

DEBATING THE FUTURE OF THE COMPACT

A discussion paper issued by the Commission for the Compact
7 August 2008

The Commission for the Compact has been asked by the Minister for the Third Sector, Phil Hope MP, to stimulate a debate on the future of the Compact in this its tenth year. After some introductory paragraphs on the Compact, this paper introduces three key questions on which we would like to hear views from anyone interested in the Compact:

- What sort of agreement should the Compact be in future?
- 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 change to ensure better implementation of the Compact?

Anyone with an interest in the Compact may comment and we are keen for the debate to be open and unconstrained. You may choose to answer each of the three headline questions as simply and directly as they are posed, or you may choose to put in your views on the detailed commentary and some or all of questions that follow. Alternatively, you may choose to use the questions as a starting point to stimulate debate.

Please feel free to answer one, some or all of the questions in this discussion paper. In addition, the Commission for the Compact welcomes any supporting evidence you may wish to include with your views. Where this paper raises complementary issues or questions not covered in this paper, please feel free to identify and address them.

All views should be forwarded to the Commission for the Compact by **Monday 10 November 2008**.

In autumn 2008, we will analyse the views and evidence we have received and make proposals to the Minister for the Third Sector. If there is a consensus on a way forward, the Minister will need to conduct a formal public consultation, with an accompanying impact assessment, on the Government's intentions for the future of the Compact.

More detailed information about the Compact can be found at www.thecompact.org.uk

Background information about the Compact

The Compact is an agreement, signed in 1998, between the Government the voluntary and community sector (VCS) in England to work in partnership with each other and improve their relationship for mutual advantage and community gain. It recognises shared values, principles and commitments and sets out guidelines for how both parties should work together.

These principles are further developed in five Codes of Practice¹ which have also been agreed between the Government and the VCS. The six documents - the 1998 agreement and the five Codes of Practice - together form the Compact².

The Compact is a voluntary agreement, meaning that it is freely entered into by both the Government and the VCS. While both sides are committed to follow the principles of the Compact, it is not legally-binding and the undertakings in the Compact cannot be legally enforced.

Some of the requirements of administrative law are echoed in the Compact - for example, the requirements on public bodies to act fairly, to be reasonable in making decisions, and to explain their reasons, are all legal requirements. They are also present in the Compact. Those requirements are enforceable by the court because they are part of the law, not because they are present in the Compact.

Although the Compact is not part of the law, it can be taken into account by a court when considering the actions or decisions of public bodies. The Compact contains undertakings freely given by the Government, and a court would expect a Government body to meet its undertakings unless there were good reasons not to. The court cannot, however, force a Government body to comply with Compact undertakings.

The Compact is a two-sided agreement, meaning that it contains both:

- Undertakings given by the Government about how it will conduct its relations with the VCS; and
- Undertakings given by the VCS about how it will conduct its relations with the Government.

¹ On: Black and Minority Ethnic Voluntary and Community Organisations; Community Groups; Consultation and Policy Appraisal; Funding and Procurement; Volunteering

² See <http://www.thecompact.org.uk/information/100023/publications/> for the Compact documents

The Compact is a national agreement for England (other arrangements exist for Scotland, Wales and Northern Ireland). Central Government signed up collectively to the Compact so it applies to all central Government bodies in England, principally:

- Government Departments (including Non-Ministerial Departments);
- Agencies and NDPBs (Non-Departmental Public Bodies - also known as quangos) sponsored by Government Departments; and
- Government Offices for the Regions.

Local authorities were encouraged by the Government from 1998 onwards to agree local Compacts for partnership working with VCS organisations in their areas. Every top-tier local authority in England now has a Local Compact for its area. Local Compacts are based on similar partnership working principles to the national Compact but vary from area to area in their detail, to reflect distinctive local issues and partnership arrangements.

How Local Compacts are affected by changes to the national Compact is a fundamental issue. Much of the VCS is locally based; their primary relationship is with local public bodies through Local Compacts rather than through central government via a national Compact.

Preliminary questions concerning Local Compacts:

Question 1: How would changes to the national Compact affect Local Compacts?

Question 2: Would statutory powers for the Commission for the Compact secure increased compliance with Local Compacts, greater awareness of Local Compacts and more effective dispute resolution?

(please see section C for information and a full explanation about statutory powers)

Question 3: What else needs to be done at a national level to help make Local Compacts more effective?

When answering the questions in sections A-C, please consider the implications at a local level.

Section A

Key Question A - What sort of agreement should the Compact be in future?

Recently there have been suggestions by some in the VCS that the Compact should be “made statutory”. The thinking behind those suggestions seems to be, in summary, that:

- The Government has had ten years to embed the Compact into the policies and processes of its departments, agencies and NDPBs (quangos);
- Despite this, the Government is still not meeting its Compact undertakings fully and consistently;
- As the Government cannot be relied on to meet its undertakings voluntarily, and cannot be forced to do so at present, it must be put under a new legal obligation to do so.

To put this into practice, the Compact would need to be converted by an Act of Parliament from a voluntary agreement into a set of statutory obligations. That would represent a radical change to the purpose and character of the Compact.

Question 4: We would like your views on the question: **Should the Compact remain a voluntary agreement or should it be made statutory?**

In addressing this question these are some of the issues to consider:

- If the Compact were made statutory should it become one-sided, with legal obligations falling only on the Government (including its agencies and NDPBs)?
- Or should it continue to be two-sided, with legal obligations falling on the VCS as well as on the Government?
- If it should become one-sided, what is the justification for imposing obligations on one partner but not on the other?
- Should the Compact remain primarily about building constructive partnerships or be more explicitly about addressing the imbalance of power between sectors?
- If it should continue to be two-sided, should the obligations on the VCS apply to all VCS organisations? Or should individual VCS organisations be allowed to choose to opt in or out? Opting in would mean that a VCS organisation could force the Government to meet its obligations and, in return, would accept that the Government could force it to meet its own obligations.
- What would the penalties be for failure (by Government or by VCS) to meet obligations?
- Who would enforce those penalties?
- What effect would making the Compact statutory have on the overall state of Government / VCS relations, and on the capacity of VCS organisations to work effectively?
- Would making the Compact statutory improve the quality of services, facilities and opportunities for people in England?

There is an alternative, based on the arrangements in Wales, between “making the Compact statutory” and leaving it as a voluntary agreement. In Wales, the Assembly Government is required by statute to make a scheme setting out how it proposes to promote the interests of voluntary organisations. To introduce a similar requirement for England would need an Act of Parliament, which could give the Government a duty to state how it proposed to promote the interests of VCS organisations (or conduct its relations with VCS organisations, or similar wording). The Act could also require an annual report to Parliament on how the Government had implemented its proposals during the year.

This would not put the Government under an enforceable legal obligation to implement each and every one of its proposals. But it would mean that the Government was acting under a requirement of Parliament and was formally accountable to Parliament each year for its performance.

Question 5: Do you have any views on the Welsh model of a statutory provision requiring the Government to set out its proposals towards the VCS and to account to Parliament each year?

There is another sort of approach which would need an Act of Parliament. The Government (and the VCS) could be put under a statutory obligation to “have regard” to the Compact principles and undertakings in its relations with the VCS (or the Government). That would not make it compulsory to follow the Compact in every case but it would force the Government (and the VCS) to take the Compact seriously: they would have to be able to explain and justify why it was not followed in any particular case. The main difference between this and the current position would be that Parliament was endorsing the Compact, though it would be encouraging rather than forcing organisations to follow the Compact.

Question 6: Is this sort of approach worth considering, in your view?

Question 7: What would it change in practice?

Section B

Key Question B - How could the form and content of the Compact be enhanced to make it fit for the future?

The Compact agreement and five Codes of Practice were written at different times between 1998 and 2003. Two of the Codes were revised in 2005 but otherwise the documents have not been changed since they were first published. Since 1998 there have been many developments in legislation, policy and practice, in the social and economic environment, and in the relationship between the Government and the VCS.

Question 8: In your view, do any of those developments, or any foreseeable future developments, require changes to be made to the content of the Compact?

Question 9: If so, what changes do you think are required?

Question 10: In particular, are there any new topics that should be included in the Compact?

Question 11: And are there any areas of the current Compact that are no longer relevant or applicable?

Question 12: Or do you think that the content of the Compact as it currently stands is adequate and should not be changed?

The Compact consists of six self-standing documents covering, together, about 135 pages. Because each of the documents was written so that it made sense on its own, some of the same background and explanatory material appears in each document. This makes the Compact, as a set of six documents, longer than it would otherwise be, and repetitive in places.

Question 13: Should the Compact continue as a set of separate documents or should it be consolidated (with or without changes) into a single document?

In 1998, the Compact was agreed between the Government and the “voluntary and community sector”, which consists of charities, non-charitable voluntary organisations, and community organisations. More recently, the Government has adopted the wider term “third sector”, which consists of all organisations that are free from Government control, exist for a socially-useful purpose, and spend all their resources (including any surpluses) for that purpose. The third sector, as defined by the Government, therefore includes not only VCS organisations but also social enterprises, cooperatives, and some mutual organisations.

Question 14: Should the Compact continue to be an agreement between Government and the VCS or should it extend to the wider third sector, or to some other class(es) of organisations?

Section C

Key Question C - How could the Commission for the Compact change to ensure better implementation of the Compact?

The Commission was set up by the Minister for the Third Sector, after consultation with the VCS, to promote the strengthening of partnership working through the operation of the Compact. It is an Executive NDPB (a type of quango) of the Office of the Third Sector, whose Minister:

- Appoints the Commission's Board;
- Provides all of the Commission's funding;
- Decided what the Commission's current functions, powers and other constitutional provisions would be;
- Has the power to change the Commission's constitution;
- Has the power to wind up the Commission.

Although the Commission was, like other Executive NDPBs, created to implement the Government's policy, it is operationally independent: Ministers shape its overall business but do not determine its day-to-day operations. The Commission's Board is required to act in the interests of strengthening partnership working between the Government and the VCS, not in the interests of any Minister or of the Government generally.

The Commission's formal powers are no more than those of any private citizen, though of course its status and resources as a public body and the degree of support it enjoys in Government and the VCS gives it significant capacity to exert influence. These are some of the things that the Commission can do:

- Identify examples of good and bad practice;
- Encourage the adoption of good partnership working practice;
- Criticise poor practice and name and shame organisations;
- Carry out and publish research into the operation of the Compact;
- Gather and publish evidence about the benefits of working in accordance with the Compact.

These are some of the things that the Commission cannot do at present but could be given power to do:

- Investigate actions and decisions of organisations with or without their consent;
- Ensure that organisations give it information and documents;
- Require organisations to explain and justify their actions;
- Ensure that organisations take note of and respond to Commission recommendations within a reasonable time.

At present, the Commission can do whatever other organisations allow it to do by cooperating with it. The Commission can't override a lack of cooperation and can't do anything for which it needs information, documents or explanations that organisations are not willing to give it.

Establishing the Commission as a statutory body would transfer from Ministers to Parliament, in an Act of Parliament, the task of deciding on the Commission's objectives, functions, powers, and other important elements of its constitution. Its constitution could then not be changed, and the Commission could not be abolished, without another Act of Parliament.

Question 15: What are your views on establishing the Commission for the Compact as a statutory body?

Question 16: If the Commission is established as a statutory body, would there be merit in expanding the Board so that membership reflects the full range of Compact stakeholders?

Question 17: Does it matter for the Commission's independence that the Minister formally controls its constitution, as long as it operates independently in practice?

Question 18: Do you think the Commission should have powers of investigation and access to relevant information, and be able to impose a duty on others to co-operate with it?

Question 19: If so, which organisations should be subject to the Commission's powers?

Question 20: Under what circumstances do you think the Commission for the Compact should take on cases of disputes between Government and VCS organisations?

Question 21: At what stage in the dispute process should the Commission become involved?

Administrative and regulatory burdens

When the Minister for the Third Sector carries out a public consultation on his intentions for the future of the Compact he will need to publish, as part of the consultation, an Impact Assessment. The Impact Assessment will consider the administrative and regulatory effects of his proposals - both the costs and the benefits to third sector organisations.

Question 22: If in addressing any of our questions you have views on the likely administrative and regulatory effects of any of the possible changes, please let us know. We are interested to know if you think any particular change will increase or decrease administrative and regulatory burdens for VCS organisations or if it will have a neutral effect.

How to give us your views

Please write to us at:

The Compact Debate
Commission for the Compact
77 Paradise Circus Queensway
Birmingham
B1 2DT

Or email us at:

debate@thecompact.org.uk

All views should be forwarded to the Commission by:
Monday 10 November 2008.

If you wish to discuss any of the issues or questions in this discussion paper, please do not hesitate to contact our Policy team:

Andy Forster	Head of Policy	Tel: 0121 237 5916
Nick Drew	Policy Adviser	Tel: 0121 237 5920
Ruth Etkind	Policy Adviser	Tel: 0121 237 5912
Richard Williams	Policy Adviser	Tel: 0121 237 5914