provident Societies and is enforced by the Housing Corporation. Broadly speaking, paragraph 2, Part 1 of Schedule 1 (herein referred to as Schedule 1) says that associations cannot grant any non-contractual payments or benefits to staff, board members or their families.

Although the people we met understand the principle, the need to maintain high standards of probity in the sector, the application of Schedule 1 has become a bureaucratic exercise; not least because the Housing Corporation can issue determinations allowing exceptions to the rules. Housing associations based in rural areas find the application of Schedule 1 particularly burdensome⁴⁵ because it can make it legally impossible for a trustee to hire a local plumber or electrician to work on his or her own house.

Currently there are ten general exemptions. In addition, special determinations are often granted after a situation is considered on its own merit, following a good business case for a particular action not allowed by Schedule 1. Determining when a special determination should apply is a bureaucratic process for both housing associations and the Housing Corporation. Training staff in housing associations in the application of these exemptions can also be costly and burdensome and the Corporation has to issue several special determinations on a weekly basis. The need for so many exemptions indicates that Schedule 1 is no longer appropriate for modern housing associations.

Additionally, private developers that bid for funding from the Housing Corporation in the future are likely to operate with the Housing Corporation entirely through up-front contracts. This means that, unlike housing association bidders, they would not be legally bound by Schedule 1. Whilst we understand the need for a range of providers of social housing and would not recommend placing additional burdens on private developers that do not already exist, we feel that Schedule 1 could disadvantage those VCS providers of social housing who do have to comply with this legislation. We believe that a high quality code of practice for housing associations, in place of Schedule 1 would create a more level playing field whilst maintaining high standards. We hope this will encourage innovation and competition in the housing sector, leading to better outcomes for residents.

Recommendation 6

The Task Force recommends that the Office of the Deputy Prime Minister (ODPM) abolishes paragraph 2, Part 1 of Schedule 1 of the Housing Act 1996 and replace it with a code of practice. ODPM should consider using the Deregulation Bill expected in the next session of this Parliament or a Regulatory Reform Order (RRO) as a vehicle for delivering this reform if no other suitable legislative opportunity is on the horizon.

The Task Force appreciates that Schedule 1 of the Housing Act is not the only regulatory issue affecting providers of social housing but it is a regulation which is overdue for reform. We hope that ODPM will continue to work with the Housing Corporation to examine other aspects of social housing regulation to find other regulations on housing associations which could usefully be removed.

⁴⁵ National Housing Federation

We recognise that the Housing Corporation has already undertaken some good work, in line with the better regulation agenda and the messages in our *Regulation – Less is More* report. It has started a process to look at quantifying the costs and benefits of its regulation and has already removed two regulatory requirements as a result of this. It has also initiated an independently chaired review of compliance burdens with the objective of identifying a broader package of deregulatory measures early in 2006. We are encouraged by this and look forward to the positive results for the sector.

14. Criminal Records Bureau Checks

The Criminal Records Bureau (CRB) was set up to provide employers with a means of checking that those working with vulnerable people were not criminals intent on abusing their charges. Many VCOs providing social and caring services make frequent use of the CRB to provide assurance about those they are considering employing or using as volunteers.

Sometimes checks are mandatory, sometimes discretionary. The circumstances when checks must be made are set out in three different Acts: the Protection of Children Act 1999; the Care Standards Act 2000 and the Criminal Justice and Court Services Act 2000.

Two types of check are available from the CRB:-

1. Standard – Where the CRB checks against the police national computer, the Protection of Children Act (PoCA) list, the Protection of Vulnerable Adults (PoVA) list and List 99 (run by the Department for Education and Skills).
2. Enhanced – Where the CRB refers to the local police force(s) in the area(s) that an individual has lived in for the past five years to obtain information relevant to the post applied for.

Around 80% of requests are for enhanced disclosures. These are normally used for individuals who will be working with children and vulnerable adults. Checks generally take 28 days. The CRB currently achieve this target 89% of the time.

Checks on volunteers are provided free of charge while charges are levied for checks on employees.

Numerous VCOs have complained to us about the bureaucracy surrounding these checks, nevertheless, most do not doubt their value. According to a recent MORI survey conducted for the CRB, 20,000 people across all sectors have been refused employment as a result of CRB checks. Most do not question the need to conduct some checks but questions are raised about the procedures around checks and the proportionality of who needs to be checked. Objections included:-

- a lack of passporting of checks – each time an individual changes jobs he or she needs to be checked again;
- a lack of proportionality – the Chief Executive of one charity told us that one of her volunteers had been unable to take a mentally ill adult to a football match because he was going with his wife who had not been CRB checked. (This is probably a case of one official misinterpreting the rules but, if widespread, it would be a worrying indication of regulatory creep);

- small VCOs, unregistered with the CRB, finding it difficult to persuade a registered body to run checks for them;
- a lack of notice of fee increases for checks on employees, making it harder for VCOs to budget; and
- the CRB complaining that many VCOs were checking people unnecessarily.

Recommendation 19 of the Bichard Inquiry asked the CRB to put a new barring/vetting scheme into operation. Under the plans the CRB has outlined to us, an enhanced disclosure would be undertaken in the first instance, but this would not need to be repeated when an individual changed jobs. Instead the individual would be given some sort of unique identification number (which would be used alongside some other means of identification) which could be referred to by other organisations, possibly via a web portal. This would help verify a person's identification and suitability for work, and prevent several checks from having to take place on the same person. The system would offer de facto passporting⁴⁶ which would reduce the burden of multiple checks. We trust that this will lessen the regulatory effort associated with CRB checks. The Bichard reforms will take some time to bed in but we think there is potential to take action to alleviate the other burdens associated with the CRB.

Recommendation 7

The Task Force recommends that the Home Office work with DfES, the Department of Health, the CRB and Bichard Implementation Group to ensure that the principles of Good Regulation are fully reflected in a simplified and co-ordinated system of checks on suitability and that the system integrates well with the CRB and other mechanisms. Specifically they should:

- Produce a guide setting out when checks should be considered for different sorts of workers and whether these are mandatory.**
- Review the proportionality of the CRB checking process by the end of 2007. In the light of experience, review which categories of individual are least likely to pose a risk to the vulnerable and seek to modify the law to make a risk based approach to CRB checks possible.**
- Ensure that fee changes take place once a year, and are advertised at least six months in advance, to allow VCS and other organisations sufficient time to include the impact of changes within their budgets for the next financial year.**
- Establish a system which would allow small VCOs to request checks easily.**
- Issue guidance to employers on what previous criminal convictions should debar an individual from being allowed to work with vulnerable adults or children, what convictions should not debar an individual and what convictions necessitate judgement on the part of the employer.**

⁴⁶ Of offences and suspected offences against vulnerable adults and children, not necessarily of dishonesty or other forms of criminality.

The first part of the recommendation should give VCOs and businesses working with the vulnerable a simple guide as to when they need to check and on whom to check. We understand there is no one guide covering all three acts which mandate checks at the moment. This should, to the extent permitted under the current legislation, stress the need for risk assessment prior to deciding to apply for a check. It would make VCOs more comfortable about their obligations to check and hopefully reduce the number of unnecessary checks made which would in turn reduce pressure on the CRB budget.

We appreciate that aspects of the CRB have been reviewed by the National Audit Office (NAO) but understand that there has never been a review of whether all the mandatory checks required under the three Acts of Parliament are proportionate to the risks involved. A full time employee in sole charge of vulnerable adults or children obviously needs to be checked but we question whether it is proportionate to check a sixteen year old doing two weeks work experience in a nursing home on the grounds that he or she might occasionally be alone with old people.

The third part of our recommendation is simply a matter of management practice. Advanced notice of future regulatory burdens (which include fees for mandatory services) helps organisations cope and VCOs have told us that the notice of fee increases the CRB has historically provided has been insufficient.

Some smaller VCOs have told us that they find it difficult to find an organisation registered with the CRB to run checks for them. The fourth part of the recommendation is a request that processes be put in place to help them.

The final part of the recommendation will help those wanting to use reformed offenders who are sometimes well positioned to do something positive in society such as warning young people of the problems of crime.

15. Representation

Case Study 5 – Women Acting in Today’s Society

Women Acting In Today’s Society (WAITS) is a women’s educational trust which supports women from a wide range of educational, social and cultural backgrounds to address issues such as welfare benefits, social education, domestic violence, isolation, health and crime; by providing skills such as confidence building, assertiveness, community profiling and public speaking. Often WAITS works with women from deprived areas and most project staff and volunteers have personal experience of the issues facing women suffering from domestic violence. Many became involved with WAITS as service users or volunteers, all have personal experience of living or working with black and minority ethnic groups.

One member of WAITS staff was working with a client who was suffering from domestic violence. The situation became complex as the client's child became implicated in the violence and social services requested a child case conference⁴⁷.

The WAITS worker wanted to represent her client at the case conference, as she had built up a strong relationship with the woman over time and understood her complex situation. However the local authority specified that only the parent or a social services worker was allowed to act as a representative at the case conference. The social services worker would have had no prior understanding of the woman's difficult situation and may not have been able to serve the client as effectively or sensitively as the WAITS worker.

Voluntary sector workers should be able to represent their clients where the client requests it. Neither regulation nor over interpretation of regulation should lead to decreased levels of support for vulnerable people.

As VCOs are increasingly involved in the provision of services previously provided by the state, such as providing help to those suffering from domestic violence or drug addiction, questions surrounding the representation of the individuals they are working with arise.

Cases of domestic violence and drug abuse often involve courts where an individual may be a key witness or the accused. Where employees of the charity are those who have most contact with the individual and know their circumstances it may well make sense for them to play a role in a hearing. We have heard of instances where this has not been possible.

⁴⁷ A child protection case conference is a confidential meeting between parents, social services child protection workers and other professionals to discuss the welfare of a child. Child protection case conferences are held after an enquiry has shown that a child is at risk of abuse or neglect.

Case Study 6 – The Advance Advocacy Project

This charity provides 24 hour crisis response, support and advice to domestic violence victims. Advance works with social services and the police to provide a woman with more options, including legal sanctions to move the man out. Advance works on behalf of women to deal with all of their practical needs, with a particular emphasis on legal advice (both civil and criminal), benefits advice, health and housing. This is advantageous for the women because, instead of having to deal with a multiplicity of agencies, (where she may encounter varying degrees of service), she has one point of contact at Advance.

At present in magistrates courts, when dealing with criminal domestic violence cases, Advance has a protocol which allows its advocates to attend courts to work with the Crown Prosecution Service bringing a prosecution. This system has worked well and has reduced the rate of repeat offences. Advance's role is particularly important at the frequent bail hearings before the main case is heard. An Advance advocate who knows the woman will be in court with up-to-date information about the woman who has suffered from abuse to ensure that adequate bail conditions are imposed and that spurious excuses are not used for changing bail conditions. Immediately after the end of a hearing the Advance advocate contacts the woman concerned and lets her know the state of the case so she can make a balanced decision about where she lives until the case is heard. This has made a real difference, especially as eight of Advance's clients have died over the last seven years.

Advance reports that civil family courts are not as good criminal courts in allowing Advance to help the woman concerned. Advance has to obtain permission from the judge to support a woman who has suffered from abuse. This is not always granted. This can often mean the woman with no legal aid is left by herself in court, not aware of protection orders that the court is able to make on her behalf. By contrast, the New York family courts allow the woman to appear with a non legal representative by default and we understand that this works well there.

We believe it would make sense to modify the law (if this is necessary) to give the VCS and others the ability to represent some of their clients in cases when they have far more involvement with them than any public sector worker or where other representation is unavailable. Removing the regulatory practices which prevent this would allow VCS and other organisations to provide a more complete service, save the public sector money and most importantly, help the individual to obtain a better outcome because he or she would be represented by those who knew them best.

Recommendation 8

The Task Force recommends that the Department for Constitutional Affairs review whether the regulations covering the representation of individuals in court need to be modified so that VCS and other organisations may represent individuals when they are best placed to do so.

16. Employment Law

VCOs have sometimes experienced difficulties with employment law and volunteers because, when using volunteers on a regular basis, a de facto employment contract has arisen with rights and obligations that the VCS organisation was ill equipped to cope with. Such a relationship can arise for a number of reasons such as:-

- Payment to volunteers over and above the reimbursement of receipted expenses; or
- Clear obligations on the part of the volunteer such as minimum time commitments.

Employment law is a complex area and guidance is useful. Volunteering England⁴⁸ produced a helpful guide - Volunteering and the Law - earlier this year but it is not widely known in the sector.

Area for Further Work 3

The Task Force recommends that the Home Office work with Volunteering England to make its employment law guidance to charities more widely available or work with other departments to produce guidance in this area.

17. Inspection, Risk and Waivers

Few organisations enjoy being inspected but some types of inspection are better than others. In this section we examine ways in which inspection and enforcement of regulations can be improved for those in the VCS.

Philip Hampton's study of inspection earlier this year made recommendations for merging independent inspectorates which were accepted.⁴⁹ A similar process is underway with regard to social sector inspectorates. We trust that this streamlined structure will lead to a reduction in multiple inspections of VCOs and we hope that those inspecting the VCS will draw lessons from Hampton's recommendations on reducing the burdens of multiple inspections on business, particularly Recommendation 33⁵⁰ which states that there should be, "a programme of work to:

- improve the co-ordination of local and national regulatory services;
- secure agreement on common services, or central communication strategies, to be provided centrally or regionally; and
- agree risk assessment arrangements, and monitor the extent to which local authority regulators apply them."

⁴⁸ www.volunteering.org.uk

⁴⁹ P. 125 *Reducing Administrative Burdens: Effective Inspection and Enforcement*

⁵⁰ p. 120 *Ibid*

VCOs object to some types of inspection:

“It feels as if we are always being checked to see if we are breaking the rules. The emphasis should rather be on support and development for providers of day care to children.⁵¹” Conversely other types of inspection were admired with the Audit Commission’s approach being singled out for praise by the Gateway Project.

Case Study 7 – Inspecting the Gateway Project

The Gateway Project is a Foyer organisation. Foyers provide accommodation along with providing opportunities for young people. By integrating training and job search, personal support, and motivation with a place to live, they provide a bridge to independence and a chance for young people to realise their full potential. The Gateway Project provides social housing to a range of primarily single people such as homeless people, women who suffer from domestic violence, pregnant teenage girls and young offenders.

The Audit Commission is viewed by some in the VCS as a tough but fair inspector. The Gateway Project thought that the Audit Commission’s model for inspection illustrated good practice for the following reasons:

- It used specialised inspectors that asked board members and service users about the service provided.
- It held focus groups with service users.
- It used a mature approach to responses, adopting the “three strikes and you’re out” rule (i.e. if one service user made an adverse comment, this did not necessarily affect the result of the inspection. However if three different service users made the same complaint, then this would affect the organisation’s score).
- It provided regular feedback and stuck to the timescales that they had set out.
- It worked on a “no surprise” rule – ensuring that the Gateway Project was prepared for how the inspection would be carried out.
- It researched the organisation before inspecting it, which resulted in a better understanding of their day-to-day business and the client group.

One major proposal of the Hampton report was that regulators should adopt a risk based approach to inspection. This was accepted by the Chancellor of the Exchequer in Budget 2005. The advantage of risk based regulation is that, properly applied, it can direct effort towards organisations where there is most likely to be a risk while leaving the better organisations less burdened.

Of the regulators we have met during the course of this study, we believe that the part of Ofsted which deals with the regulation of pre school childcare has come closest to a model of risk based regulation which would merit evaluation by other regulators dealing with vulnerable people. Ofsted has a risk matrix

⁵¹ From *The Impact of Regulation on Voluntary Organisations* – Margaret Bolton

which determines how often bodies providing childcare should be inspected based on the results of the last inspection, with factors such as a new manager, complaints, staff turnover within 12 months or a childminder moving house signalling a need for increased vigilance. In order to implement this successfully they have worked with the Department for Education and Skills to remove prescriptive regulations which previously specified frequent inspections of every premise. It can now leave a high quality childcare provider for up to three years without inspection. This system enables Ofsted to free up inspectors who would have been inspecting high quality nurseries to pay attention to those where care may be failing.

The Housing Corporation has been progressively introducing a more risk-based approach to its regulation of the housing association sector, based on the use of a risk matrix similar to that used by Ofsted. The Corporation introduced this approach in March 2005, however the views of a number of associations indicated that they had not yet felt the intended benefits.

Other regulators we have spoken to do not appear to have made the same advances towards risk based inspection. The Commission for Social Care Inspection (CSCI) would like to implement risk based inspection, but cannot because the law currently requires them to inspect care homes twice a year. We are pleased to hear that the Department of Health is currently consulting on proposals to change the requirements.

Recommendation 9

The Task Force recommends that the Department of Health and the Office of the Deputy Prime Minister work with the Commission for Social Care Inspection, the Healthcare Commission, the Housing Corporation and other public service regulators on further developing their risk-based approach to regulation. As some of these bodies are reconfigured, we recommend that a risk-based approach be confirmed in legislation.

Waivers

As well as complaining about the quantity and appropriateness of inspections many VCOs are concerned about what regulators look for when they inspect:

- “Often regulators are not sympathetic when providers say we can’t do it your way but we can tackle the same issue in another way’ – supported housing provider.⁵²”
- “Regulators don’t know how to make a real difference in the lives of service users but they do know how to measure the size of a room.⁵³”
- A lot of charitable work is conducted in very specific niches. Charities are often affected by the regulator applying an inappropriate, “One size fits all” approach.⁵⁴

⁵² *The Impact of Regulation on Voluntary Organisations* – Margaret Bolton

⁵³ Nick Aldridge - ACEVO

⁵⁴ Nicholas Wharton, NACVS

- “We are an unusual organisation meeting the needs of [one part of the population] who do not fit a normal pattern so compliance with and inspection against generalised standards has been somewhat frustrating.⁵⁵”

Many of these problems with inspections and the enforcement of regulations arise because, as David Robinson of Community Links points out, there has been a loss of discretion or ability to exercise judgement due to the way regulation is structured. The regulators give the impression that they themselves are risk adverse and are seeking to avoid any problems for themselves. This is putting pressure on the voluntary sector to be *merely outsourced service providers rather than value adders*. We have heard a strong case for allowing regulators and their inspectors to make intelligent judgements but are conscious that this cannot be done at the expense of rolling back protections which Parliament has deemed necessary.

We think there is a solution, which would offer flexibility to those wishing to provide services differently in the private, public and voluntary sectors working in social care. The Financial Services Authority (FSA) has a possible model. It has a large number of detailed rules which it expects firms transacting financial business to comply with. Above these rules are a set of overarching Principles for Business with which all firms must comply. If a firm wants to try something innovative, it can apply to the FSA (for example by email or online submission) for a waiver. Providing the firm can convince the FSA that:

- a. compliance by the firm with the rules would be unduly burdensome, or would not achieve the purpose for which the rules were made; and
- b. the waiver would not result in undue risk to persons whose interests the rules are intended to protect,

the FSA may grant it a waiver from the detailed rules which outlaw the innovation. This waiver based model requires advanced planning by financial services firms but allows the FSA to give responsible entities considerable latitude to conduct business as they choose.

Case Study 8 – Dartford & Gravesham Women’s Aid and Ofsted Inspections

Women's Aid Federation of England (Women's Aid) is a national charity working to end domestic violence against women and children. Its mission is to act as advocate for abused women and children and to ensure their safety. Women's Aid co-ordinates and supports a network of over 300 local projects across England, providing over 500 refuges, helplines, outreach services and advice centres. Its work is built on almost 30 years of campaigning and developing new responses to domestic violence.

Dartford & Gravesham Women’s Aid wanted to try an innovative idea to help the women in their refuge. They wanted to care for the children of the tenants for a couple of hours whilst the woman left the refuge – either to attend training, sort out official business or simply to have time alone. All staff are CRB checked before being allowed to work with children.

⁵⁵ A survey respondent

However caring for a child for more than 1 hour and 59 minutes in a day requires an organisation, including a women's refuge, to register with Ofsted. Not only would this mean that the refuge would be inspected by Ofsted; but would also require those staff caring for the children to have a childcare qualification which met National Standards; even though those staff members may have other valuable qualifications or years of work experience. Whilst staff might be willing to undertake such training, a voluntary organisation such as Women's Aid would find it extremely difficult to find the necessary funding. Additionally, refuges provide services for children of all ages. Complying with national training standards for those under the age of 8 may pose a threat to the services provided for children over the age of 8, due to a lack of resources.

Being able to waiver prescriptive requirements in cases such as these, where workers have other relevant experience and training, would lead to a better environment for vulnerable women staying in refuges.

Giving public services regulators the power to grant waivers from prescriptive regulations would help move inspection away from a "one-size-fits-all" mentality while ensuring that conscious decisions were taken both by the care provider and the regulator that certain prescriptive rules need not apply in certain instances. This would not allow safeguards to be dropped by default.

Recommendation 10

The Task Force recommends that the Home Office work with the Department for Education and Skills, the Departments of Constitutional Affairs and Health and the Office of the Deputy Prime Minister to:

- a. Review the balance between regulation (which is inflexible) and rules and guidance (which are more flexible) so that public service regulators can more quickly recognise and respond to changes in an organisation's circumstances. This could usefully apply to the Charity Commission, the Commission for Social Care Inspection, the Healthcare Commission, the Housing Corporation, the Legal Services Commission and Ofsted.**
- b. Give public service regulators authority to consider waiving specific rules and guidance in individual cases for particular organisations, using a formal waiver process such as that developed by the Financial Services Authority.**

18. Self-Regulation

This section examines how self regulation by parts of the VCS might be used to preserve or enhance standards while reducing the burdens imposed by statutory regulators on funders.

Self-Regulation in the Private Sector

In some commercial areas, the public interest in a uniformly high standard of safety or quality, or the gravity of the consequences in the event of failure, lead to government regulation. Nevertheless, the

private sector often sets and maintain additional quality standards:

- to protect the reputation of their product;
- to ensure consistency of “non-safety-critical” standards; and
- to minimise the scope and impact of “classic” regulation. This can create informal self-regulation within companies, or collectively agreed voluntary codes, establishing codes of conduct affecting companies operating in a sector.

Government has engaged with self-regulation (to create “co-regulation”) in the commercial sector. The Office of Fair Trading⁵⁶ has produced guidance on creating Codes of Conduct, using powers under the Enterprise Act 2002, and Government co-operates with specific instances of voluntary regulation, such as advertising control.

“Classic” Regulation of the VCS

VCS bodies often operate in areas where “classic” regulation⁵⁷ may be deemed necessary:-

- where strong safety grounds exist, such as in the provision of healthcare related activities or services; or
- where potential vulnerabilities of user groups require stringent regulation, such as in the provision of long term care or services to children.

VCS bodies have not been subject to self-regulation or co-regulation to the extent seen in the commercial world. We consider that there is scope for self-regulation or co-regulation to complement classic regulation.

Self-Regulation by VCS Bodies

Case Study 9 – The National Autistic Society

The National Autistic Society (NAS⁵⁸) has developed a system of accreditation, Autism Accreditation, which applies voluntary sector-specific care standards to bodies which agree to, and are found to have met, those standards.

Approximately 240 organisations, providing services to about 5,500 people, hold Autism Accreditation. They include local authorities, voluntary and private sector bodies. Autism Accreditation now operates at arms length from the NAS, and also inspects services provided by the NAS.

The stated mission of the scheme is to improve the quality of provision for people with an Autistic Spectrum Disorder.

⁵⁶ www.volunteering.org.uk

⁵⁷ P. 125 *Reducing Administrative Burdens: Effective Inspection and Enforcement*

⁵⁸ www.nas.org.uk

The scheme requires accredited bodies to demonstrate and maintain compliance with core standards applicable to all accredited organisations, and standards designed for the particular type of service (such as pre-school, day care and residential care). An initial approval and acceptance process is followed, for successful bodies, by annual peer inspection to validate or, where necessary, withdraw accreditation.

Inspections are carried out by “peer review” – bodies holding Autism Accreditation provide staff to undertake inspections.

Bodies which apply for and receive accreditation are entitled to use a “kitemark” to demonstrate their compliance with the standards. Accredited bodies also benefit from the sharing and dissemination of information about employment vacancies and placement availability for service users.

The Autism Accreditation scheme itself is externally audited to ensure compliance with key principles of accreditation.

Benefits of Self-Regulation

Self regulation has several advantages over classic regulation:

- *Targeting and proportionality*: self regulation, through collectively agreed standards and peer review, provides “bespoke” design, implementation and enforcement of sector specific standards. This is more likely to focus on the quality of services experienced by users than broadly drafted “generic” regulation of a widely defined sector. Sector specific self-regulation is more efficient in identifying key risk areas requiring stringent inspection, and so minimising the scope of inspection and the regulatory burden on VCS bodies.
- *Consistency*: the criteria for inspection will be targeted at the specific services being provided, and, with appropriate auditing and training of examiners, will reduce the risk of different interpretation, by regulators or individual inspectors, of “generic” standards or requirements.
- *Flexibility*: a sector driven regulatory framework can react to changes in best practice more quickly than legislative regulatory standards. We believe that self-regulation can more effectively facilitate and promote innovation, by ensuring that the regulator, as part of the sector being regulated, is able rapidly to capture and disseminate innovation and developments in best practice.

The “one-size-fits-all” characteristic of classic regulation, in contrast, can have the unintended consequence of requiring service providers to meet requirements which were not designed for them and which absorb a disproportionate level of resources.

Self-regulation, where unrecognised by statutory or “classic” regulators, can have unintended consequences, becoming:

- a secondary layer of regulatory burden; and
- an effective “obligation” to participate, through market pressure, which can undermine the benefits, because of the risk of adverse perception associated with the lack of a particular “kitemark”.

Any overlap between classic regulation and self-regulation must therefore be minimised.

Government’s Role in Developing Self-Regulation

The Task Force considers that Government should avoid action which makes self-regulation overtly or indirectly “mandatory”⁵⁹, imposing it on sectors. That said, the development of self-regulation in the VCS, and its recognition by Government, would facilitate the five key Principles of Good Regulation, namely Proportionality, Accountability, Consistency, Transparency and Targeting.

Encroachment of self-regulation into areas covered by “classic” regulation requires clear delineation of the respective responsibilities of statutory regulators and “self-regulating” regimes. However, even in sectors necessitating intensive scrutiny and inspection, the Task Force considers that there is potential for effective co-regulation. Following the enactment of the Care Standards Act 2000, Autism Accreditation undertook a review of its scope in order to minimise the extent of any overlap (and so of the regulatory burden imposed by the scheme). However, some overlap remains. It should be possible for statutory regulators to minimise the scope of their inspection regimes where recognised self-regulatory schemes are adopted by VCS bodies.

Government departments responsible for statutory regulators, and those departments with supervisory responsibility for commissioning from the VCS, should encourage and engage with those VCS bodies seeking to develop self-regulation.

Implementing Co-Regulation

Even where Parliament decides that “self-regulation” alone offers insufficient protection for service users and a need for “classic” regulation remains, its scope and impact can be mitigated by effective self-regulation, encouraged by engagement by Government, regulators and VCS bodies to develop a “co-regulatory” regime.

The Task Force has identified a number of means by which co-regulation could assist, in delivering better regulation. Key to this is formal recognition by regulators of “kitemarks” resulting from effective self-regulation.

- *Commissioning bodies’* service specifications - Government, and particularly procuring and commissioning bodies, recognising “kitemarks” as a means of defining service levels under contractual arrangements with service providers. This would avoid inconsistent service specifications, imposing different requirements on the same provider providing the same services to different commissioners.

⁵⁹ www.brtf.gov.uk/reports/principlesentry.asp

- *Regulatory waivers* - Regulators could identify “waivers” of regulatory requirements. This could be achieved in individual cases, by means of formal procedures by which organisations can demonstrate to a regulator a case for a waiver, or, for organisations holding “kitemarks”, where statutory regulatory requirements are met by means of an overlap with a self-regulation scheme.
- *Risk assessment* - Regulators adopting risk-based systems can acknowledge “kitemarks” when undertaking risk assessments – for example, a “kitemark” could, in the absence of other aggravating risk factors, automatically place a provider into a lowest-risk “grade”, ensuring the minimum level of regulatory intervention consistent with the regulator’s statutory duties.

Area for Further Work 4

The Task Force would like the Home Office to encourage all government departments and regulators to give positive consideration to proposals from the VCS and other organisations for self-regulation, particularly:

- ***The possibility of granting collective waivers from some regulations for bodies that hold “kitemarks” or other appropriate self-regulated status that provides a similar level of protection or reassurance to current statutory regulation; and***
- ***The possibility of incorporating “kitemarks” or other self-regulatory systems into risk assessments such that they could then influence the level of reporting and inspection required.***

19. Regulation – Less is More and the VCS

In the sections above we have outlined new measures which should be taken to alleviate the general regulatory burdens faced by the VCS. One set of reforms which should significantly benefit the VCS is coming about as a result of the Task Force’s first recommendation in *Regulation – Less is More*, published in March 2005:-

“The Task Force recommends that, to strengthen the structure for managing the total regulatory burden, the Government should:-

- Adopt the Standard Cost Model and use it to provide a systematic measurement of the Administrative Burden in the UK by May 2006;
- By May 2006 (or earlier if the results of the measurement are available), set a target for reducing the Administrative Burden; and
- By July 2005, put in place an organisational structure and the necessary resources to facilitate measurement and target achievement. This structure must include a central co-ordination unit, a body providing independent scrutiny, and stakeholder participation.⁶⁰”

⁶⁰ p. 31 *Regulation – Less is More*

Administrative Burden is defined in the report as the costs imposed on business when complying with information obligations stemming from government regulation. We noted in *Regulation – Less is More* that there was no reason why this approach should not be applied to the VCS and were delighted that the Government included the VCS in the administrative burden and simplification programme it has established on the basis of our recommendations. Under the programme each department will be required to produce a simplification plan showing how it will reduce the administrative burdens which it and the regulators accountable to it are responsible for. A Cabinet minister (John Hutton, Chancellor of the Duchy of Lancaster), supported by the Better Regulation Executive in the Cabinet Office has been charged by the Prime Minister with seeing these reforms through. This process requires departments and regulators to remove unnecessary administrative burdens, including those on the VCS.

Reducing Multiple Burdens

In the course of our study we have heard numerous complaints about the multiplicity of regulatory burdens falling on the VCS:

- Multiple objectives can mean an organisation is subject to several different regulatory frameworks.⁶¹
- VCOs can feel the pinch disproportionately due to the various funding, contracting and quality mark regimes which are then aggravated by parallel regimes from local authorities.⁶²
- Providing the same information in slightly different formats is incredibly complex and time consuming.⁶³
- It is not particularly obvious who benefits from some form filling regulatory requirements where the organisation requesting the form filling has no capacity to process the completed forms.⁶⁴
- “The most burdensome problem is that each regulator requires similar information but each in a different format.”⁶⁵
- Regulators don’t trust each other and are risk adverse. What is deemed as a high rating by one regulator may not be deemed thus by another. Multiple different inspections are a big issue.⁶⁶

The need to implement *Regulation – Less is More* means that departments and regulators have an incentive to eliminate multiple burdens by co-operating with each other as this will help them achieve their administrative burden reduction targets. To do this, they need to know what multiple burdens the VCS is suffering from. The Better Regulation Executive in the Cabinet Office has developed an online service for stakeholders in the public, private and voluntary sectors to submit regulatory simplification proposals to government departments (<http://www.betterregulation.gov.uk>). These simplification proposals could include multiple burdens in need of streamlining. The target is for these suggestions to receive a response within ninety days.

⁶¹ Robinson, David - Community Links

⁶² Pudge, Mark - Legal Services Commission

⁶³ Dean, Penny - The Children’s Society

⁶⁴ Umbrella organisations (NACVS, ACEVO, Charities Internal Audit Network) in conversation with BRTF

⁶⁵ Duffy, Anne - Head Teacher, Hamilton Lodge School for Deaf Children

⁶⁶ Williams, Helen - National Housing Federation

Area for Further Work 5

The Task Force recommends that the BRE and Government departments work together to ensure that Voluntary and Community Organisations know how to make simplification proposals and are encouraged to submit suggestions of regulatory burdens for simplification or elimination.

Simplification

In addition to just eliminating information obligations, *Regulation – Less is More* recommends that the Government adopt a “One in, One out” strategy with respect to all regulation. As part of this we said that,

“By September 2006, all departments, in consultation with stakeholders [should] develop a rolling programme of simplification to identify regulations that can be simplified, repealed, reformed and/or consolidated.”⁶⁷

This provides scope for simplification suggestions from the VCS to be included in the simplification programmes of departments and regulators.

Some simplification measures have already been achieved. For example, in January this year the requirement that home childcare workers must have their own homes inspected, even though they look after the children in their parents’ homes was abolished.⁶⁸

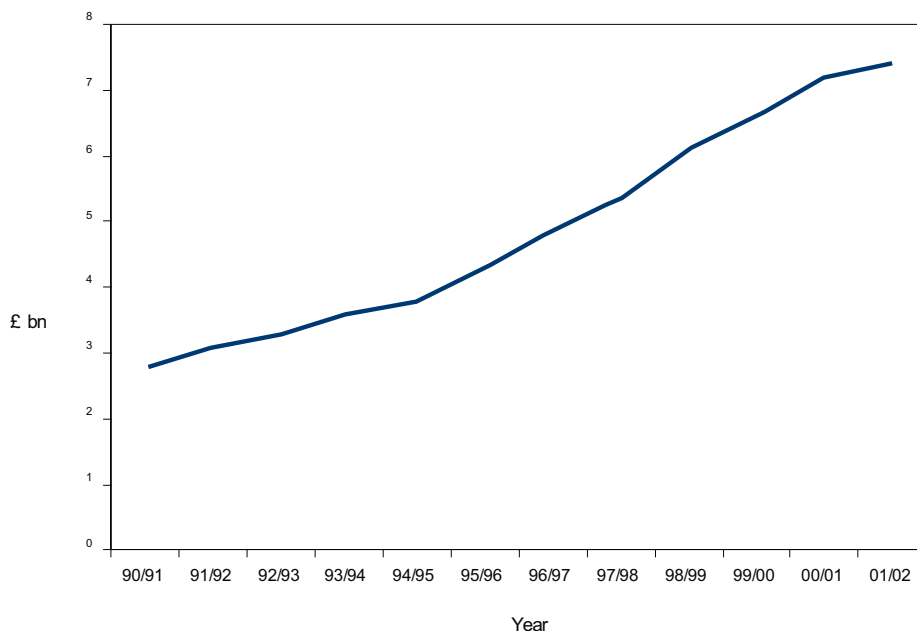
⁶⁷ p. 9 *Regulation – Less is More*

⁶⁸ Cohen, Sue - Single Parent Action Network UK and Dorian Bradley of Ofsted

IV Reforming funding

In 2001/2, the state became the largest single funder of the VCS, providing c. 37%⁶⁹ of its total revenues, though this total includes National Lottery funding (2.6%).⁷⁰ The state funds the VCS through grants (16.9%)⁷¹ and increasingly through contracts (17.7%)⁷² to provide services previously provided by the public sector.

Voluntary sector income from public sources



Sources: NCVO, HM Treasury

As discussed in the introduction, the growth in state funding has engendered much concern in the sector as many working with government find that the greatest burdens come not from classic regulation but rather from the quasi-regulation associated with government funding streams. This regulation is not generally passed by Parliament or the Privy Council; rather it is imposed through the contracts which VCOs enter into with local authorities, NHS bodies, the Learning and Skills Council, the Legal Services Commission and other distributors of public funds. We are concerned by the administrative burdens associated with both grant and contract funding.

20. National Audit Office - Working with the Third Sector

In June 2005 the National Audit Office (NAO) published a significant study on the way in which government contracts with VCOs - *Working with the Third Sector*. This made several recommendations which we commend to the Government as they should help reduce the burden of quasi regulation on the VCS:

⁶⁹ UK Voluntary Sector Almanac 2004 – data relates to 2001/2

⁷⁰ *Financing the Voluntary and Community Sector – Future Prospects and Possibilities* – David Carrington

⁷¹ *Ibid*

⁷² *Ibid*

- “Introduce new measures to improve funding practice, including:
 - o identifying and promoting “beacon” funders at all levels of government, to act as centres of expertise and help spread good practice;
 - o establishing an annual awards scheme to recognise and celebrate good practice and innovation in the way funders and third sector providers work together for successful service delivery; and
 - o making all relevant guidance to government funders, whether produced by government or outside experts, available from a single source to provide a web based ‘virtual university’ for funders.”⁷³
- “Expand the scope of the Government funded web based portal within an agreed timescale, to include details of all government grant funding which is available to the sector.”⁷⁴
- “Develop a template contract for procurement from the [VCS], suitable for adapting to special requirements.”⁷⁵
- “Commission further research into local funding practices, leading to recommendations for improvement at a local level.”⁷⁶
- “Internal and external auditors should work with funders and sector representatives to produce guidance on the monitoring and audit processes best suited to different types and value of funding.”⁷⁷

Working with the Third Sector also discussed the issue of full cost recovery – whether an organisation recovers the full costs of providing a service it is under contract to provide. This causes much debate within the VCS and it is important but it is not a regulatory issue as such. Most people would expect those undertaking a contract for the public sector, be they private sector or VCOs, to want to make a profit or surplus as a result of the transaction but there are legitimate reasons for taking a contract at sub-market rates. Government often benefits from contractors working for it at sub-market rates because of the prestige or interest of the work and, as Ann Blackmore makes clear, “A VCO may conclude that the most effective way to provide the service its clients need is to accept the contract but to choose to fund an enhanced service out of its own resources.”⁷⁸

What does concern us, from a regulatory perspective, is the evidence the NAO assembled that, in many instances, VCOs were being discriminated against relative to private sector contractors:-

- “Funders often sought to claw back any surplus funds remaining at the end of the contract from [VCOs], while private sector suppliers would retain these as profit.”⁷⁹

⁷³ Para 20.2 *Working with the Third Sector* by the NAO

⁷⁴ Para 20.5 *Ibid*

⁷⁵ Para 20.9 *Ibid*

⁷⁶ Para 20.11 *Ibid*

⁷⁷ Para 22 *Ibid*

⁷⁸ Blackmore, Ann – *The reform of public services: the role of the voluntary sector*

⁷⁹ Para 3.11 *Working with the Third Sector* by the NAO

- “[VCOs] believed that funders ran contracting processes which involved [VCOs] differently from contracting situations including only private sector suppliers. In general, contracting processes involving [VCOs] allowed little scope for negotiation over contract terms and sought excessive amounts of information in bids for funding.”⁸⁰
- “[VCOs] told us ... funders would usually ask [VCOs] to reveal their overhead costs in detail ... [VCOs] believed that private sector firms bidding for contracts would usually submit only a price and would not be required to provide details of their overheads.”⁸¹

When we spoke to the Legal Services Commission we found that the VCOs were treated differently from private sector contractors providing a similar service. The Legal Services Commission currently has a contracting regime with the sector with intense monitoring processes. That said, we are encouraged to learn that, within eighteen months, it will be introducing a fixed fee regime which will put VCOs on a more equal footing with private sector providers.

We agree with the NAO that when a contract to provide services is being let, “For best value for money, neither VCS nor private providers should be disadvantaged.”⁸²

Case Study 10 - Learning and Skills Council

Background:

In mid 2003, a London voluntary organisation (the Organisation) was awarded a grant from a London Learning and Skills Council (LSC). The amount awarded was just over £200,000 - contributing to an overall operational budget of £350,000 for a period of 15 months.

The project offered support to small VCOs with little or no access to support and advice, and umbrella organisations with a coordinating and supporting role to other organisations.

Reporting / Monitoring Requirements

There were monthly narrative reports to the LSC that compared the delivery plan with the outcomes, outputs, and milestones achieved. There was a requirement to explain any variances and provide some evaluation of the project to date. There were also electronic reporting requirements; two evaluation reports (one intermediate and one final); one control environment questionnaire explaining the systems employed for managing the project; maintenance of the delivery plan Excel workbook used by LSC (which listed all the outputs profiled and the associated unit costs); quarterly visits from the LSC contract manager and an auditor’s visit; a paper trail verifying eligibility for each organisation supported by the programme and other evidence for expenditure, i.e. advertisements for posts, etc.

⁸⁰ Para 3.11 Ibid

⁸¹ Para 3.20 Ibid

⁸² Para 3.12 Ibid

Issues arising

- Contracts were not signed until three months into the project creating a backlog in reporting and collating physical evidence. In addition the guidance notes were delayed.
- The LSC contract manager did not communicate the evidence requirements clearly to the Organisation's project manager. There was a poor understanding by the LSC contract manager and the Organisation on the systems needed to manage these type of projects. This delayed gathering information for evidence and monitoring requirements effectively in a consistent fashion.
- The Organisation agreed with the LSC that it would use its own registration forms (for the smaller organisations the Organisation was contracted to provide services to). However, later, all the forms for a six month period had to be redone as they did not have the European Social Fund or LSC logo. The Organisation couldn't see how this inhibited the project, since the logos were on all promotional materials which is what the guidelines required. In addition, the registration forms will continue to be used by the Organisation well after the end of the programme, regardless of the current funder(s).
- The Excel workbook provided by the LSC is susceptible to error during handling because the formulas and references are not protected. This can offset formulas causing erroneous calculations. This has meant spending time tracking down the error, or starting again with a new workbook.
- The on-line system was not reliable, and the interface was not user friendly. Furthermore, the information entered on line simply duplicated the narrative reports so the Organisation had to report the same thing twice. In the end problems led to the on-line system being abandoned.
- Verifying eligibility for the support the Organisation was offering (i.e. approx. <£28 million annual income, and <250 staff for the VCO being advised) via its advice line was impossible, as it required a representative from the Organisation to verify the information collected, which was not feasible. Furthermore, the eligibility criteria covered all the VCOs the Organisation worked with. The Organisation had to negotiate constantly about this, especially after the auditors threatened clawing back some of the money.
- Overall, the monitoring requirements seemed onerous for a relatively small Organisation, and the value of gathering the information was unclear.

21. Contracts and Administrative Burden Reduction

The regulatory burdens associated with government funding are not irreducible. There are good suggestions for improving the status quo in the NAO report and, in addition, we think the following are worthwhile:

- Local authorities introducing standardised social care contracts.⁸³
- Local authorities passporting the auditing they do of special needs education so that charitable special schools are not subject to inspection visits by multiple local authorities.
- Increased acceptance of “kitemarks” as a substitute for detailed bidding and auditing requirements.⁸⁴

Some departments are taking initiatives to improve the situation. On 21 July 2005 the Department of Health announced the establishment of a taskforce which will look at how administrative costs for VCS providers of health services can be reduced. In addition the ChangeUp team in the Home Office is about to commission research on the possibility of linking up different quality standards so that different standards boards acknowledge the value which certification by another organisation offers.

Many sound recommendations, such as those of *Working with the Third Sector*, have been made over the years in an attempt to improve the way in which government contracts with both the voluntary and private sectors. Similarly the Compact and the new Compact Plus initiative try to improve the situation. Unfortunately, the evidence suggests that there has not been great improvement in the way in which the Government contracts with the VCS. Many speakers at the NAO’s conference on 29 June 2005 to mark the launch of *Working with the Third Sector* said that funding relationships with government had not improved. Indeed the evidence we have from some VCOs we have met and from *Working with the Third Sector* is that the quasi regulation associated with government contracts may actually be getting worse:

- “We were refused consideration of the grounds that I had missed out two questions in the 25 question (30 page) bid document. The two questions were omitted, obviously in error and were questions that needed a single word answer. They could have been put right in a five minute ‘phone call. No ! Bureaucracy said no ! We had missed out two questions and that was that. It has destroyed my team and almost destroyed me.”⁸⁵ The charity in question had previously been praised by the Prime Minister for the quality of its work.
- “The majority of respondents [to a Home Office state of the VCS survey in late 2003] said monitoring processes have never been proportionate and had not improved since 2002.”⁸⁶
- “Some funders are becoming more prescriptive over how targets are to be achieved. ‘I’m increasingly being questioned on how I achieved those targets, ‘why are you going to do it that way, we would have done it in such and such as way, we’d rather you did it that way.’”⁸⁷

⁸³ Aldridge, Nick - ACEVO

⁸⁴ Duffy, Anne - Head Teacher, Hamilton Lodge School for deaf children

⁸⁵ Chairman of a charity

⁸⁶ Para. 4.26 *Working with the Third Sector* by the NAO

⁸⁷ NCVO – *Action Points for Public Services – Monitoring and Evaluation Processes*

Case Study 11 - Jobcentre Plus Funding

The New Deal for Disabled People Job Broking service is contracted out to a range of private and voluntary sector providers. In some areas there is also in-house Jobcentre Plus provision. The service is wholly outcome funded - payments to providers are made for the achievement of five different outcomes: registration of eligible participants onto the programme, full time job starts and sustained employment, and part-time job starts and sustained employment. Each provider has a total number which it must not exceed against each of these five measures. Each provider must be prepared to provide evidence of performance against each of these five measures. This sounds encouraging.

Unfortunately, we are told that the simple concept of payment for demonstrable results has become a complex and burdensome process. The Provider (a charity under contract to Jobcentre Plus) considers that one of the benefits of outcome funded contracts should be that market forces dictate which geographic area providers will focus on. In this case, this would be where there are high densities of potential programme participants. However, in order to meet the Government's objective of providing a national service, Jobcentre Plus is micro managing the contracts. Firstly by saying that these contracts should sit solely within its regional structure and secondly by determining that each outcome should be monitored and managed at a district level. As an illustration of the impact of this approach, the Provider (which is delivering the Job Broking service in several Jobcentre Plus regions) is required to report against 250 key performance indicators (the original five contract outcome measures x 50 Jobcentre Plus areas). We understand that there are plans to make this system more flexible.

Jobcentre Plus has also introduced a manual process for registering each programme participant, requiring contractors to fax a typed form to the New Deal for Disabled People payment team, to enable them to log the client details onto the payment website. This replaced a system of registration by 'phone, in order to ease the load on Jobcentre Plus. We are told that duplication could be eliminated if providers were able to enter client details directly onto the payment website and Jobcentre Plus conducted its checks using this database. In terms of proving job outcomes, the process is similarly cumbersome, requiring contractors to undertake a time consuming process - obtaining evidence from the programme participant and the employer about both jobs started and jobs sustained, despite the fact that this is often resented by both parties as an invasion of privacy. Jobcentre Plus has introduced a range of options to make this task easier but the Provider believes that the information about an individual's tax and benefits status should be available on government databases. This duplication of administrative effort ties up significant resources (20% of a Provider's costs) which could better be spent helping those in need.

In terms of the evidence Jobcentre Plus requires, the "back to work plan" and "basic skills assessment" for each registered client. These are evidence of the means, not a demonstration of an outcome. The provider complains that the purpose of using outcome funded contracts to minimise bureaucracy and maximise results is obfuscated by the focus on paper based processes, the reluctance to use existing information and an enthusiasm for managing inputs rather than checking outcomes.

As the NAO puts it, “More needs to be done to translate high level commitments into practical results wherever government interacts with [VCOs], and to introduce additional mechanisms for improving funding practice.⁸⁸” We concur with this assessment and believe that a *programme to reduce administrative burdens on funding*, integrated into that which has already been established to tackle excessive administrative burdens emanating from classic regulation, *is required to provide the catalyst that will ensure meaningful improvement.*

Case Study 12 - The Community Foundation for Northern Ireland

The Community Foundation for Northern Ireland works to support people, strengthen communities and build peace in the divided communities of Northern Ireland. The Community Foundation for Northern Ireland’s mission is to improve the quality of life through enabling communities to tackle social need and divisions by funding and supporting community based action, raising funds and producing policy and publications.

The Community Foundation, at the request of the Department for Social Development, is managing a two year Local Development Fund for the Department. This is intended to deliver a £1m per annum grant to specific ‘low community infrastructure’ areas of Belfast.

In addition to a 41 page Operations Manual, there are now some 13 forms that have to be potentially completed by the Community Foundation in order to enable applicant groups to access the money available. These include an application form (13 pages), activity outputs and outcomes form, duplication funding checklist, assessment form, financial plan form, technical assistance costs form (and apportionment), variations pro forma confirmation of expenditure verification, document summary sheet, quarterly progress report form, post project evaluation report and completion of lessons learnt report.

In addition to negotiating a consensual community approach (which can be difficult and time consuming in fragmented and divided areas) the Foundation has to complete all the forms involved for each grant. The technical assistance budget available to support this work is set at 5% (some £50,000 per annum). Consequently the Foundation is facing subsidising the cost of delivering a departmental programme.

This excessively bureaucratic approach is audit driven – a drive that often undermines the real purpose of the grant. The emphasis on overly rigid audit comes from the experience of the implementation of the European Union Peace Programmes in Northern Ireland. A recent example of the latter is where a Community Foundation worker had to drive around a number of projects in an attempt to find receipts for some £5,000 for exhibition display equipment that had been purchased with grant funding in 1996 – the audit which demanded the original invoices/receipts was carried out in July 2003. In 2005, the Department for Social Development is still seeking the receipts. Whilst no one can argue with the need to be accountable, this lack of flexibility can only be damaging to service delivery.

⁸⁸ Para. 13 *Working with the Third Sector* by the NAO

Although the programme for reducing administrative burdens could be expanded, to make it manageable, we recommend that just five categories of public sector body, those which work most closely with the VCS (local authorities, Jobcentre Plus, the Housing Corporation, NHS Primary Care Trusts and the Learning and Skills Council) be asked to measure and then reduce the administrative burdens they place on funders.

Under the administrative burden reduction programme set out in *Regulation - Less is More*, primary and secondary legislation and certain legally binding rules issued by regulators are the source of the information obligations which are being measured before reduction targets are set. In our proposed extension to the programme (which would reduce the administrative burden caused by funding regimes) the information obligations would be drawn from the contracts the public bodies had with the VCS contractors. In other respects, lessons could be learnt from the Government's broader programme focusing on classic regulation.

Putting such a programme in place would initially create work for the public bodies listed above but, within a short amount of time, it would help achieve Gershon efficiency savings because it would enable these public bodies to determine what it was actually important to do and what was superfluous administrative burden for both their staff and those under contract to provide services. In addition it would ensure that real advances were made in:-

- Reducing inequality in the treatment of VCS providers relative to private sector providers - "Many [VCOs] complain that government funders are inconsistent in their treatment of [VCS] suppliers, too often relying on a grant culture and thus requiring a much greater level of cost disclosure that they would expect of private sector firms."⁸⁹
- Simplifying funding streams - "The NAO believes that the complexities and transaction costs of filtering money through a variety of organisations until it reaches the front line should be simplified and reduced wherever possible."⁹⁰
- Providing longer term contracts with correspondingly lower administrative burdens for both funder and provider - "Although departments' budgets are set for three years, programme and policy teams within departments may have their budgets agreed annually and therefore feel unable to commit funds for longer than one year. ... other funders who had put long term arrangements in place said that administrative work was significantly reduced."⁹¹
- Proportionate monitoring - "Monitoring is not always proportionate to the amount of funding provided, 'We have just under £1 million and the monitoring will take me a couple of days. We have £18,000 [from another funder] and monitoring will take me two or three weeks. They want every invoice. We have to write reams of what we did and who we did it with."⁹²

⁸⁹ Para 15 Ibid

⁹⁰ Para 2.13 Ibid

⁹¹ Para 3.45 Ibid

⁹² From NCVO - *Action Points for Public Services – Monitoring and Evaluation Processes*

- Ensuring funders focused on outcomes rather than how the Voluntary or Community Organisation (VCO) is run - “Our local authority, because they fund us, it’s as though they own us ... there are recommendations to my board about how they should use me as a resource and my time.”⁹³
- Freedom to deliver diverse services - “VCOs may seek funding to deliver a public service because they believe that, in doing so, they can add value to that service ... what the sector often means by added value is distinctive or different values ... the nature of the contract itself can undermine what a VCO wants to bring to a service, for example, if it is overly prescriptive about processes rather than outcomes.”⁹⁴

Recommendation 11

The Task Force recommends, in line with the Government’s drive to reduce administrative burdens, that ODPM, DfES, DWP and the Department of Health respectively ensure that upper tier local authorities and the Housing Corporation, Learning and Skills Council, Jobcentre Plus and Primary Care Trusts work to measure and reduce the administrative burdens arising from contracts with the VCS drawing on the expertise of the Cabinet Office’s Better Regulation Executive and the existing administrative burden measurement process. Each public body should:

- **undertake a systematic measurement of the administrative burdens from VCS contracts by April 2007; and**
- **develop a simplification plan or input into an existing simplification plan to reduce the administrative burdens in place on VCS service providers by November 2007.**

Each department should take steps to ensure that appropriate targets are set, and that the public bodies concerned have incentives to meet the administrative burden reduction targets.

In the same way as the Dutch have set a five year timeline for delivering their administrative reduction programme, we envisage the public bodies concerned making the reductions in burden by November 2012. While the programme will focus on the contractual burden associated with VCS contracts it should ensure that reductions are made in similar contracts held by private sector contractors. While it is tempting to recommend tighter deadlines than those we set out, we want the departments which are currently engaged in administrative burden measurement in response to our report *Regulation – Less is More* to have a chance to digest the lessons of that exercise and to avoid possible duplication of effort as some of the contractual burdens may be included within the scope of the current exercise.

Once public bodies such as upper tier local authorities have measured the administrative burdens they place on the VCS through their bidding and accounting processes, they will be able to prepare a simplification plan or integrate items into a wider existing simplification plan. In preparing these plans they may find that classic regulations provide a rationale for some of the quasi regulation they place on the VCS through the commissioning and monitoring process. Where this is the case, they now have a mechanism

⁹³ Quoted in *NCVO – Action Points for Public Services – Relationships with Local Funders*

⁹⁴ Blackmore, Ann – *The reform of public services: the role of the voluntary sector*

(see Area for Further Work 5 above) to alert central government to the reforms to classic regulations which they require to reduce the burdens on the VCS. These reforms to classic regulations can be integrated into departmental simplification plans (which are being written as a result of our report *Regulation – Less is More*) creating a virtuous circle of administrative burden reduction in both classic and quasi regulation.

Recommendation 11 complements the recommendations we made to the Government in *Government – Supporter and Customer* in 2003 which were designed to make it easier for small businesses to contract with public sector bodies. In the recommendation itself we have specifically identified VCOs as the focus of the programme because the evidence gathered by the NAO in *Working with the Third Sector* suggests that they are not treated as well as private sector organisations. Most of the simplification measures taken as a result of a public sector body's simplification programme should also help to private sector organisations providing services similar to those offered by the VCS to the public sector.

Properly implemented, Recommendation 11 will help meet the aspirations of those who designed the Compact and Compact Plus.

Annex A

The Better Regulation Task Force

Membership and ways of working

The Better Regulation Task Force is an independent advisory group established in 1997. Members are appointed by the Minister for the Cabinet Office. Appointments are for two years in the first instance and are unpaid. Members come from a variety of backgrounds – from large and small businesses, citizen and consumer groups, unions, the public sector, not-for-profit and voluntary groups and those responsible for enforcing regulations. All have experience of regulatory issues in the UK. The Chairman is Sir David Arculus. He was appointed for a three year period from 1 April 2002, which has been extended until December 2005.

Terms of reference and how we work

The Task Force terms of reference are:

“To advise government on action to ensure that regulation and its enforcement are transparent, accountable, proportionate, consistent and targeted.”

When we comment on the quality of existing or proposed regulation, we test it against the five principles of good regulation listed within these terms of reference, asking ourselves a number of questions:

- Is the regulation necessary ?
- Is it affordable ?
- Is it fair ?
- Is it effective ?
- Is it simple to understand and easy to administer ?
- Does it command public support ?

We carry out studies of particular regulatory issues. These reviews are undertaken by sub-groups of Task Force members. All sub-groups discuss their proposals with key organisations and individuals, as well as (for UK reports) with ministers and government departments. We work through consensus and all studies are endorsed by the full Task Force before being sent to the relevant ministers for their response. The Prime Minister has asked ministers to respond to Task Force reports within 60 working days of publication. We also respond to consultation exercises on regulatory proposals and we comment on current regulatory issues. The Chairman of the Task Force attends meetings of the Panel for Regulatory Accountability, a Cabinet committee which meets regularly to discuss regulatory issues with departmental ministers.

Members of the Task Force

Sir David Arculus, KB – *Chair*, 02

Teresa Graham OBE – *Deputy Chair*, Business Advisor

Adrian Askew, Connect

Lynne Berry, General Social Care Council

Jean Coussins, Portman Group
Michael Gibbons, Consultant: (utility sector)
Dr Kevin Hawkins OBE, British Retail Consortium
Dr Simon Murphy, Birmingham Forward
Kirit Patel, MBE, Day Lewis Group
Dr Ian Peters, EEF
Dr Penelope Rowlatt, Independent Economist
Janet Russell, Kirklees Metropolitan Council
Eve Salomon, Consultant: (communications)
Sukhvinder Stubbs, Barrow Cadbury Trust
Tim Sweeney, Consultant: (financial services)
Rex Symons CBE, Bournemouth Teaching Primary Care NHS Trust
Sarah Veale, Trades Union Congress
Victoria Younghusband, Lawrence Graham LLP

A register of members' interests has been drawn up and is available on the Task Force website: www.brta.gov.uk or is available on request, to BRTF Secretariat, 6th floor, 22 Whitehall, London, SW1A 2WH.

Members of the Task Force who worked on this report

Chair - Sukhvinder Stubbs:

Sukhvinder Stubbs is Director of the Barrow Cadbury Trust, a grant making foundation that seeks to encourage a just, peaceful and democratic society. She is also a Non-Executive of Severn Trent Water and Chair of Young Enterprise West Midlands. Sukhvinder was formerly Chair of the European Network Against Racism and Chief Executive of the Runnymede Trust.

Rex Symons CBE:

Rex Symons is Chairman of Bournemouth Teaching Primary Care NHS Trust, Bournemouth Transport Ltd and Dorset Travel Ltd. He is a member of the Council of Southampton University and was, until 2002, a member of the Health and Safety Commission.

Sarah Veale:

Sarah Veale, the Head of Equality and Employment Rights at the Trade Union Congress. She is a member of the ACAS Council. She has also written publications on employment rights.

Daniel Purcell (Seconded) is a Solicitor-Advocate and a Partner in Capsticks Solicitors

Task Force Secretariat: William Mason and Marie Farmer

Annex B

The Five Principles of Good Regulation

Proportionality	Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed and costs identified and minimised. <ul style="list-style-type: none">• Policy solutions must be proportionate to the perceived problem or risk and justify the compliance costs imposed – don't use a sledgehammer to crack a nut.• All the alternative options for achieving policy objectives must be considered – not just prescriptive regulation. Alternatives may be more effective and cheaper to apply.• “Think small first”. Regulation can have a disproportionate impact on small businesses, which account for 99.8% of British businesses.• EC Directives should be transposed without gold plating.• Enforcement regimes should be proportionate to the risk posed. Enforcers should consider an educational, rather than a punitive approach where possible.
Accountability	Regulators must be able to justify decisions and be subject to public scrutiny. <ul style="list-style-type: none">• Proposals should be published and all those affected consulted before decisions are taken.• Regulators should clearly explain how and why final decisions have been reached.• Regulators and enforcers should establish clear standards and criteria against which they can be judged.• There should be well-publicised, accessible, fair and effective complaints and appeals procedures.• Regulators and enforcers should have clear lines of accountability to ministers, Parliaments and assemblies, and the public.
Consistency	Government rules and standards must be joined up and implemented fairly. <ul style="list-style-type: none">• Regulators should be consistent with each other, and work together in a “joined-up” way.• New regulations should take account of other existing or proposed regulations, whether of domestic, EU or international origin.• Regulation should be predictable in order to give stability and certainty to those being regulated.• Enforcement agencies should apply regulations consistently across the country.

<p>Transparency</p>	<p>Regulators should be open and keep regulations simple and user-friendly.</p> <ul style="list-style-type: none"> • Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all interested parties. • Effective consultation must take place before proposals are developed, to ensure that stakeholders' views and expertise are taken into account. • Stakeholders should be given at least 12 weeks, and sufficient information, to respond to consultation documents. • Regulations should be clear and simple. Guidance, in plain language, should be issued 12 weeks before the regulations take effect. • Those being regulated should be made aware of their obligations, with law and best practice clearly distinguished. • Those being regulated should be given time and support to comply. It may be helpful to supply examples of methods of compliance. • The consequences of non-compliance should be made clear.
<p>Targeting</p>	<p>Regulation should be focused on the problem and minimise side-effects.</p> <ul style="list-style-type: none"> • Regulations should focus on the problem and avoid a scattergun approach. • Where appropriate, regulators should adopt a "goals-based" approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets. • Guidance and support should be adapted to the needs of different groups. • Enforcers should focus primarily on those whose activities give rise to the most serious risks. • Regulations should be systematically reviewed to test whether they are still necessary and effective. If not, they should be modified or eliminated.

Annex C

List of those Consulted

Abrol, Sudashan – UK Asian Women’s Centre
Adama, Joseph – Black Training and Enterprise Group
Aldridge, Nick – Association of Chief Executives of Voluntary Organisations (ACEVO)
Allen, Rachel – National Association for the Care and Resettlement of Offenders (NACRO)
Barker, Heather – Look Ahead Housing & Care
Bennet, Linda – Business Link Kent
Better Regulation Executive, Cabinet Office
Birmingham Settlement
Bolton, Margaret – Author of NCVO Report *The Impact of Regulation on Voluntary Organisations*
Barratt, Mervin – National Association for the Care and Resettlement of Offenders (NACRO)
Bray, Richard – Charity Tax Reform Group/ Cancer Research UK
Brooks, Clare – Community Foundation Networks
Business in the Community (BITC)
Cabinet Office
Carr, Brian – Birmingham Voluntary Services Council
Charity Commission
Charities Consortium, the
Charlesworth, Ian – Shaw Trust – Ability at Work
Cleeveley, Neil – NACVS
Cohen, Sue – Single Parent Action Network UK
Dartford & Gravesham Women’s Aid
Davidge, Michael – Wellcome Trust & Charities Internal Audit Network
Dean, Penny – The Children’s Society
Dench, Andrew – Housing Corporation
Department of Health
Department for Work and Pensions
Dolphin, Stephen – Groundwork UK
Donoghue, Helen – Charity Tax Reform Group
Duffy, Anne – Hamilton Lodge School
Emerson, David – Association of Charitable Foundations
Fiennes, Caroline – New Philanthropy Capital
Gateway Project, the
General Social Care Council
Gibbson, Jeff – Business Link Kent
Graham, John – National Society for the Prevention of Cruelty to Children (NSPCC)
Gutch, Richard – Futurebuilders
Hampson, Chris – Look Ahead Housing & Care
Hanlon, John – Regulator of Community Interest Companies
Harte, Carole – Birmingham Women’s Advice and Information Centre (BWAIC)
Hayes, Mark – Christian Action
Home Office
HM Revenue and Customs
HM Treasury

Joseph, Kemi – Community Action Network
Lennard, Andrew – Financial Reporting Council
Little, Amanda – London Development Agency
McCall, Christopher Q.C. – Lincoln’s Inn
McNeish, Greig – National Autistic Society
Manise, Rosie – Audit Commission
Marks, Martin – Church of England Solider’s, Sailor’s and Airmen’s Housing Association
Mia, Roofa – Saathi House
Monique, Bear – Advance Advocacy Project
Office of the Deputy Prime Minister
Nall, Charles – The Children’s Society
Smith, Maurice – Early Years Directorate, Ofsted
Pattison, Michael – Sainsbury Family Trusts
Piper, Anne-Marie – Farrer & Co
Portrait, Judith – Portrait Solicitors
Pudge, Mark – Legal Services Commission
Robinson, David – Community Links
Royal Borough of Kensington and Chelsea
Sayer, Kate – Vincent Sayer
Sayer, Su – United Response
Sellwood, Carol – Baker Tilly
Smith, Barry – Urban Fox Consulting
Smith, Heather – The National Trust
Stark, Vicky – Look Ahead Housing and Care
Thorndick, Barbara – West Kent Housing Association
Varney, Anita – Criminal Records Bureau
Walden, David – Commission for Social Care Inspection
Walker, Philip – Campaign Against Age Discrimination in Employment (CAADE)
Wallace, Steve – Small Business Service
Wharton, Nicholas – NACVS
Williams, Helen – National Housing Federation
Williamson, Robin – Chartered Institute of Taxation
Women Acting in Today’s Society (WAITS)
Wood, Sarah – Local Government Association

Annex D

Proposals from the Charity Commission for Reducing Regulatory Burdens on Trustees

The Charity Commission have developed the following reforms to laws governing the conduct of trustees and executors. For a full description of their rationale, please see the our website (www.brta.gov.uk).

1. To introduce the requirement of mens rea into the definition of two criminal offences in the 1993 Charities Act.
2. To allow trustees to dispose of land with a value of £1,000 or less (or such other limit as may be prescribed by the Secretary of State from time to time) without obtaining a qualified surveyor's report, and without advertising the proposed disposition, providing they obtain and consider the advice of a competent person.
3. To make it possible for more people to give formal advice in connection with charity land dispositions, provided that any additional categories of persons are competent to take on this work. In order to achieve this without losing necessary protection it is necessary to be able to identify particular categories of charity land dispositions upon which it is appropriate that people qualified in particular ways may advise.
4. To allow trustees to transfer land for less than the best price reasonably obtainable, whenever that is in furtherance of their objects, without having to obtain Charity Commission consent.
5. To allow trustees to delegate their consideration of whether they are under a moral obligation to make an ex gratia payment, before making an application to the Charity Commission for permission to do so.
6. To allow the executors of a deceased person to pay small charitable legacies to an appropriate charity, with the consent of the Charity Commission, where the recipient institution identified by the testator is non-existent or has been misdescribed.
7. To permit trustees to make ex-gratia payments with a value of £1,000 or less, (or such other limit as may be prescribed by the Secretary of State from time to time) where they believe they are under a moral obligation to do so, without the need for authorisation from the Charity Commission.
8. Reform of Local Authority Rights to participate in the Administration of Charities.

Annex E

VCS Survey Results

Methodology

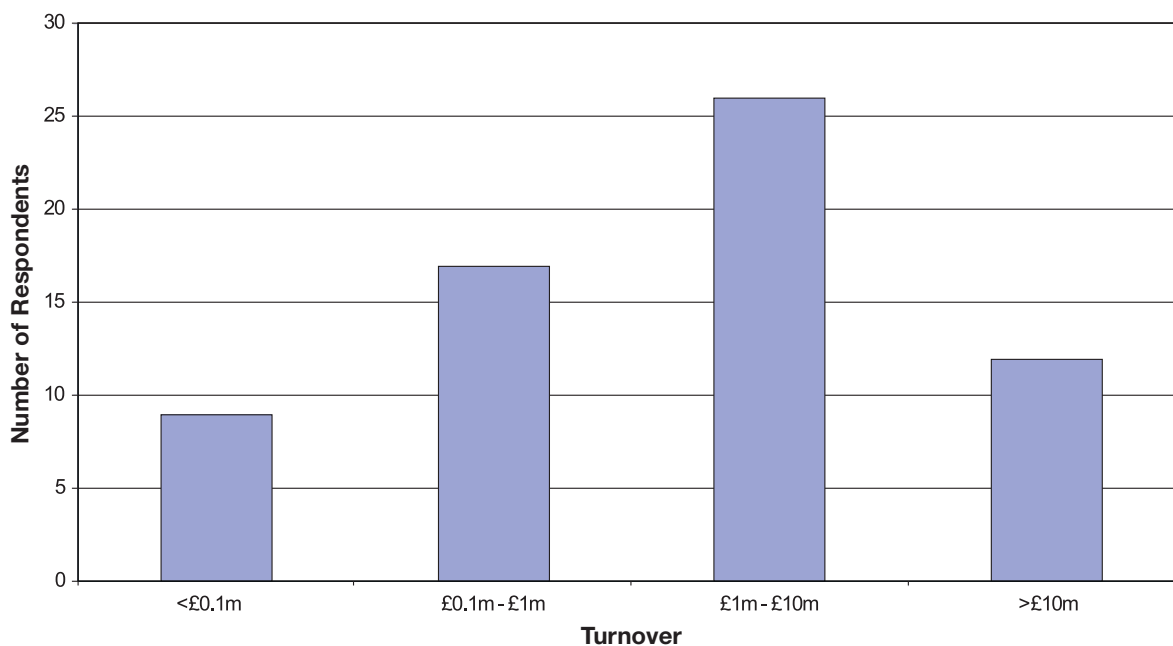
We received 64 responses to our survey which we publicised on our website and those of umbrella groups and in the Baker Tilly charity newsletter.

The greatest number came from housing associations (14) with other responses coming from organisations working in a range of fields including: advice, black and minority ethnic empowerment, churches, community foundations and endowed trusts, crime reduction, disability, education, care for the elderly, health, leisure, lone parenting, museums, overseas development, rural communities, sport and youth.

We asked closed questions as well as allowing for substantive responses on issues of concern. In any survey such as this, where the respondents are self selecting and the basis on which they calculate the time they spend is not consistent, it would be reasonable to expect a bias towards over reporting of regulatory burdens and this should be borne in mind when interpreting the results.

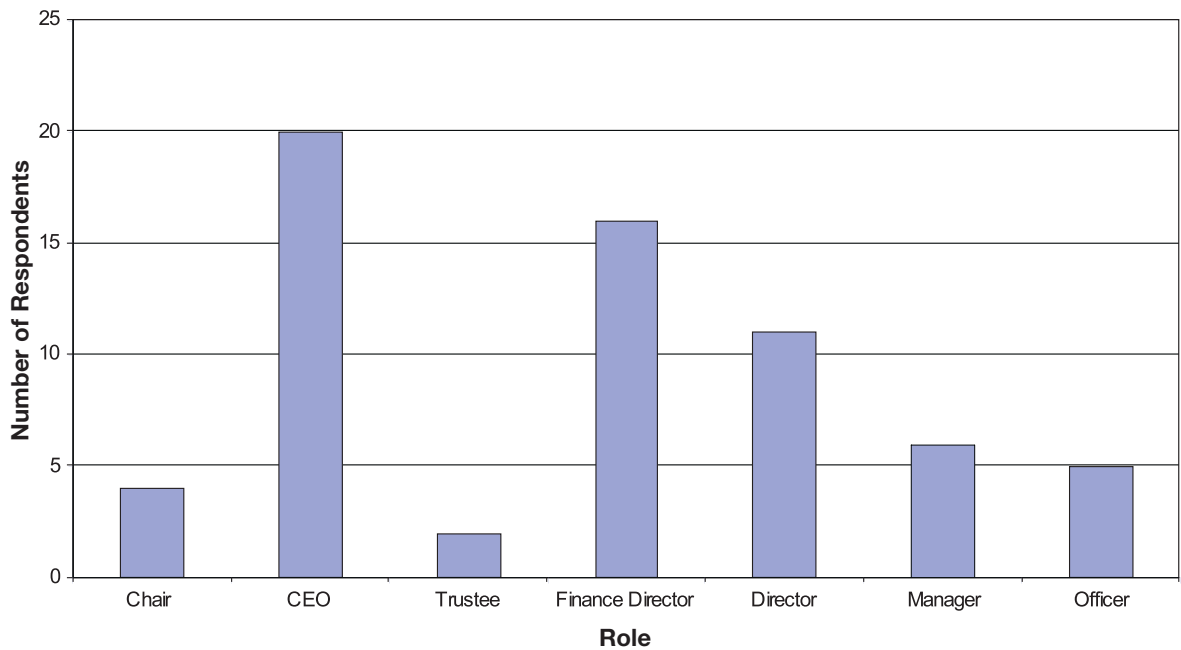
The table below shows that organisations of all sizes responded though the smallest organisations are significantly under represented relative to the number that exist.

Breakdown of Respondents by Turnover



Of those who responded, a bias towards senior staff can be seen as the following chart shows.

Respondents by Organisational Role



Charity Commission Regulation

Charity Commission regulation, for those who responded, consumed up to 12% of their time though for most it was a negligible burden. This appears to indicate that Charity Commission regulation is not a significant issue for many organisations but it is noteworthy that those organisations which spent the most time on it were the smallest organisations. Three of the seven respondents from charities with a turnover of less than £100,000 said that they were spending 10% or more of their time on Charity Commission regulation, perhaps showing the smallest organisations, most dependent on volunteers, find the Charity Commission requirements most burdensome. As one respondent put it,

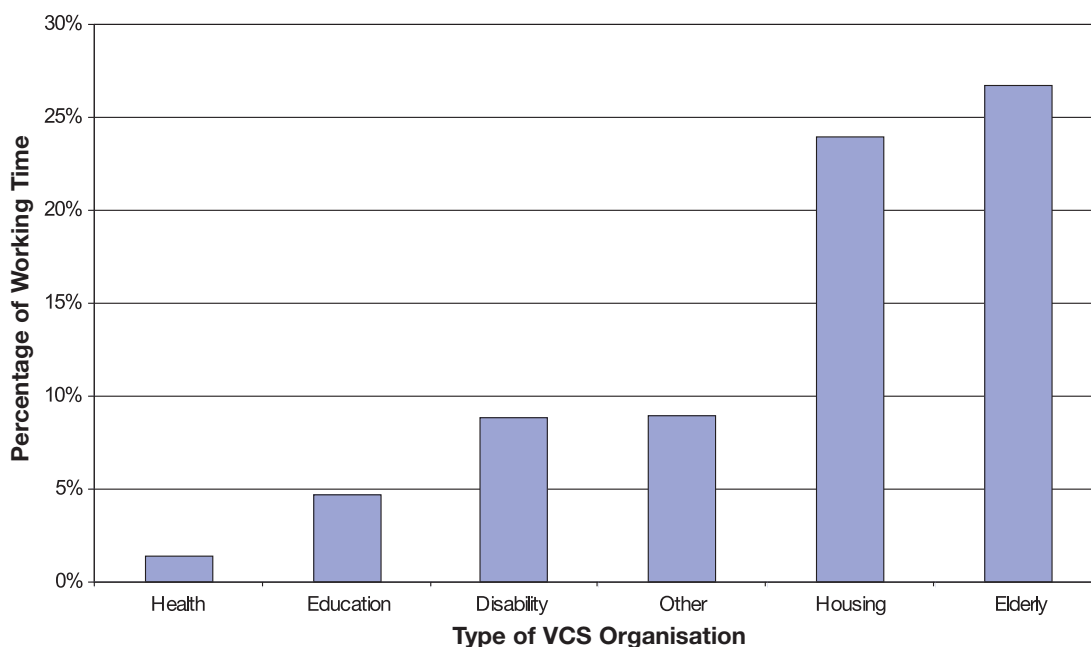
“Why the need for charities to produce an Annual Return when the details are held in the Trustees’ Report, Accounts and Financial Statements. This duplication of effort both increases the time taken by charity on compliance whilst the Charity Commission’s time saving resulting from the Annual Return being produced for them probably means that they do not read charity accounts so thoroughly....”

Other Regulators

As would be expected with such a wide variety of VCOs responding, the amount of time individuals spent managing regulators, other than the Charity Commission, varied hugely.

The chart below, showing the percentage of an individual’s time spent dealing with requests from regulators other than the Charity Commission, gives some impression of differences in the burden on different types of VCS organisation. It should be noted that our data sample is not large enough for these results to approach statistical significance. They may at best be regarded as indicative.⁹⁵

Percentage of Time Spent Dealing with Requests from Non Charity Commission Regulators



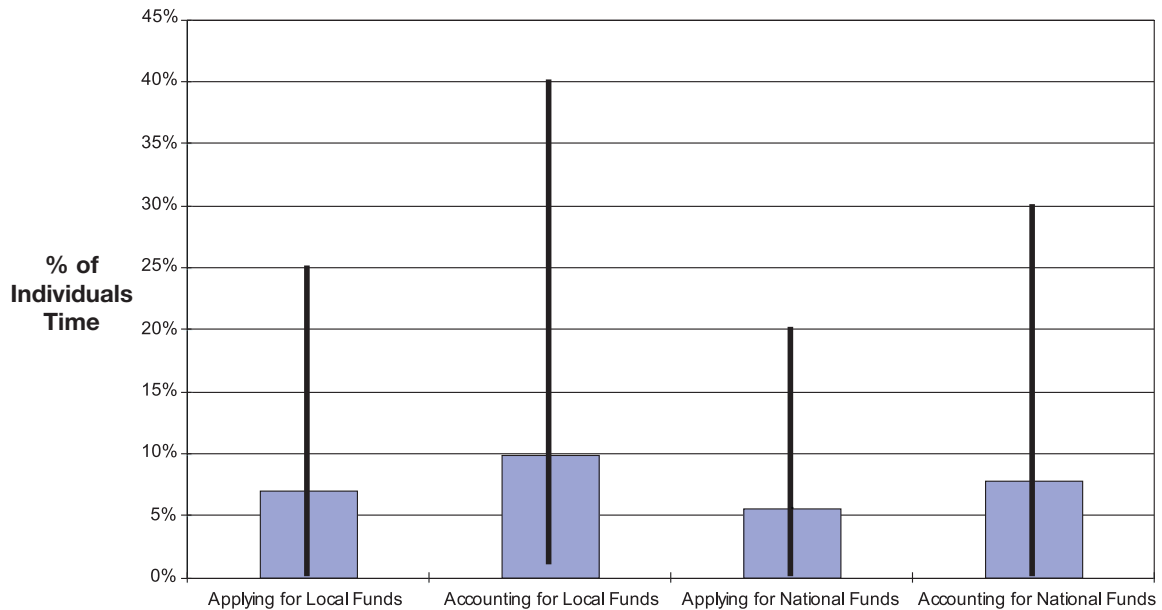
It appears that the regulatory burden falls most heavily on those VCOs dealing with housing and the elderly. It should be noted that the health VCOs which responded were largely those engaged in funding research rather than providing healthcare services.

Funding

We asked questions about the time spent applying for funds from central and local government and accounting for funds from central and local government. Many of the VCOs which responded did not seek funding from central or local government. These have been excluded from the following chart. The wide purple bar in the table below shows the average percentage of the time the respondents spent on aspects of the state funding whilst the black line shows the high and low. E.g. On average 7.1% of total working time was spent applying for local authority funding with the range being 0.1% to 25% of an individual’s total working time.

⁹⁵ To avoid drawing spurious conclusions, we only show results where we had four or more responses.

VCS Staff Time Spent on Funding



The chart above shows that, on average, more time was spent accounting for funding than applying for funding and that, on average, local authority funding is more burdensome than central government funding. In addition the burden of accounting for funding was considerably greater than the burden of applying for funding. We would expect the senior management of any organisation in the private sector or VCS, to spend a considerable amount of time applying for funds (sales pitches). The fact that the burden of accounting for the funds once granted is even greater suggests that there may be considerable scope for reducing these burdens.

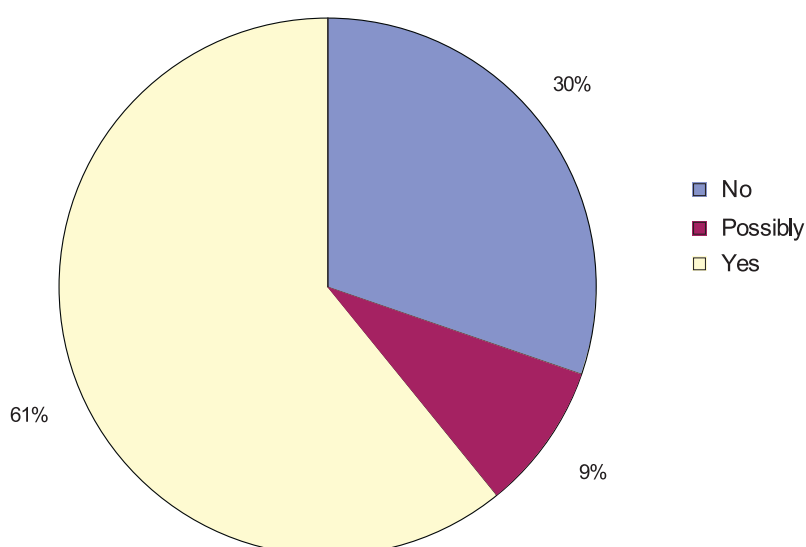
It is also interesting to note that, whilst the burden is negligible for some of those who replied (possibly because someone else in the organisation deals with this or because state funding is rarely accessed by the organisation), accounting for funding takes 40% of one director's total working time – an activity which must have an effect on his ability to run his organisation effectively. Written comments on funding included:

- “[I would like to see] one standard contract from all local authorities – albeit with caveats...”; and
- “Once a service is mainstreamed, funding should be based upon results achieved.”

Innovation

We have focused on social innovation throughout our study and asked those surveyed whether they thought that regulation was damaging their ability to innovate. As the results below show, 61% thought that regulation was damaging innovation in their organisations – a concerning total.

Percentage of Respondents who Believed Regulation was Damaging Innovation in their Organisations



For many VCOs, regulation was simply a distraction from the efficient administration of their organisation and, to the extent that it distracted them from their job, it damaged their organisation's ability to innovate. Others however, provided more specific insights into the conflict between innovation and regulation:

- “Too much senior time and leadership is concerned with compliance at the expense of time and energy devoted to service development. People who are good at checking and form filling (useful but not necessarily creative skills) assume relatively greater prominence in the organisation.”
- “In short, our church leaders are now devoting an increasing amount of limited time to charity governance which is having an adverse impact on their ‘front-line’ pastoral ministry (e.g. the objects of the charity). They now have less time for pastoral care, teaching & equipping, compassion ministry and evangelism, but spend much more time on general charity administration.”

- “Thirty percent of my organisation’s £18m costs is spent on meaningless bureaucracy from government and prevents service delivery to many potential clients.”
- “It makes it more difficult to give our elderly residents the nursing care that we want them to receive.”
- “It requires us to meet targets which largely address efficiency rather than effectiveness in relation to our Business Plan.”
- “[Regulation affects] flexibility in running residential care with nursing, i.e. RGNs [the most highly qualified type of generalist nurse] can’t attend to residents in social care or supported housing. [A] community nurse has to be brought in even when [there is] a qualified RGN on site.”
- “[Regulation reduces innovation by] sapping time, energy and the will to live!”
- “[Regulation reduces innovation by] deflecting effort to meet government targets away from providing basic education and training in support of students and employers.”

List of those Responding to Our Survey

We received survey data from the following organisations:

1990 Trust
 Affirming Catholicism
 Age Concern Hackney
 Age Concern North Staffordshire
 Age Concern Preston and South Ribble
 Anti Slavery International
 Attercliffe & Darnall Community Enterprises
 Belgrade Theatre Trust
 Berwickshire Housing Association
 Birmingham Asian Resouce Centre
 Bournemouth Churches Housing Association
 British Lung Foundation
 CAADE
 Chaddlewood Farm Community Association
 Chelmsford Sport
 Circles Network
 Citizens Advice
 Durham Aged Mineworkers Homes Association
 East Boro Housing Trust
 EDPA

Elizabeth Fitzroy Support
Gingerbread
Hanover (Scotland) Housing Association
Hanover Housing Association
Heeley City Farm
Larkfield Hall
Learning South West
London Mathematical Society
Mancroft Advice Project
Marine Biological Association
Martha Trust Hereford Ltd
Martin Yates Independent Living Services
Milton Keynes Community Foundation
Montalbo Village Hall and Recreational Charity
Morden College
Mosscare Housing
Motor and Allied Trades Benevolent Fund
Muscular Dystrophy Campaign
National Rifle Association
Old Herefordian Fund
Outlook Housing Limited
Prospect Community Housing
Railway & Canal Historical Society
Richard Orwell Trust
Royal Holloway College, University of London
Sandwell Leisure Trust
Scottish Federation of Housing Associations
SETA
Shaw Trust
Southern Focus Trust
SOVA
St Nicholas' Hospice
Stoke-on-Trent & North Staffs Y.M.C.A.
Sutton Coldfield Municipal Charities
The Britain-Nepal Medical Trust
The Children's Trust
The Duchy Health Charity
United Response
Vineyard Churches UK
Warwickshire Association of Youth Clubs
West of Scotland Housing Association
Western Challenge Housing Association
Willow Park Housing Trust
Wolverhampton Citywide BME Community Forum

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ACEVO – *Surer Funding* (November 2004)
Aldridge, Nick – *Communities in Control: The new third sector agenda for public service reform* (July 2005) SMF/ACEVO
Audit Commission – *Strategic Regulation – Minimising the Burden, Maximising the Impact*
Better Regulation Task Force – *Avoiding Regulatory Creep* (November 2004)
Better Regulation Task Force – *Bridging the Gap – Participation in Social Care Inspection* (September 2004)
Better Regulation Task Force – *Government – Supporter and Customer?* (May 2003)
Better Regulation Task Force – *Less is More* (March 2005)
Blackmore, Ann – *The reform of public services: the role of the voluntary sector* (NCVO) 2005
Bolton, Margaret – *The Impact of Regulation on Voluntary Organisations* (2005) NCVO
Cabinet Office Strategy Unit – *Private Action, Public Benefit – A Review of Charities and the Wider Not-For-Profit Sector* (2002)
Carrington, David – *Financing the Voluntary and Community Sector – Future Prospects and Possibilities* – David Carrington (2004) www.DavidCarrington.net
Charity Commission – *Charity working at the heart of society – the way forward 2005-8*
Charity Commission – *The Charity Commission and Regulation* (2005)
Charity Commission – *The Charity Commission: Regulating for the Future* (2005) (this document was the product of 74 in depth interviews with sector leaders)
Charity Commission – *The Essential Trustee - What You Need to Know* (June 2003)
Guidestar UK – Report and Financial Statements (March 2004)
Hampton, Philip – *Reducing Administrative Burdens: Effective Inspection and Enforcement* (2005)
HM Treasury
HM Treasury – *Review of Charity Taxation* (1999)
HM Treasury – *The Role of the Voluntary and Community Sector in Service Delivery – a Cross Cutting Review* (2002)
Home Office – *Compact on Relations between Government and the Voluntary and Community Sector in England* (Nov 1998) Cm 4100
Jochum, Veronique, Pratten, Belinda, Wilding, Karl – *Civil renewal and active citizenship – a guide to the debate* (June 2005) NCVO
Lloyd, Theresa – *Why Rich People Give* (2004) Philanthropy UK
National Consumer Council – *Community-based delivery of essential services*
National Housing Federation – *Schedule 1 to the Housing Act 1996 – Case for Reform*
National Audit Office – *Home Office - Working with the Third Sector* (June 2005)
NCVO – *Actions Points for Public Services – Monitoring and Evaluation Processes*
NCVO – *Actions Points for Public Services – Relationships with Local Funders*
NCVO – *UK Voluntary Sector Almanac 2004*
Voluntary Sector Skills – Proposed Business plan for ICT hub
Voluntary Sector Skills – Summary Business Plan for the National Hub of Expertise in Workforce Development for the Voluntary and Community Sector in England
Volunteering England – *Volunteering and the Law* (2005) Mark Restall
Whyley, Claire & Booker, Steve – *Home Credit* (2004) National Consumer Council

Glossary

ACEVO	Association of Chief Executives of Voluntary Organisations
ACF	Association of Charitable Foundations
CAADE	Campaign Against Age Discrimination in Employment
ChangeUp	ChangeUp is the capacity building and infrastructure framework for the VCS, published by the Home Office in 2004. A programme of activities to ensure that VCOs have the skills, knowledge, structure and resources to realise their full potential is being funded by the Home Office on the basis of this framework.
Charities	Organisations legally recognised as undertaking activities that satisfy the four heads of charity (relief of poverty, education, religion and general charitable purposes) and are therefore eligible for preferential tax status.
Civil Society	All organisations operating in the space between the state and the market are included within civil society. It includes voluntary organisations, community groups, faith based groups, trade unions and a range of other organisations and associations outside the private and public sectors.
Classic Regulation	Prescriptive state regulation where a law is passed to tell people what to do or what not to do.
Communities of Interest Compact	Non-Geographic Communities The Compact is a framework for partnership working between Government and the voluntary and community sector. It recognises the contribution the voluntary and community sector makes to our society. It was inspired by The Deakin Commission report on the future of the voluntary sector, which recommended partnership between Government and the sector to lay down basic principles of future relations. The Compact is the result of consultation across Government and the voluntary and community sector.
Compact Plus	Compact Plus is a short set of commitments which public sector bodies and voluntary and community sector organisations can opt into, with a Compact Champion who would support organisations in realising those commitments and adjudicate on disagreements.
Co-regulation	If self-regulation is at one end of a spectrum and classic regulation is at the other, there are points in between. In some cases voluntary codes of practice have significant Government involvement. This is known as co-regulation.
Corporate Social Responsibility	Corporate Social Responsibility (CSR) is a broad concept covering the range of ways in which companies respond to social and environmental facts, alongside making a profit. CSR includes a company's behaviour in relation to environmental care, employment practice, promotion of human rights, engagement in community partnerships or activities, and corporate giving or other modes of support to the voluntary and community sector.
CRB	Criminal Records Bureau
CSCI	Commission for Social Care Inspection
CVS	Council for Voluntary Service. There are a network of these organisations around the country providing support to VCOs.
DfES	Department for Education and Skills

DTI	Department of Trade and Industry
DWP	Department for Work and Pensions
Endowed Trusts	General charities with endowments which provide an income whose primary purpose is grant making to other voluntary organisations, other institutions or individuals.
ESF	European Social Fund
FOI	Freedom of Information Act 2000
Futurebuilders	An initial £125 million investment fund provided by the Government specifically to assist the VCS ready their organisations for public service work as a result of one of the recommendations in HM Treasury's <i>Cross Cutting Review</i> in 2002. It has now been established as a not-for-profit company. www.futurebuilders-england.org.uk
GDP	Gross Domestic Product
Gershon Efficiency Savings	2.5% p.a. efficiency savings which public sector bodies are committed to making as a result of Sir Peter Gershon's 2004 review of public sector efficiency (<i>Releasing Resources for the Frontline: Independent Review of Public Sector Efficiency</i>)
Gift Aid	A tax relief for cash gifts made to charities by individuals and companies in the UK, whereby charities can claim back from government the income tax or capital gains tax paid on the value of the donation. It means that every £1 donated using Gift Aid is worth £1.28 to the charity.
Guidestar UK	Launching in November 2005, GuideStar UK aims to position itself as both a "yellow pages" of charities allowing members of the public to search the database using keywords to find the charity that best meets their needs and an "encyclopedia" holding comprehensive information on all charities. GuideStar UK captures both narrative and financial data from the Trustees' Annual Report and stores it in its database. It then becomes available to its search engine and for display on its free public website. GuideStar UK, with the assistance of Experian (private sector providers of business information), have developed data capture processes which mean that all the information presented in the Trustees' Report - including many of the items on the SIR - is captured without placing additional burden on charities. GuideStar UK provides supporting information to help lay and professional users to interpret the information it has captured. GuideStar UK builds links between different items of information. For example, a direct link is provided between a charity's "total expenditure" and the "review of activities" presented in the Trustees' Report - users will be therefore be able to read in detail how a charity has spent its money.
IEE	Institution of Electrical Engineers
Local Strategic Partnerships	Partnerships bringing together public, private and voluntary representatives with local people. They have a role to play in developing Community and Neighbourhood Renewal Strategies, designed to improve the quality and joining up of local services and to reduce health, education, employment and crime inequalities experienced by those in the poorest communities.

NACRO	National Association for the Care and Resettlement of Offenders
NACVS	National Association of Councils for Voluntary Service
NCVO	National Council for Voluntary Organisations
NSPCC	National Society for the Prevention of Cruelty to Children
NVQ	National Vocational Qualification
ODPM	Office of the Deputy Prime Minister
Outcomes	These are benefits or changes for beneficiaries of programmes. They tend to be less tangible and therefore less countable than outputs.
Outputs	The direct countable products of a programme or an organisation's activities. They could be classes taught, training courses delivered or people attending workshops.
Primary Purpose Trading	Primary purpose trading is a trade exercised by a charity in the course of the actual carrying out of its primary purpose (e.g. the provision of residential accommodation by a residential care charity in return for payment).
RGN	Registered General Nurse – the title awarded to the most highly trained general nurses the other grade of nurse being a state enrolled nurse (SEN).
RN	Royal Naval
Self-Regulation	Regulation which organisations agree to sign up to because it offers a better alternative to statutory regulation or otherwise benefits them, their customers or their sector. It is voluntary in that those in the sector are not compelled by the state to participate in the self-regulatory measures though there may be implicit pressure to do so.
Social Capital	Norms and social relations embedded in social structures that enable people to achieve desired goals. The term is often used to refer to the stock of active connections among people including the trust, mutual understanding, shared values and behaviours that bind members of communities and make co-operative action possible.
Social Enterprise	A social enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being distributed to shareholders and owners. Social enterprises are diverse and operate at many levels. They can include community enterprises, social firms and mutual organisations such as co-operatives and large-scale operations operating nationally or internationally. What they have in common is a commitment to meeting social and financial needs, with some also aiming to meet environmental needs.
SORP	Statement of Recommended Practice: Accounting and Reporting by Charities 2005 sets out the way in which a charity should report annually on its resources and activities.
Trustees	The group of (generally unpaid) people responsible for control and management of a charity, which includes members of a charitable association's management committee and directors of charitable companies.
TSO	Third Sector Organisation (i.e. neither public nor private sector). Used as a synonym for the voluntary sector

VCO	Voluntary and Community Organisation
VCS	Voluntary and Community Sector
VfM	Value for Money
Volunteer	A person who donates or gives his or her time freely to provide services to other people or the wider community.

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