

Appendix II:

List of People Who Gave Evidence to the Taskforce

We thank the following people who gave generously of their time, thoughts and experience to give evidence to the Taskforce:

Clare Auty, Head of Legal, St Andrew's Healthcare

Prof Philip Sugarman, CEO, St Andrew's Healthcare

Martin Brookes, CEO, New Philanthropy Capital

Liam Cranley, Head of ImpACT Coalition, ACEVO

Paul D Emery, Head of Community & Social Organisations, Zurich Municipal

Caroline Forster, Deputy CE, The Adventure Capital Fund (ACF)

Barbara Frost, Chief Executive, WaterAid

Jay Kennedy, Head of Policy, Directory of Social Change

Jonathan Lewis, CE, The Social Investment Business

Sian Lockwood, CEO, NAAPS

Dame Mary Marsh, CEO, Clore Leadership Programme

Rosamund McCarthy, Partner, Bates Wells & Braithwaite

Megan McNally, Head of Policy, CFDG

Professor Gareth G Morgan, Centre for Voluntary Sector Research, Sheffield Hallam University

Rob Owen, CEO, St Giles Trust

Geraldine Peacock

Clare Thomas, Chief Grants Officer, City Bridge Trust

The fact of giving evidence to the Taskforce or otherwise engaging constructively with our discussions does not of course entail or imply endorsement of the Taskforce's conclusions reached or of the use made of the evidence. Our conclusions and report are the responsibility of the Taskforce alone.

Appendix III:

Examples of Charity Commission Initiatives Aligned With Our Principles and Recommendations

As we noted in the Introduction, the Taskforce's conclusions are supportive of the necessary role of regulation in the sector and are also supportive of much that the Charity Commission has initiated in its development of the regulatory framework and in its current proposals and programmes. The stance of the Taskforce is to recognise and support these elements of the Charity Commission's work and to engage in a constructive conversation.

In this Appendix, we briefly summarise examples of the Charity Commission's changes and work that we particularly support:

- The Charity Commission's continuing focus on outcomes.
- The Charity Commission Simplification Plans to reduce the burden of reporting on charities.
- Memoranda of Understanding with other regulators to give greater clarity in areas of dual regulation. These have currently been agreed with the Big Lottery Fund, Child Exploitation and Online Protection Centre, Fundraising Standards Board, Office of the Scottish Charity Regulator, Regulator of Community Interest Companies, Serious Organised Crime Agency, Security Service, the Serious Fraud Office and the Welsh Assembly Government.
- Hampton Reviews to encourage Charity Commission implementation of the Hampton Principles.
- The continuing guidance issued by the Charity Commission to shape culture in the sector.
- The Charity Commission's recognition of the need to report public impact.
- The greater increased detail and functionality on the Charity Commission website, particularly regarding the Register of Charities.

Appendix IV:

Details of ACEVO Membership Consultation

Following a session at ACEVO's 2009 Annual Conference on 'Improving Governance and Board Effectiveness', ACEVO initiated a Progressive Governance project, led by Kevin Carey, to consult with its members on governance and regulation.

Two events were held (London 21/10/2009 & Leeds 10/03/10), as well as an online call for evidence. A summary of the findings is outlined below:

1. Most smaller charities hardly notice the Charity Commission for good or ill; and this supports the further development of a regime which acts proportionately. The only areas where small charities strongly advocated reform is:-
 - In allowing founders to be Trustees as well as CEOs; the current situation means that a charismatic founder has to give up all power to be paid. This leaves small charities open to distortion by powerful trustees.
 - Trustees should not be permitted (in a panic) to liquidate a charity without consulting the Commission.
2. Amongst middle and large charities there was overwhelming support for outcome and impact assessment from the perspective of end users; opinion was split on whether this should be financed by the sector or the Commission. The worry about such assessment was the regulatory burden on many charities from the public sector.
3. There was strong support for the freedom to establish unitary boards and to pay Trustees, subject to detailed reporting in the Annual Report and Accounts.

Many thanks to the following people who took time to engage with this consultation:

Nick Aldridge, CEO, Missionfish

Lesley-Anne Alexander, CEO, RNIB

Sharon Allen, CEO, St Anne's Community Services

Gregory Atiken, CEO, Hull and East Yorkshire Mind

Tony Barlow, CEO, Wakefield & District Hospitals Contributory Scheme Ltd

Keith Bradley, CEO, Hospital Saturday Fund

Richard Buttery, Assistant, Wakefield & District Hospitals Contributory Scheme Ltd

Kevin Carey, Chair, RNIB

Andy Cole, CEO, Bliss

Tony Collins, CEO, St Michael's Hospice

Rupert Evenett, Chair, BTCV

Barry Graham, CEO, National Pyramid Trust

Keith Lawrey, Trustee, Hospital Saturday Fund

Professor Philip Sugarman, CEO, St Andrew's Healthcare

Kate Welch, CEO, Acumen Trust

Steve Woodford, CEO, Foundation

Appendix V:

High Level Principles In European Regulation of Non-Governmental Organisations

Hanneke de Bode

I. European Level

Throughout the EU, four sources of legislation are important for NGOs:

- International treaties from the UN, Council of Europe, EU
- The national Constitutions that contain the 'freedom of association' and guarantee the right to associate
- National Civil Codes that regulate how to set up an organisation and recognize its legal form(s), thereby defining its tax and liability status
- Special laws and jurisprudence that regulate lower-order aspects like volunteer status, relation with statutory bodies, active citizenship etc.

The EU and Civil Society

Over time, the EU has come to recognize the role civil society plays in social life and the democratic process. Although attempts to create a formal 'Statute of a European Association' have been frustrated by Germany, Austria and Finland, and a 'Statute of a European Foundation' seems to be in the same pipeline, this recognition has been laid down in a number of documents. Of these, the 'White Paper on European Governance' and the 'General principles and minimum standards for consultation of interested parties by the Commission' are essential.

The documents state that 'all relevant interests in society should have an opportunity to express their views', and that 'civil society organisations play an important role as facilitators of a broad policy dialogue'. After a general consultation, the Commission decided that more detailed regulation was undesirable and the British request for a Compact was turned down. Minimum standards, however, were deemed desirable and, as a result, general principles and minimum standards have been established and apply from 1 January 2003 for a clear content of the consultation process, the consultation of target groups, publication, time limits for participation and acknowledgement and feedback.

The Council of Europe and Civil Society

Separately from EU attempts, within the Council of Europe a set of guidelines have been developed on the legal status of NGO's in Europe. This document (Recommendation 2007/14) has been agreed by the Committee of Ministers, thereby automatically committing its members to the standards formulated therein. As all EU member states are, at the same time, members of the Council of Europe, this document could form the basis of more elaborate and clearer relations between individual governments and civil society.

Direct Overall EU Regulation

At the moment, the direct overall regulation of NGOs is a subsidiary issue, i.e. something regulated by the member states themselves, especially since attempts at drafting statutes of a European Association and a European Foundation (to facilitate cross-border working) have stranded.

Special attention, though, deserve the 'Register of Interest Representatives in Brussels, which requires civil society organisations to register with the Commission if active in the field of campaigning and advocacy at EU level, and proposed anti-terrorism and other anti-crime measures in the financial field.

The Commission endorses OECD's Financial Action Task Force (FATF), commissioned a 'Study on Recent Public and self-regulatory Initiatives Improving Transparency and Accountability of Non-profit Organisations in the European Union from European Center for Not-for-Profit Law (ECNL) in Budapest. As a consequence of further pressure from some member states and within the framework of the so-called 'Stockholm Programme', a Code of Conduct for Financial Transactions is being drafted by DG Justice.

Indirect EU Regulation

Indirect EU regulation is encroaching and exists at least in the following areas:

- State Aid
- Internal Market, Competition and Trade regulation
- VAT regulation
- Cross-border giving
- Public Health regulation
- Consumer regulation
- Employment regulation
- Services regulation

II. Member State Level

Roughly speaking, there are a number of differences between the UK (and Ireland) and other member states, the first being that in the UK, non-profits are legally defined by Common Law, whereas the continent uses Civil Law.

The second is the number of different legal types. Where the UK has Unincorporated organisations, Trusts, Limited Companies, Community Interest Companies, Industrial and Provident Societies and Charitable Incorporated Organisations, most other member states seem to have no more than two types. Most old member states, and many new ones, have Associations and Foundations. Some former Eastern European countries have similar organisations called Public Benefit Organisations, NGOs or Civil Society Organisations.

As a rule, Associations are (democratic) membership organisations, Foundations are co-optative Trust or Charity-like entities.

On the continent, in Western Europe the most-heavily regulated non-profit organisations seem to be those that traditionally carry out public tasks (health care, housing, education, welfare, environment, big culture, development: the 'need-to-haves').

Less regulated are non-profits that work for a cause generally thought important, but where no public task has been acknowledged. These non-profits may function largely through statutory grants and membership fees or beneficiary contributions (local environment activities, culture, sports, community; the nice-to-haves). Finally, all other non-profits will be largely unregulated and could be 'ought-to-haves' on the way up or any kind of fringe phenomenon. Former Eastern Europe is still very much a work in progress.

Overall National Public Regulation

General national public regulation of non-profits on the continent seems to do a number of things:

- it forbids non-profits that collect or handle money from members, statutory powers or other donors to be mere (conglomerates of) natural persons
- it requires them to be registered
- it requires Memorandum & Articles formalities
- it forbids certain activities on the capital markets and (probably) the issuing of shares or the sharing of profits
- it requires limited or extended financial reporting (depending on size/turnover)
- it allows non-taxability (corporate/income)

Specific Sector Regulation

Specific sector regulation (public health, welfare, education) seems to exist in many countries and may consist of specific law and regulatory bodies.

Other Specific Public Regulation

Other specific public regulation often concerns fundraising and volunteering.

Co-regulation

Co-regulation of non-profits exists in various forms and in various countries, from mild Codes of Conduct, Governance or Practice to quality assessment schemes like ISO or PQASSO.

Conclusions

Civil society regulation in Europe seems to be based on fairly similar concepts of:

- public benefit/general interest
- formal organisation
- the right to raise, receive, manage and spend money
- a degree of accountability
- tax-exempt status

III. Annex

ACEVO Taskforce on Better Regulation: Public Impact & Self-Regulation for Civil Society

Civil society in Europe: a diverse picture

Since World War II, political circumstances and social/welfare traditions are the main factors to have shaped European politico-institutional frameworks, and, as a consequence, civil society.

Portugal, Spain and Greece, for example, were dictatorships for a long time. Northern Ireland, the UK, Belgium, Spain, former Yugoslavia and Cyprus were ethnically, religiously or linguistically divided. The Netherlands, Belgium and Italy long had pillarized and/or corporatistic social systems. There were an East and a West Germany, and east of the Iron Curtain independence and self-determination remained a dream until the Berlin Wall collapsed.

After 1989, new countries were created and former countries were re-created. Over the years, a number of new states became EU members: Estonia, Latvia, Lithuania, the Czech and Slovakian republics and Slovenia. East-Germany disappeared, while a number of new Balkan and Eastern European countries emerged. Fully (Germany, Belgium) and light-touch (Spain, UK) federal systems -with some degree of regional independence and law-making-co-exist.

Social/welfare systems are traditionally different in different countries. These systems treat elements of social security, family policy and personal responsibility differently, and throughout Europe a mixture of these elements can be found. Their distinctive traits still dominate national social dialogue (thereby complicating the creation of a social Europe), although globalisation, changing economic circumstances, progressive EU lawmaking and increased pressure on budgets seem to lead towards convergence.

While in some European countries civil society –even if the term itself is of recent origin– has been an age-old phenomenon (hospitals, orphanages), other countries' experience with them is recent. International solidarity has brought existing organisations in Europe to either set up NGO's or help their counterparts in emerging democracies do this, and their assistance is often ongoing.

There is no accepted definition of the term 'civil society organisation', but it is generally understood to include the social partners, NGOs, joint-interest associations and local organisations. What all organisations have in common is their not-for-profit character (which does not mean they cannot generate surpluses, but does mean they must be reinvested in and used for the general purpose of the organisation. Many –but not all– of them make use of volunteers and indeed, volunteering could be their second-most important characteristic. The International Year of Volunteers 2001 has, in many countries, clearly been a stimulus to streamline and expand volunteering regulation and a European Year of Volunteering 2011, is on its way.

In all European countries, not-for-profit organisations exist, but they differ in a considerable number of aspects. In the UK alone, they can be shared-interest organisations (trade unions, brass bands, school boards) or altruistic (cancer research, disabled, Roma), sectoral (disability, waste, regeneration) or horizontal (environment, women, democracy, volunteering), aiming at limited or wider target groups, national or international, working exclusively at local, regional or national level or throughout them, unconnected at local/regional/national level (local bands or arts clubs) or connected, ethnically, religiously, ideologically, linguistically divided.

They can be members umbrella organisations, members of EU and International bodies, co-operating with the corporate sector, delivering services, partially or wholly funded by

statutory powers, have infrastructural support organisations, be with or without legal status, be covered by specific laws and, finally, work with or without volunteers.

In other countries, many of these distinctions can be found as well.

In spite of this diversity - which may also point to different interests- official status as a non-profit entity seems desirable to most of them and clearly serves a number of purposes. The most important are the fact that it makes an organisation look better in the public eye and that it regulates its tax, insurance and liability status.

Throughout the EU, four sources of legislation are important for NGO's: International treaties from the UN, Council of Europe, EU; national Constitutions that contain the 'freedom of association' and guarantee the right to associate; national Civil Codes that regulate how to set up an organisation and recognize its legal form(s), thereby defining its tax and liability status and special regulators, laws and jurisprudence that regulate lower-order aspects like volunteer status, relation with statutory bodies etc.

Crucial for Europe's organised civil society seems to be its entities' not-for-profit character, and most - but not all - countries have specific laws covering this aspect. Associations and foundations are their most common legal forms. Other forms exist too, like social enterprises, charities, (non-investment) funds, federations and public benefit corporations. Some countries require a not-for-profit organisation to 'declare itself' with a government body (sometimes depending on size), some proceed to scrutinize applicants for the desired status and some countries require registration in a public register, often with the obligation to submit yearly reports. Apart from the above, the status seems to bring both tax benefits and reduced tax rates. Tax benefits in terms of cheaper rent, rates or supplies; reduced tax rates on income out of fundraising, membership, payment for services or investment.

Although far-reaching agreements between governments and civil society are scarce, most countries either have in place legislation concerning volunteering or they are working on it. These laws concern general relations (e.g. UK, Finland, Netherlands, Belgium, France, Malta) and/or issues like insurance, reimbursement of expenses, allowances, volunteering by the unemployed, etc.

Non-profit bodies normally get their income from different sources: statutory funding (grants and sometimes loans), large or trust funders, individual donors, trading, events, return on investment and managing real estate. In Western Europe, lottery funds are increasingly important as funders.

Not-for-profit organisations in the member states have different dealings with the for-profit sector, big corporates and small and medium enterprises (SMEs) alike. All of them have for-profit suppliers, if only for stationery or sandwiches, and in some (mostly Scandinavian) countries this is the only relation they have with the business sector. Some have distant corporate funders, some work more closely with corporate supporters, and some work in Public-Private arrangements. Working with corporate partners does not come naturally to the sector and in many countries they, and their activities in civil society, are frowned upon.

As with the corporate sector, relations with statutory bodies vary. From the times of the Industrial revolution until privatisations and the Internal Market took hold, utilities like public transport, energy and water companies, food providers, insurance and part of the banking sector used to be either state-run companies or parastatal not-for-profits in many European countries. Where the two worlds clash, debate about limiting market forces takes place. Structured dialogue between the social partners takes place in many countries, often in independent councils, as do the national educational, housing and care dialogues. Sectoral

umbrellas often have an ongoing relationship with their own ministries, who, in some countries, are more easily approachable than in others.

In the Nordic countries, statutory bodies are natural funders of, and partners in, delivering social services, often as parastatal organisations and sometimes with the exclusion of private partners. In the former Eastern European countries, civil society has been built up from scratch and had to forge new and not always welcome ties with traditionally centralistic, autocratic and in some cases corrupt, statutory partners. In southern Europe, civil society has trouble defining and organizing itself, including its relations with different, in some cases also corrupt, government levels. In Western Europe the pattern is diverse. Germany still has a comprehensive statal system, the Netherlands seem to be in transition from a Nordic to an Anglo-Saxon model, Belgium follows a traditional corporatistic model, France shows signs of permanent dislike and distrust between government and the not-for-profit sector; while in the UK ties with government have been regulated and delivering services through trading arms and social enterprises seem to be modelled on the situation in the US.

Research regularly shows that the not-for-profit sector is of enormous interest to societies. The sector employs a high number of people (especially in care), it delivers 'need to have', 'nice to have' and 'ought to have' services to a great many beneficiaries, it reaches people otherwise hard to reach, its voices beneficiaries' concerns and advocates for better conditions. More people work or volunteer in the non-profit sector than turn out to vote. The sector's number of volunteers easily reaches a third of the population and in many member states the sector's yearly turnover constitutes an important part of GDP.

Appendix VI:

Applicable Regulators of the Charitable Sector across the UK

The Charity Commission for England and Wales

The proper administration of charities and of funds given or held for charitable purposes.

Office of Scottish Charity Regulator

The proper administration of charities and of funds given or held for charitable purposes.

The Charity Commission for Northern Ireland

The proper administration of charities and of funds given or held for charitable purposes.

The Care Quality Commission

The Care Quality Commission is the independent regulator of health and social care in England. CQC regulate health and adult social care services, whether provided by the NHS, local authorities, private companies or voluntary organisations. And, protect the rights of people detained under the Mental Health Act.

The Commissioners for Her Majesty's Revenue and Customs

Value added tax, insurance premium tax, excise duties and landfill tax. The import and export of prohibited or restricted goods. Income tax, corporation tax, capital gains tax, petroleum revenue tax, inheritance tax, stamp duties, national insurance contributions, statutory maternity pay, statutory sick pay, tax credits, child benefits, collection of student loans and the enforcement of the national minimum wage.

Controller and Auditor General of the National Audit Office

The proper conduct of public business, value for money, fraud and corruption in relation to the provision of centrally funded public services.

Auditor General for Wales

The proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.

Auditor General for Scotland (including persons appointed by or on his behalf as auditors or examiners)

The proper conduct of public business, value for money, fraud and corruption in relation to the provision of public services.

Director General of Water Services

The supply of water and the provision of sewerage services.

Water Industry Commissioner for Scotland

The supply of water and the provision of sewerage services.

The Director of the Serious Fraud Office

Serious or complex fraud.

The Lord Advocate, Scotland

Serious or complex fraud.

The Environment Agency

Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment including those relating to pollution, abstraction of water; flooding, the flow of rivers, inland fisheries and migratory salmon or trout.

Scottish Environment Protection Agency

Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment, including those relating to flood warning systems and pollution.

Food Standards Agency

Matters which may affect the health of any member of the public in relation to the consumption of food and other matters concerning the protection of the interests of consumers in relation to food.

Financial Services Authority

The carrying on of investment business or of insurance business; the operation of banks and building societies, deposit-taking businesses and wholesale money market regimes; the operation of friendly societies, benevolent societies, working men's clubs, specially authorised societies, and industrial and provident societies; the functioning of financial markets, investment exchanges and clearing houses, money laundering, financial crime, and other serious financial misconduct, in connection with activities regulated by the FSA.

General Social Care Council

Matters relating to the registration of social care workers under the Care Standards Act 2000.

Care Council for Wales

Matters relating to the registration of social care workers under the Care Standards Act 2000.

Scottish Social Services Council

Matters relating to the registration of the social services workforce by the Scottish Social Services Council.

Children's Commissioner for Wales

Matters relating to the rights and welfare of children.

Health and Safety Executive

The proper conduct of public business, value for money, fraud and corruption in district councils, the Northern Ireland Housing Executive, the Northern Ireland Local Government Officers' Superannuation Committee and Local Government Staff Commission for Northern Ireland.

Housing Corporation

The registration and operation of registered social landlords, including their administration of public and private funds and management of their housing stock.

Local Authorities

(The local authority which under section 18 of the Health and Safety at Work etc Act 1974 is responsible for the enforcement of the relevant statutory provisions) Matters which may affect the health or safety of any individual at work; matters which may affect the health and safety of any member of the public arising out of, or in connection with, the activities of persons at work.

Information Commissioner

Compliance with the requirements of legislation relating to data protection and to freedom of information. Data protection legislation regulates the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information. Freedom of information legislation provides for the disclosure by public authorities of the information that they hold.

Scottish Information Commissioner

Compliance with the requirements of legislation relating to freedom of information.

Care Standards Inspectorate for Wales

Matters relating to the provision of Part II services as defined in section 8 of the Care Standards Act 2000 and the Children Act 1989.

Social Services Inspectorate for Wales

Matters relating to the inspection and performance assessment of Welsh local authority social services as defined in section 148 of the Health and Social Care (Community Health and Standards) Act 2003.

Healthcare Inspectorate Wales

Matters relating to the review of, and investigation into, the provision of health care by and for Welsh NHS bodies as defined under the Health and Social Care (Community Health and Standards) Act 2003.

Housing Directorate

The registration and operation of registered social landlords in Wales, including their administration of public and private funds and management of their housing stock.

Scottish Commission for the Regulation of Care

Matters relating to the provision of care services, as defined in the Regulation of Care (Scotland) Act 2000.

The Pensions Regulator

Matters relating to occupational pension schemes and other private pension arrangements.

The Office of Communications

The provision of electronic communications networks and the use of the electro-magnetic spectrum, broadcasting and the provision of radio and television services, media ownership and control and competition in communications markets.

Office of Fair Trading

Enforces consumer protection law and competition law, reviews proposed mergers and conducts market studies.

Secretary of State for Business, Innovation and Skills

Fraud and other misconduct in relation to companies, investment business, insurance business, or multi-level marketing schemes (and similar trading schemes); insider dealing.

ACEVO is the professional body for third sector chief executives. We connect, develop, support and represent our members, to increase the sector's impact and efficiency.

We promote a modern, enterprising third sector, and call upon organisations to be:

- **Professional and passionate** in achieving change and delivering results
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