

# **UNSHACKLING GOOD NEIGHBOURS – ONE YEAR ON**

**Implementing the recommendations of  
the Civil Society Red Tape Task Force**

**May 2012**

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# INTRODUCTION

After nine months examining the rules and regulations that deterred people from giving their time and money to good causes and stifled the civil society sector, the Civil Society Red Tape Taskforce, led by Lord Hodgson of Astley Abbots, concluded that a “suffocating blanket of red tape and an insidious mythology about being sued are deterring millions of Britons, volunteer organisations and charities from helping out more fully in society”.

When the Task Force’s report, “Unshackling Good Neighbours”,<sup>1</sup> was published in May 2011, Nick Hurd, the Minister for Civil Society, agreed to take forward all 17 main recommendations and invited Lord Hodgson to return in a year’s time to review the progress made.

The recommendations set some significant challenges, but the response of Government departments, civil society organisations and others has been very encouraging. There is a real will to tackle the burden of red tape.

There has been good progress in implementing the recommendations: some have already been fully achieved; others are well in hand but will take longer to achieve; and for others the legislation is now in place and we look forward to seeing how well it works.

Three of the Task Force’s recommendations are being addressed by the Review of the Charities Act 2006, which Lord Hodgson is also leading. Those recommendations are:

- The simplification of the charitable licensing regime. An increased role for the Fundraising Standards Board in this process should be considered.
- Trust Law as regards charities with permanent endowment seeking to make mixed purpose investments should be reviewed.
- The Review should consider ways to make it easier for charities with permanent endowment whose original purposes have become obsolete to recycle their assets to other charitable purposes.

The work to implement the recommendations in “Unshackling Good Neighbours” is part of the Government’s ongoing commitment to reduce bureaucracy. We have launched the “Red Tape Challenge<sup>2</sup>” to look at regulations thematically across a number of sectors, and today we are launching the Civil Society Red Tape Challenge, giving the public a further opportunity to highlight unnecessary regulation that gets in the way of social action and the effective running of civil society organisations, including social enterprises. The drive to reduce the burden of red tape will continue and we are always looking for new ways to improve.

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<sup>1</sup> [www.cabinetoffice.gov.uk/resource-library/unshackling-good-neighbours](http://www.cabinetoffice.gov.uk/resource-library/unshackling-good-neighbours)

<sup>2</sup> [www.redtapechallenge.cabinetoffice.gov.uk/about/](http://www.redtapechallenge.cabinetoffice.gov.uk/about/)

# RECOMMENDATION 1

**The Attorney General should make a reference to the Charity Tribunal asking it to consider establishing a test of reasonableness for volunteers. The Law Commission should be asked to consider whether current law provides adequate protection to volunteers. If neither of these prove fruitful, the Government should consider how the issue of volunteer liability should be addressed.**

This was a particularly timely recommendation because of the major community volunteering opportunities supporting the Queen's Diamond Jubilee and the London Olympics that are taking place in 2012.

Much of the evidence provided to the Task Force indicated that people are discouraged from volunteering because of the perceived risk of being sued and consequently found negligent. "Unshackling Good Neighbours" said that the perception is *"fuelled by both media articles and the very large number of legal firms currently advertising conditional fees (more commonly known as "no win, no fee") services"*. This situation should change because in recent years both case<sup>3</sup> and statute law<sup>4</sup> have changed and recognise that, sometimes tragic, accidents do happen.

Apart from those changes in the way that the Courts are now able to interpret negligence, a further change to come is that the Legal Aid, Sentencing and Punishment of Offenders Act 2012, when in force, will reduce prosecuting lawyers' fees in negligence cases by requiring them to be paid out of the damages awarded and capped at 25% of the award. Its intention is that this will make litigation a less attractive financial proposition for prosecuting lawyers as it reduces the profit they can make from such cases.

However, despite these changes to the law the evidence to the Task Force suggests very clearly that there has not been a corresponding change in the public perception that it is easy for volunteers to be sued.

To begin to counter this, the Insurance Working Group, established under recommendation 3, has developed a volunteer code of practice to provide clarity on when there is risk and insurance is

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<sup>3</sup> Tomlinson v Congleton Borough Council (2003) at [www.bailii.org/uk/cases/UKHL/2003/47.html](http://www.bailii.org/uk/cases/UKHL/2003/47.html), other examples are Poppleton v Trustees of the Portsmouth Youth Activity Committee (2008) at [www.bailii.org/ew/cases/EWCA/Civ/2008/646.html](http://www.bailii.org/ew/cases/EWCA/Civ/2008/646.html) and Harry Bowen and others v The National Trust (2011) at [www.judiciary.gov.uk/media/judgments/2011/bowen-others-v-national-trust-27072011](http://www.judiciary.gov.uk/media/judgments/2011/bowen-others-v-national-trust-27072011)

<sup>4</sup> Section 1 of the Compensation Act 2006 at [www.legislation.gov.uk/ukpga/2006/29/contents](http://www.legislation.gov.uk/ukpga/2006/29/contents)

genuinely needed. The work has been coordinated by Volunteering England and they have also brought the Local Government Association (LGA) into the discussion, with the intention of ensuring that local authorities are made aware of this work, together with the Sport and Recreation Alliance to ensure coverage of sports organisations as well as Community Service Volunteers and the National Association of Citizens Advice Bureaux.

The code is also supported by guidance ‘Celebrate – An ABI guide to planning an event’<sup>5</sup> from the Association of British Insurers that signposts for organiser of community events how to assess risk and where to seek various insurances that may be sensible and what they will cover.

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<sup>5</sup> [www.abi.org.uk/Media/Releases/2012/04/Celebrate\\_safely\\_ABI\\_publishes\\_guide\\_on\\_organising\\_street\\_parties\\_and\\_other\\_events.aspx](http://www.abi.org.uk/Media/Releases/2012/04/Celebrate_safely_ABI_publishes_guide_on_organising_street_parties_and_other_events.aspx)

## RECOMMENDATION 2

**Posters should be prominently displayed in all Jobcentres and there should be regular emphasis on guidance on the rules concerning unemployed individuals undertaking voluntary work and links between individual Jobcentres and their local CSO's should be improved.**

The Task Force made this recommendation because despite “progress that has been made by Jobcentres, the Task Force has come across too many cases where staff in Job Centres are unaware of the regulations on voluntary work and have suggested that if an unemployed person has taken voluntary work, even if for a few hours with no pay, he or she would suffer a deduction of benefit”<sup>6</sup>.

As well as Jobcentre Plus, we have sought the views of Volunteering England and the Prince's Trust in reviewing the success in implementing this recommendation, which has been addressed in a different way to that envisaged by the Task Force but which is valued by all three organisations and who are all committed to further developing an approach that encourages Jobseekers to use volunteering opportunities as a potential route to finding employment.

### **Jobcentre Plus**

Jobcentre Plus (JCP) is moving away from using posters, but fully acknowledges that working in partnership with local Volunteering Centres is critical to the promotion and delivery of the Get Britain Working measure "Work Together". Organisations that promote volunteering, such as the Prince's Trust, Volunteering England and other national and local voluntary and community sector partners are co-locating in Jobcentres to help jobseekers identify volunteering opportunities and to raise personal adviser awareness of local opportunities.

Following a consultation exercise with JCP advisers, guidance on volunteering has been strengthened and communicated to ensure all advisers understand the importance of appropriate volunteering opportunities for jobseekers as a route towards employment. Independent research concluded that there are high levels of recognition of the value of volunteering for young people amongst JCP Advisers.

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<sup>6</sup> Unshackling Good Neighbours

Overall 97.1% of JCP staff interviewed were aware of the appropriate guidelines and Jobcentre Plus reported the highest levels of confidence in applying them. However, the availability of Get Britain Working measures will vary across the country according to local circumstances and needs.

## **The Prince's Trust**

The Prince's Trust has been involved in co-location at 38 Jobcentre sites. Informal feedback to the Trust indicates that the service has been well received and that customers have appreciated an opportunity to access information inside the Jobcentre and helped to engage customers who would not otherwise have taken the initiative to seek out volunteering and connected them to a local source of opportunities.

Martina Milburn, Chief Executive the Prince's Trust, said of its partnership with Jobcentre Plus:

*"With youth unemployment at a record high, it is now more important than ever to help young people into jobs. This partnership will help us reach thousands more disadvantaged young people, giving them the skills and confidence to break out of long-term unemployment and poverty. Transforming these young lives will have a huge impact on their families, communities as well as on Britain's economy."*

## **Volunteering England**

Like the Prince's Trust, Volunteering England members are involved in the co-location initiative to make space available in JCP offices for local organisations to speak to unemployed people about volunteering, carrying out much work to communicate the project to its members and advise the Department for Work and Pensions about the best way to effect delivery following initial problems.

Highlights of the partnership included:

- the identification of appropriate local Department for Work and Pensions contacts for Volunteer Centres and others who could help with developing relationships with JCP;
- consultation with Volunteering England on publications such as 'Volunteering while getting benefits' and Directgov web pages; and
- attendance of Department for Work and Pensions staff at the Volunteering England AGM to deliver workshops.

Mike Locke, Director of Public Affairs at Volunteering England and who signed the agreement between Jobcentre Plus and Volunteering England on behalf of the latter, said:

*“On behalf of Volunteering England, I am very pleased to sign this agreement to work together with Jobcentre Plus to promote understanding and improve communications about the opportunities of volunteering. We believe that organisations which rely on volunteers will benefit from a wider and more diverse pool of people prepared to give their time, as will the communities in which they are based.”*

## RECOMMENDATION 3

**A Working Party should be established by the insurance industry and the CSO sector to provide a forum to address the insurance needs of the sector**

The potential for closer working between the insurance industry and civil society organisations was demonstrated by the publication on the ABI website of “Volunteer Driving - The motor insurance commitment”<sup>7</sup> in August 2011. This was a pilot issue proposed by the Task Force. When it was published on the ABI website last August the document listed 54 insurance providers who provide cover for 85% of all drivers and do not charge extra premiums for volunteer drivers. By April the number of insurance companies had risen to 66 providing cover for over 90% of all drivers.

Alastair McDougall of WRVS said of the publication:

*“This marks real progress. Over 10,000 volunteers use their cars to help older people for WRVS. Last year they covered over 3.5 million miles. We know there are going to be a lot more older people in Britain in the years ahead and WRVS is going to grow to meet that need. Overcoming isolation is one of the targets to help older people, and that often involves driving.”*

Otto Thoresen, ABI Director General said:

*“Volunteers are a critical part of our communities. Motor insurers have given a clear commitment that they do not want to stand in the way of volunteer driving, by not charging extra premiums. They recognise the tremendous benefit that this work brings to local communities and society as a whole.”*

Following some thorough preparation work by the Association of British Insurers and Volunteering England the first meeting of this group was held last November. The group comprises representatives of sector umbrella bodies, including ACEVO, NAVCA and NCVO, and representatives of insurance companies and brokers. The group is chaired by David Tyler, Chief Executive of Community Matters and a Civil Society Red Tape Task Force member. At its initial meeting it was agreed that four smaller working groups should be formed to address the following specific issues of mutual interest:

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<sup>7</sup> [www.abi.org.uk/information/consumers/general/volunteer\\_driving\\_.aspx](http://www.abi.org.uk/information/consumers/general/volunteer_driving_.aspx)

- facilitating community volunteering and engagement;
- personal liability, including informal volunteering by individuals;
- local authority imposed obligations and unevenness of enforcement; and
- mapping insurance products and what they cover.

The working group has developed the code of practice for volunteers referred to in recommendation 1, aimed at individuals who are informally helping out neighbours and supporting their community. It provides some simple, common sense guidance to help people reduce the risk they are exposed to. It also aims to address the perception that volunteering to help others is inherently risky.

# RECOMMENDATION 4

**The broad proposals contained in the Reviews of Criminal Records, Health and Safety and Contingent Fee Litigation should be followed through.**

There has been major progress in all three of these areas.

## **Changes to Criminal Record checks**

The recent review of the criminal records regime is leading to significant and important improvements to our vetting and barring arrangements, which are being implemented via the Protection of Freedoms Act 2012<sup>8</sup>.

Crucial amongst these improvements is the introduction of a new ‘updating service’ by the Criminal Records Bureau (CRB), whereby a current or new employer (including a relevant organisation using volunteers) will be able to establish if any new information has been recorded by the police since a particular criminal records certificate was issued.

This will radically improve the ‘portability’ of CRB certificates between posts and lead to a very substantial reduction in the need for repeat checks on the same individual. It will allow applicants for CRB disclosures to subscribe to a service that will enable them to authorise employers to make a simple and immediate online check, which will indicate whether any new and relevant information is known about that person since their last disclosure was issued. In the vast majority of cases there will be no new information.

Whether the check is being made by a new employer or by an existing employer seeking to update a disclosure, the absence of any new information will remove the need for a full scale criminal record certificate application, thus saving both time and money. Therefore, the need to seek a further full disclosure from the CRB will be limited to the small proportion of cases where new information has actually arisen since the last check. The practical benefits for volunteers and voluntary organisations will be very substantial, particularly in terms of reducing delays which currently occur while repeat checks are made.

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<sup>8</sup> [www.legislation.gov.uk/ukpga/2012/9/contents/enacted](http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted)

CRB checks will remain available for a wide range of roles where people are working with children or vulnerable adults but, subject to any specific rules applying to particular employment sectors, there is often significant scope for employers, including voluntary organisations, to make balanced judgements about when such checks are actually needed.

The extent of “regulated activity”, where a check will be needed to establish whether someone is barred from particular types of work, is being significantly scaled back to concentrate on those having really close contact with the vulnerable. It is currently planned that from September the number of people involved in “regulated activity” will fall from 9.3 million (25% of the working population) to 5 million. Once again, this will benefit organisations that use volunteers.

The Rt Hon Theresa May MP, Home Secretary, said:

*“Security checks for parents who want to help out in their children's classrooms were never needed for state security and we have brought them to an end.*

*“I have brought common sense back to public protection with this Act.”*

## **Making health and safety simpler**

Work has already been completed by the Health and Safety Executive (HSE) in a number of areas. These include a series of online simplified risk assessments for lower risk workplaces, such as offices and shops (including charity shops). “Health and Safety Made Simple”<sup>9</sup> is new online guidance targeted at business, but also relevant to many civil society organisations, providing very simple, very straightforward guidance on what’s required based on common sense and proportionality. There have been over 360,000 hits on that piece of guidance since its publication last year.

Also underway is a comprehensive review of all of the guidance produced by HSE, with the intention of simplifying it where possible. The intention is not to lower standards, but simply to make it easier for people to understand what they have to do and how to do it. This will create guidance that is easier to read and apply in practice.

Judith Hackitt, Chair, HSE said:

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<sup>9</sup> [www.hse.gov.uk/simple-health-safety/](http://www.hse.gov.uk/simple-health-safety/)

*“Britain is one of the safest and the healthiest places to work in the world, and I believe it can continue to be so, but central to the achievement of that outcome is the ability of those who form part of the health and safety system to play their part, and we need to do that by drawing the distinction between what’s real health and safety and what is bureaucracy and over interpretation people to understand what’s required.”*

## **Contingent Fee Litigation**

The Government has brought into law the primary recommendations contained in Lord Justice Jackson’s Review of Civil Litigation Costs<sup>10</sup>, including in particular a fundamental reform of no win no fee Conditional Fee Agreements. This reform is being taken forward in the Legal Aid, Sentencing and Punishment of Offenders Act 2012<sup>11</sup>.

The Government is also banning the payment and receipt of ‘referral fees’ in personal injury cases. Referral fees are paid by solicitors to third parties who ‘refer’ business to them. The ban on referral fees will remove incentives for excessive litigation.

Under the Government’s changes, meritorious claims will be resolved at more proportionate cost, while unnecessary or avoidable claims will be deterred from progressing to court.

The Rt Hon Kenneth Clarke MP, Justice Secretary said:

*The Act aims to stop the symptoms of a compensation culture where the public are facing increased insurance costs, and local authorities and firms are scared to go about their business, due to the high legal costs that widely advertised no-win no-fee deals can ramp up.*

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<sup>10</sup> [www.judiciary.gov.uk/NR/rdonlyres/.../0/jacksonfinalreport140110.pdf](http://www.judiciary.gov.uk/NR/rdonlyres/.../0/jacksonfinalreport140110.pdf)

<sup>11</sup> [www.legislation.gov.uk/ukpga/2012/10/contents/enacted](http://www.legislation.gov.uk/ukpga/2012/10/contents/enacted)

## RECOMMENDATION 5

**Clearer guidance for licensing of fund raising events should be provided immediately.**

This is an area where significant progress is being made, both in developing better practice and in new legislation to scale back and simplify requirements.

### Good practice

As appendix B of “Unshackling Good Neighbours” illustrates, a single event can potentially require several different licences, prescribed by different pieces of legislation and overseen by a range of statutory and commercial bodies. Councils are well aware they may be the first point of contact for people wishing to hold an event and work hard to support them in making it a success. Where the necessary licences are issued by the council, they strive to make the process straightforward and many activities, including serving of food and alcohol, can be supported through one licence. Councils constantly build on their experience of licensing events, major recent examples being handling thousands of street party applications for last year’s Royal Wedding and this summer’s Diamond Jubilee, to improve how they support community activities. They are conscious to keep form-filling to a minimum and make guidance simple and easily accessible.

The Local Government Association (LGA) is now collecting these different approaches into “Community events – A councillor handbook” a single councillor handbook to share innovative and best practice<sup>12</sup>. This will be complemented by a simplified ‘How to run an event’ guide for communities that is being produced in conjunction with the voluntary sector, insurance industry and central government partners. All of this information will be shared through a new online Knowledge Hub to improve awareness of the best ways to support communities and promote discussions on ways to tackle remaining barriers. It will also be sent to our members via email bulletins.

Cllr Flick Rea, Chair of the LGA’s Culture, Tourism and Sport Board, said:

*“Bringing communities together is something councils see as one of their key roles. They work with event organisers to make it as easy as possible to run events, regardless of whether applications are made by residents, voluntary organisations or local businesses. There will of*

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<sup>12</sup> <http://www.local.gov.uk/publications>

*course be cases where a genuine concern means a proposed activity may not be able to go ahead, but through common sense and talking to each other councils and residents should be able to find amicable solutions to make any event happen.*

*“This work can only go so far without changes in legislation to give councils more flexibility when implementing licensing schemes. We supported the Live Music Bill as it progressed through Parliament and are pleased that it has now received Royal Assent. This will go a long way to making it easier for charitable events to feature live music, which can act as a significant attraction as well as promoting local talent. We hope that government will continue this approach and look forward to continue working with Whitehall on behalf of our members so councils can support and protect residents in a straightforward and helpful way.”*

## **Changing regulation**

The Live Music Act 2012<sup>13</sup> has already made a change to one area of licensing. From October performances of live *unamplified* music will no longer require a licence under the Licensing Act 2003 between the hours of 8am and 11pm. Performances of live amplified music for audiences of up to 200 people held in licensed premises and workplaces between the same hours will also no longer need this kind of licence.

The Department for Culture, Media and Sport (DCMS) also consulted on deregulation of Schedule 1 to the Licensing Act 2003 concerning ‘Regulated Entertainment’ last year<sup>14</sup>. The proposals would make the licensing of voluntary fundraising events such as the performance of a play, a performance of live music, any playing of recorded music, an exhibition of film, or a performance of dance much easier. The consultation received around 1,400 responses. DCMS is currently analysing them and will be publishing the Government response in due course.

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<sup>13</sup> [www.legislation.gov.uk/ukpga/2012/2/contents/enacted](http://www.legislation.gov.uk/ukpga/2012/2/contents/enacted)

<sup>14</sup> [www.culture.gov.uk/consultations/8408.aspx](http://www.culture.gov.uk/consultations/8408.aspx)

## RECOMMENDATION 6

**Changes to encourage payroll giving by smaller companies should be implemented.**

Work is continuing in this area.

The Cabinet Office and HM Treasury are currently working with the Payroll Giving Agencies (PGAs) – the bodies that process payroll gifts from employees and send them to validated charities – to improve their individual and collective performance.

The Giving White Paper<sup>15</sup> committed the Government to increasing the numbers of employees in Payroll Giving schemes – through measures such as a national campaign, removing barriers to small and medium-sized firms adopting payroll giving and use of behavioural insights.

However before embarking on any promotional campaign, the Government is keen to get the system working more effectively and efficiently. In early March a letter was sent to the PGAs from the Minister for Civil Society and the Economic Secretary to the Treasury. It called upon them to come back with plans for improving their individual and collective performance. Their responses are expected towards the middle of 2012.

Some companies already do Payroll Giving very successfully. The Giving White Paper highlighted the efforts of St. James Place Group – a London-based wealth management fund that sees over 80% of its employees giving via their payroll.

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<sup>15</sup> [www.cabinetoffice.gov.uk/resource-library/giving-white-paper](http://www.cabinetoffice.gov.uk/resource-library/giving-white-paper)

## RECOMMENDATION 7

**A category of “social investor” following the existing regulatory framework for “experienced investor” should be developed.**

The Cabinet Office has initiated a project that will make concrete recommendations as to how to remove the legal, regulatory and fiscal barriers to social investment. The overarching objective of the review is to make it easier to set up and grow social ventures by improving their access to finance.

The Cabinet Office has worked closely with the sector to identify the following opportunities to improve the existing framework that governs investment into social ventures:

1. Distorted financial incentives: The tax regime discourages social investment when compared with commercial investment in small and medium enterprises (SMEs) and philanthropy. In addition, social ventures are often unable to benefit from government measures to ease the flow of credit to SMEs, such as the Business Finance Partnership and guarantee funds.
2. Regulatory barriers to institutional investors and financial planners: charitable trusts and institutional investors are uncertain about how to interpret the law relating to investors fiduciary duties; financial advisers are unsure about the suitability of social investment products; and there is no legal form that allows charities and commercial investors to co-invest.
3. Regulatory barriers to retail social investment: current rules on financial promotions make it difficult for social ventures to raise small amounts of finance from ordinary people who wish to make small social investments.

The next stage is to design and implement measures to remove these barriers. The Cabinet Office will use existing cross-government vehicles where appropriate to help achieve this:

1. HM Treasury Review: The Cabinet Office will work with this review to address tax issues and how existing measures to ease the flow of credit to SMEs (such as the Business Finance Partnership) could be made to work for social ventures.

2. The Red Tape Challenge Civil Society theme: We will work with a range of departments via the Red Tape Challenge to address regulatory barriers to institutional and retail social investment.

A further development is the Social Impact Bond (SIB). A SIB is one way of financing a Payment by Results (PBR) Scheme. Under a PBR scheme a commissioner (e.g. a Government department) agrees to make payments if a service provider (e.g. a voluntary organisation) can achieve certain social outcomes. A SIB allows investors to fund the provision of the services upfront on the basis that they will receive the outcome payments if the service delivers the outcomes in the PBR agreement. SIBs enable access to a new source of capital for social investment and commissioners will be able to choose investors and providers that are best placed to address the issues. SIBs also transfer the financial risk to investors so that the commissioner only pays if the service is successful.

The Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, and Nick Hurd MP, Minister for Civil Society, said:

*“We want social ventures to take full advantage of these opportunities and create positive change in our society. To achieve this, we need to make it easier for them to access the capital and advice they need.”*

*“There is a growing social investment market which is prepared to blend financial return with social impact. However, it is embryonic and needs support.”*

## RECOMMENDATION 8

**Regulatory duplication, particularly between Companies House and the Charity Commission, should be eliminated.**

The Charity Commission has identified that this is the only example of regulatory duplication with which it is involved (HM Revenue and Customs requires different information from charities registered for Gift Aid).

Companies House and the Charity Commission are working together to address this issue and are considering both the joint submission of accounts and common Annual Returns. There is willingness and commitment from both organisations to address this recommendation, although there are technological challenges to be overcome.

Companies House (and HM Revenue and Customs) use a different software format for the submission of accounts to that used by the Commission and, following discussions with a small number of large charitable companies, it is not clear whether that format is suitable for charities (charitable companies prepare their accounts and then convert them to the format). The Commission will be consulting on the change during the summer.

When an effective solution is identified there will be work to be done technically and a period of transition and adjustment for charities will be needed to become used to the different format.

The two organisations also use their Annual Returns in different ways. The Commission's Return is used primarily to get monitoring data to populate its Register and to help its scrutiny work. Companies House requires confirmation or notification of factual data, for example, changes in the address and the names of officials of a company. For the Commission charities have constant real time access to make changes to basic details of the charity (names of trustees, addresses etc) through the on line "Manage Your Charity"<sup>16</sup> function.

These differences do not necessarily prevent a single portal being developed, but they do add complexity and a business case is under development to ensure that any changes are made following a full appraisal of the benefits.

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<sup>16</sup> [www.charity-commission.gov.uk/Manage\\_your\\_charity/default.aspx](http://www.charity-commission.gov.uk/Manage_your_charity/default.aspx)

## RECOMMENDATION 9

### **Reforms should be made to the law to give limited liability to trustees of unincorporated charities**

This recommendation will be delivered by the introduction of the charitable incorporated organisation (CIO).

The regulation of CIOs will be ‘light touch’ (very similar to that for unincorporated charities) when compared to company law requirements and easier to access, making it more attractive to small charities. The lack of a Register of Charges may make the CIO less attractive as an option for larger charities as this may make it more difficult for them to raise capital through secured borrowing, however for smaller charities that are not so dependent on raising capital, it should provide a form of incorporation that will be less onerous than being a company but provide the limited liability that the trustees of many currently unincorporated charities seek.

The Office for Civil Society is now taking forward the various clearances required before the Statutory Instruments can be laid in Parliament and the new form of charity should become available during October.

The availability of the CIO model for existing charities will have to be phased in over time to help the Charity Commission manage the expected demand and an implementation timetable will be published shortly to give more of an indication of the proposed introduction times and phasing arrangements. Currently, the intention is to make it available to brand new charities first before proceeding to register existing unincorporated charities who wish to adopt the form according to income bands (starting with the largest and working downwards) and then incorporated charities that wish to convert.

The Charity Commission has already published guidance and model constitutions for charities<sup>17</sup> that are considering using this organisational form, according to Charity Commission Chief Executive Sam Younger, to enable “*people to look more closely at whether the CIO structure is the right one for their needs, and what will be involved*”.

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<sup>17</sup> [www.charitycommission.gov.uk/RSS/News/pr\\_cio.aspx](http://www.charitycommission.gov.uk/RSS/News/pr_cio.aspx)

The CIO framework will be reviewed three years after implementation to ensure that it provides a proportionate and effective corporate structure that meets the needs of charities.

# RECOMMENDATION 10

**An effective replacement for cheques needs to be found before they are withdrawn.**

The Task Force argued that for small CSOs in particular, the proposal to abolish cheques posed considerable challenges. Cheques are a major means of payment – not least because they provide an important control mechanism through the use of joint signatures. Moreover, not all CSOs have electronic access.

The Payments Council announced last July<sup>18</sup> that cheques will be retained for as long as they are needed and that it was no longer seeking a replacement.

Richard North, Chairman of the Payments Council said:

*Over the last two years we have learnt a great deal about what is important to our many stakeholders and we are really grateful to all of those groups and individuals who took the time to talk to us and help us reach this decision. We will use what we've learnt to keep improving existing systems, as well as introducing innovation, so that customers benefit from 21st century ways to pay. Innovation must be at the heart of what we do”.*

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<sup>18</sup> [www.paymentscouncil.org.uk/media\\_centre/press\\_releases/-/page/1575/](http://www.paymentscouncil.org.uk/media_centre/press_releases/-/page/1575/)

# RECOMMENDATION 11

**Civil society umbrella organisations should assist smaller CSO's to form consortia to bid for public work.**

A great deal of work is being undertaken by OCS strategic partners and other umbrella organisations to support and encourage both collaborative and consortia working.

There is a clear realisation in many civil society organisations that to bid effectively for public contracts it is necessary to work together. In part this is simply because a group of organisations working together will have more resources available to carry out the necessary work in preparing a bid, but also because the different organisations may complement each other in the services they provide. Good examples of the sort of support available include:

- A partnership of ACEVO, the Social Investment Business and Voluntary Action Sheffield, offers a number of packages of business development support, valued at over £5,000 to civil society infra-structure support providers who wish to work with the groups they support to develop consortia approaches aimed at securing contracts from local or national public sector bodies to deliver public service contracts.

The bespoke package of support could include consultancy and mentoring support related to:

- Approaching potential consortium members and organising initial meetings
  - Developing the consortia agreement and legal framework
  - Considering quality assurance and developing a marketing strategy and business plan
  - Financial planning, accessing finance and bidding for contracts
- The School for Social Entrepreneurs (SSE) and the other members of the Social Entrepreneurship Partnership (SEP) (UnLtd, CAN, Plunkett Foundation and Social Firms

UK) are carrying out several strands of work, helping civil society organisations to form consortia to enable them to bid more effectively for public sector contracts. These include:

- SSE working closely with the London Voluntary Service Council and numerous other umbrella organisations in London to develop a joint platform for bidding for public sector contracts, with the objective of boosting the bidding power of smaller organisations.
- Several of the SEP partners (SSE and CAN) working together (alongside another OCS Strategic Partner, Social Enterprise UK) to help social entrepreneurs understand the options around scaling through social franchising. As social franchising essentially works on the basis of collaboration and licensing of multiple independent organisations it is similar to a consortia. SSE, CAN and Social Enterprise UK have delivered three workshops on this topic.

In addition, the Charity Commission research report “Consortia for the delivery of public services: the issues for small and medium-sized charities”<sup>19</sup>, published in July 2011, includes an extensive list of resources that can help small and medium sized charities and other civil society organisations to form consortia to enable them to bid effectively to provide public services. Sam Younger, the Commission’s Chief Executive, said:

*“This research demonstrates that working together in consortia is a really effective way for charities to access more funding sources than they can on their own.”*

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<sup>19</sup> [www.charitycommission.gov.uk/Publications/rs26\\_consort.aspx](http://www.charitycommission.gov.uk/Publications/rs26_consort.aspx)

# RECOMMENDATION 12

## **Pre Qualification Questionnaires (PQQs) should normally be dispensed with.**

PQQs have been removed in 15 out of 17 departments (now only used when security is an issue in the Ministry of Defence and the Foreign and Commonwealth Office) for procurements below £100,000 (goods and services).

Since July last year, SMEs can register on the Dynamic Marketplace<sup>20</sup> and provide quick quotes for low value Government contracts (below £100,000). This simple, online registration process has been designed to reduce the burden on SMEs, enabling them to compete at minimal cost alongside larger suppliers.

The Government is currently looking to build on the good progress made so far and see where we can go further to simplify and streamline the procurement process over the next year – particularly in the wider Public Sector.

The Rt Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, said

*“Our latest figures show that the value of central government business going to SMEs is on track to double from £3 billion to £6 billion (6.5% to 13.7%) by the end of this financial year, despite government spending much less overall on procurement. But there is still more to do and, as a Government committed to stripping away bureaucracy and waste, there is more we will do.”*

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<sup>20</sup> [https://buyers.procserveonline.com/otis/preregistration/splash\\_page.html](https://buyers.procserveonline.com/otis/preregistration/splash_page.html)

# RECOMMENDATION 13

**Commissioning bodies should recognise the special contribution of smaller CSO's. A standard proportionate method for bidding for contracts and for their subsequent monitoring should be devised.**

A lot has happened in the last year, both in terms of legislation and good practice.

## **The Public Services (Social Value) Act 2012**

This Act<sup>21</sup> requires commissioners to consider social, environmental and economic value of a public services contract at the pre-procurement phase; and will also requires them to consider consulting on the service.

This has been widely welcomed by civil society organisations. Joe Irvin, NAVCA's chief executive, said that the Act will *"open the door for many local charities to contribute more to their communities"*.

## **Best Value Statutory Guidance and Your Value**

To help embed this in practice the Department for Communities and Local Government has published "Best Value Statutory Guidance<sup>22</sup>" for local authorities asking local authorities to consider social, economic and environmental value when commissioning services. The simple one page of guidance states that:

- Councils "should seek to avoid passing on disproportionate reductions by not passing on larger reductions to the voluntary and community sector and small businesses as a whole, than they take on themselves".
- Councils should consider social, economic and environmental value when commissioning services.
- Councils should give at least three months' notice to voluntary groups and small businesses, and their users, if they intend to reduce or end their funding.

<sup>21</sup> [www.legislation.gov.uk/ukpga/2012/2/contents/enacted](http://www.legislation.gov.uk/ukpga/2012/2/contents/enacted)

<sup>22</sup> [www.communities.gov.uk/publications/localgovernment/bestvaluestatguidance](http://www.communities.gov.uk/publications/localgovernment/bestvaluestatguidance)

- Councils should consult these organisations and their service users about the impact the funding cut will have on the local community and should give the groups the chance to propose ways to reshape the service.
- Councils have a compulsory duty, when commissioning and decommissioning services, to consult "those appearing to the authority to have an interest in any area within which the authority carries out functions".
- Councils must also consult representatives of council tax payers and service users, and should include local voluntary and community groups in this.

To compliment “Best Value Statutory Guidance” Community Matters has launched ‘Your Value’<sup>23</sup>, a tool that enables community organisations demonstrate their contribution to social value through a user friendly tool that includes ‘critical friend’ analysis.

Councillor Keith Mans, Executive member for Communities, Hampshire County Council said:

*“Trials of the tool have shown it to be relatively simple to use by organisations that are managed by volunteers. The evidence from the Social Value report including the value of volunteering enables funders to demonstrate that any financial support for these local organisations is an effective use of public funds”.*

### **Inspiring Impact, Contracts Finder and the Growth Review**

The Government is also supporting the Inspiring Impact<sup>24</sup> programme, which is looking to accelerate the uptake of impact measurement across the UK social sector over the next decade. One of the programme’s work streams is specifically looking at foundations, commissioners and investors and aims to align incentives through practice that supports an

In central government all contract opportunities above £10,000 have to be advertised on the Contracts Finder<sup>25</sup> procurement portal which allows for suppliers to search for free on-line for suitable work. We are encouraging contracting authorities outside central government to use this system. We have made significant steps to improve transparency of opportunities to do business with government over the last year; we are now reaching 90,000 viewings per week on Contracts Finder. Of 4,341 contracts that have been posted, 1,749 have been awarded to SMEs.

<sup>23</sup> [www.communitymatters.org.uk/content/494/Assessing-Social-Value](http://www.communitymatters.org.uk/content/494/Assessing-Social-Value)

<sup>24</sup> [www.philanthropycapital.org/publications/improving\\_the\\_sector/improving\\_charities/inspiring\\_impact.aspx](http://www.philanthropycapital.org/publications/improving_the_sector/improving_charities/inspiring_impact.aspx)

<sup>25</sup> [www.contractsfinder.businesslink.gov.uk/](http://www.contractsfinder.businesslink.gov.uk/)

Central government is committed to more procurement by outcomes and its Lean Sourcing<sup>26</sup> work has emphasised the need for effective pre-competition engagement with the market when designing services and developing procurement approaches. The Minister for the Cabinet Office has announced that none but the largest and most complex procurements will take longer than 120 working days through the application of Lean Sourcing principles.

In the Growth Review<sup>27</sup> the Government announced the establishment of pipelines for key areas of spend so supply markets have visibility of future demand and can gear up to meet it. The following progress has been made:

- pipelines for construction, infrastructure, ICT and facilities management are in place and the other sectors will be by April
- Lean standard operating procedures (SOP) have been developed. Departments have been briefed and training in their use is being developed. The SOPs are scheduled to be published by the end of March

In central Government there is a presumption towards the use of the Open procurement procedure, which keeps suppliers in competitions longer without excluding them at an early stage on financial and other technical grounds – allowing more bids to be assessed on value for money grounds.

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<sup>26</sup> <http://gps.cabinetoffice.gov.uk/node/1106/lean-sourcing>

<sup>27</sup> [www.hm-treasury.gov.uk/ukecon\\_growth\\_index.htm](http://www.hm-treasury.gov.uk/ukecon_growth_index.htm)

# RECOMMENDATION 14

**A means of determining whether accidents are the result of systemic failure or chance should be established.**

This recommendation was considered as part of the Red Tape Challenge Health and Safety theme<sup>28</sup>.

New procedures and bodies are in place to scrutinise regulatory proposals (for example, the Reducing Regulation Committee<sup>29</sup>) and existing powers and functions allow regulators to address this.

Provisions already exist to allow for formal inquiries, or public inquiries under the Health and Safety at Work etc Act 1974<sup>30</sup>(HSWA). Using powers in that Act, the Secretary of State may consent to a public inquiry in to any health and safety incident. Under s14(2) the Health and Safety Executive can investigate and make a special report. A formal investigation under s14(2) allows the investigation board to talk directly with the public affected, such as with the Buncefield investigation.

Bill Callaghan, Health and Safety Commission Chair said at the time the formal inquiry was set up:

*"Our aim as an independent Commission is for the investigation to engage with the public and the local community in as open and transparent a way as possible. We will want the investigation to have the fullest engagement with those running the site, those employed on the site and the wider industry."*

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<sup>28</sup> [www.redtapechallenge.cabinetoffice.gov.uk/themehome/health-and-safety-spotlight/](http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/health-and-safety-spotlight/)

<sup>29</sup> [www.bis.gov.uk/policies/bre/old%20content/better-regulation-framework/regulatory-decision-making/reducing-regulation-committee](http://www.bis.gov.uk/policies/bre/old%20content/better-regulation-framework/regulatory-decision-making/reducing-regulation-committee)

<sup>30</sup> <http://www.legislation.gov.uk/ukpga/1974/37/contents>

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