

**REPORT ON THE DEBATE ABOUT THE
FUTURE OF THE COMPACT**

28 November 2008

1. Introduction

1.1 Background

The final report of the Third Sector Review (*The Future Role of the Third Sector in Social and Economic Regeneration*, July 2007) reaffirmed the Government's commitment to the Compact. In doing so the report acknowledged that, while there was strong support for the Compact within the third sector and a desire for better partnership working with all levels of Government, more was required to ensure that Compact principles were consistently adhered to by public bodies.

The Third Sector Review also called for a review of the Compact, having identified that some aspects of the Compact and its five accompanying Codes were being overtaken by developments in policy and practice. A review of the Compact would bring it up to date in those respects while preserving unchanged its basic principles and strengthening implementation of it.

The Annual Compact meeting in December 2007 agreed that the Commission for the Compact should lead such a review. The meeting also agreed that the legal status of the Compact - i.e. the extent to which it was consistent with principles of public law - would be examined.

On 4 July 2008, Phil Hope MP, Minister for the Third Sector, initiated the review by asking the Commissioner for the Compact, Sir Bert Massie, to stimulate a debate on the future of the Compact, to gather views from the third sector and from local government, and to report to the Minister with recommendations.

The debate on the future of the Compact was framed around three questions set out in a discussion paper published by the Commission for the Compact in August 2008:

- What sort of agreement should the Compact be in future: should it continue as a voluntary agreement or should it be “made statutory” in some way?

- How could the form and content of the Compact be enhanced to make it fit for the future?
- How could the Commission for the Compact be equipped to ensure better implementation of the Compact?

This paper gives a summary of the views gathered by the Commission on these questions and makes a number of recommendations to the Minister for the Third Sector.

1.2 The need for change

There has been little or no questioning of the desirability of maintaining a partnership working agreement between Government and the third sector. However, some in the third sector point to the slow pace of implementation after a decade of the Compact and show frustration that political commitment does not seem to have been translated consistently into governmental practice. Government and third sector analyses of the success of the Compact as a policy instrument over the last ten years come to similar conclusions: although it has without doubt contributed to the improvement of working relations between public and third sector bodies, progress has been slower than might have been expected.

Since the Compact was formed there have been many changes in the environment in which it operates, including:

- A significant increase in the amount of public funding of third sector organisations;
- Greater participation by third sector organisations in the delivery of public services;
- Changes in the way Government identifies citizens' needs and arranges for services to meet those needs, through commissioning which is increasingly by local or regional, rather than national, public bodies;
- Changes to the structure of local Government and to the assessment of its performance;

- Greater prominence given equalities and human rights issues;
- Creation of the Office of the Third Sector and the widening of the Government's policy focus from the voluntary and community sector to the third sector, which includes not only voluntary and community organisations but also cooperatives, mutuals and social enterprises;
- The growth of social enterprise;
- A policy to devolve decision-making to the citizen level;
- Growth in the willingness and capacity of citizens to address, through collective action, not only domestic but also global issues such as third world poverty and debt, sustainable development and climate change;

and many others. Overshadowing these changes is the crisis which has undermined the national finances and made the prospects for the next few years very bleak indeed. In these difficult circumstances the need for partnership working and a mutual understanding between the state and an independent third sector has surely never been greater.

As a set of documents providing a framework for Government/third sector relations the Compact is beginning to show its age. Its six documents were written by different committees at different times and in different styles. Some of the documents predate important changes in the environment and have arguably ceased to cater for today's conditions.

In 2007, the Commission for the Compact was launched to oversee the operation of the Compact, from an independent position equidistant between Government, both central and local, and the third sector. The Commission is established as a company limited by guarantee, with the object of promoting and strengthening partnership working between public bodies and voluntary and community organisations. Its sole member is the Minister for the Cabinet Office and it has a small board consisting of directors with a wide knowledge and experience but central or local Government are not specifically represented. The Commission, after a difficult start, is now making good progress. To fulfil its role as an honest broker it needs to act independently and to be seen to do so. The legal structure of the Commission does not ensure this and its detailed policies could be

determined by a Minister, thus undermining the role and independence of the Commission. However, Ministers have recognised that an independent Commission is a more effective Commission and in practice the Commission has been able to act independently.

The Commission has no powers beyond those of any private citizen to hold governmental or third sector organisations to account for their conduct of relations with each other.

2. Respondents to the debate

There were 74 written responses to the debate. 53% of the responses were from organisations in the third sector; 19% were from local authorities or their representative bodies; and 13% were from local authority/third sector partnerships.

Within the third sector, the capacity-building, campaigning, infrastructure and membership organisations that responded represent over 60,000 regional and local third sector groups from all parts of England.

Outside the third sector, notable responses included those from the Local Government Association; the County Councils Network; the Audit Commission; UNITE (the UK's largest trade union, with over two million members in the public and private sectors) and the Big Lottery Fund.

2.1 The respondents by sector

Third Sector	39	53%
Local authority/LA body	14	19%
LA/VCS Partnership	10	13%
Other public sector	3	4%
Private sector	3	4%
Individual	5	7%
Total	74	100%

The respondents by prime policy area and sphere of operation

	National	Regional	Local Authority	Other	Total
Third Sector lobbying	2				2
Third Sector capacity building	14	4	8		26
Third Sector Campaigning	7		1		8
LA VCS Policy; LA/VCS Partnership	2		23		25
Special interest	6		3		9
Other				4	4
				Total	74

3. Views of respondents to the debate

In summary, there was:

- Strong majority support for retaining the Compact as a voluntary agreement rather than replacing it with a statutory version - see 3.1;
- Near unanimous support for the rewriting of the Compact to bring it up to date and strong majority support for consolidating it into a single document in the rewriting process - see 3.2;
- Strong majority support for an independent statutory Commission for the Compact. (A minority of responses called for the Commission for the Compact to be given significant new powers but did not want the Commission, or those powers, to be statutory.) - see 3.3.

3.1 What sort of agreement should the Compact be in future - voluntary or statutory?

There was strong majority support for retaining the Compact as a voluntary agreement (81%) rather than “making the Compact statutory”. This majority recognised that “making the Compact statutory” would effectively require the abolition of the current Compact and its replacement with a set of statutory obligations on the Government and its national bodies, on local authorities and other local public bodies and, perhaps, on third sector organisations. Performance of those obligations would have to be policed and enforced, and sanctions applied for failure to meet obligations.

A small number of respondents gave qualified support to a closer examination of the Welsh model, in which there is a statutory duty on the Government to have a Compact but no statutory prescription as to the content of the Compact.

These respondents were not advocating immediate adoption of the Welsh model but wanted the Commission to consider at greater length the advantages, disadvantages and practical implications of importing a similar arrangement to England.

NAVCA, the national membership body for local infrastructure organisations in England, was alone in arguing that all local public bodies, in particular local authorities and primary care trusts, should be required by statute to adopt a local Compact that met minimum national standards agreed by the Government and the Commission for the Compact.

3.2 The Compact documents

There was near unanimous support for the rewriting of the Compact and Codes (98%), and for consolidation of the Compact into a single document (85%). Only 6% of respondents wanted to retain the Compact in its current form as a set of separate documents. Many respondents identified the repetition of principles throughout the Codes as unnecessary. There was a general recognition that the Compact documents, though each of them was apt and up to date when it was first published, had been overtaken by subsequent developments and had suffered for lack of regular updating since then.

While there was also considerable support to mainstream the BME Code/undertakings into the other Codes of practice and/or to create an Equalities code, there was significant opposition from Voice4Change England. Voice4Change England, the national body providing a co-ordinated policy voice for BME groups and organisations, has called for the BME Compact Code to remain as a distinct entity, whether as a separate document or as a separate part of a new single Compact document. Their concern is that if a Single Equalities Code is created, equalities will be treated homogenously, without recognition of specific issues and concerns facing different equalities strands.

3.3 The Commission for the Compact - oversight of implementation of the Compact

There was majority support for measures to establish a permanent and independent Commission for the Compact, and to give it a mandate and the appropriate powers to secure better implementation of the Compact (98%).

There was some confusion about the means by which the Commission would be given new powers. Several, although a small minority of, respondents (3%) supported giving the Commission appropriate new powers but said that these powers should not be statutory powers and that the Commission should not be established as a statutory body. There were no suggestions as to how, or by whom, the Commission should be given new powers if not by statutory provision by Parliament.

Despite this confusion, however, there was strong majority support (85%) for giving the Commission powers to investigate matters to do with the operation of the Compact and powers to have access to relevant information.

A small number of local authorities expressed reservations about giving the Commission powers which proved to be intrusive, interventionist or likely to impose a heavy burden of administration. Although these concerns were not echoed by the Local Government Association, it would clearly be necessary to recognise these concerns and to ensure that interventions are proportionate and consistent with the Compact principles of co-operation.

There was considerable support for closer links to existing inspectorates and regulatory frameworks to avoid duplication of functions and activities. Many of the respondents calling for closer links to existing inspectorates and regulatory frameworks suggested that any new powers given to the Commission should be designed to augment and add value to the functions and activities of the Audit Commission, the Local Government Ombudsman and other inspectorates.

There was majority support, across all respondents, to enlarge the Commission's Board of Directors so that it contain members with knowledge and experience of all types of body (national and local Government, national and local third sector) involved in the Compact. No respondent argued against such an enlargement.

4. Conclusions

4.1 What sort of agreement should the Compact be in future - voluntary or statutory?

There is overwhelming support for retaining the voluntary and value-driven basis of the Compact. In the Commission for the Compact's view it would be wise to keep the legal status of the Compact as it is now. While there is frustration among many third sector respondents that the Compact is too readily ignored, the enactment of a statutory Compact would not resolve those frustrations. Indeed, converting the Compact into a set of statutory obligations would have these distinct disadvantages:

- The strong emphasis in the Compact on co-operation and mutual respect are not easily incorporated into statute and the process of moving from a voluntary to a statutory agreement is likely to weaken those parts of the Compact that are not readily converted into law;
- A statutory Compact would tend to increase the financial, regulatory and bureaucratic burden not only on public bodies but also on third sector and public organisations;
- A statutory Compact would be inherently adversarial, undermining the value of the Compact as a partnership agreement developed through dialogue and joint working.

However, that does not mean that the Compact and the law should never meet. The Compact should draw attention to laws already on the statute book. The Compact ought to be, and ought to state that it is, consistent with the law, so that someone who follows the Compact knows that they are acting consistently with the law.

4.2 The Compact documents

The Compact remains largely relevant but parts are no longer fit for purpose. Since it was published there have been legislative changes that supersede undertakings in the Codes; there have been changes in Government policy, and reforms to the way public services are designed, delivered and paid for; there have been changes in language; and there have been changes in the organisation and functions of both the third and the public sector.

Respondents to the debate were united in calling for updated Compact documentation that:

- Is shorter in length and sharper in focus than the current documentation;
- Contains clear and measurable commitments from both the Government and the third sector;
- Is clear in scope - i.e. explains clearly which descriptions or classes of bodies it applies to.

Respondents also called for a mechanism to be established to ensure that the Compact can readily be revised to accommodate future changes in its operating environment.

The Commission for the Compact supports these calls and believes it is well placed to lead a rewrite of the Compact. It would want to reassure both public and third sector bodies that the process of rewriting would be consultative of all parties while being conducted as economically as possible. The Commission would guarantee that a rewritten Compact would not be a watered-down version of what now exists. And it would emphasise that the present Compact should continue to be followed until the revised Compact took effect.

4.3 The Commission for the Compact - oversight of implementation of the Compact

There is majority support for an independent statutory Commission for the Compact with a larger, more representative, Board and with the necessary powers to improve the implementation of the Compact.

The purpose of enlarging the Commission's Board would be to ensure that collectively it had knowledge and experience of the range of public and third sector bodies involved in the Compact, and that those bodies had confidence in the capacity of the Commission's Board to understand and take account of their interests.

The Commission's Board members should not act as representatives of the narrow interests of particular constituencies (e.g. local government or local third sector bodies) but should bring their knowledge and experience of those constituencies to bear in making decisions in the wider interest of promoting and strengthening partnership working.

The purpose of establishing the Commission as a statutory body is to:

- Ensure the Commission is transparent and open and accountable;
- Empower the Secretary of State to ensure that the Board of the Commission is reflective of the various parties to the Compact;
- Ensure that the Commission is independent and is therefore able to act as an honest broker;
- Enable a number of new powers and duties to be given to the Commission.

It is recommended that the Commission should lay an annual report before Parliament and be subject to scrutiny by the appropriate Parliamentary committees.

The Commission's current object of promoting and strengthening partnership working in accordance with the Compact, or otherwise, should be preserved in a new statutory Commission, which should be given:

- Power to inquire into or investigate any matter concerning the operation or application of the Compact;
- A right of access to information or documents relevant to an inquiry;
- Power to make recommendations following an inquiry;
- Power to require any person or organisation to whom a recommendation is directed to respond to the recommendation;
- A duty to carry out research into the practices and benefits of partnership working, the operation of the Compact, and the conduct of relations between public and third sector bodies, and to disseminate the useful results of research;
- A duty to promote the resolution of disputes between public and third sector bodies about the operation or application of the Compact;
- A duty to keep the Compact under review, to report on its effectiveness, and to make recommendations for any revisions which it believes are needed.

The Commission should not have any power to regulate or enforce compliance with the Compact and should not duplicate the work of any existing regulator or inspectorate.

5. Recommendations

- 5.1 That the Compact remain a voluntary agreement and that no further consideration be given to converting it into statutory form.
- 5.2 That the Compact and Codes be rewritten into a single document, with particular consideration given to the implications for Local Compacts of a revised national Compact. The redrafting should take account of, and refer to, the new local performance framework, Local Strategic Partnerships, Local Area Agreements and the Comprehensive Area Assessment.
- 5.3 That the Commission be mandated to begin the work of revising and rewriting the Compact forthwith, according to a consultative process to be agreed between the Compact parties.
- 5.4 That the Commission for the Compact be established as a statutory corporation as described in 4.3 above. The statute establishing the Commission should also provide that, in the exercise of its functions, the Commission should act independently, having first agreed its business plan with the Secretary of State.