

# **DIRECTORY OF SOCIAL CHANGE**

**INFORMATION AND TRAINING FOR THE VOLUNTARY SECTOR**

## **DSC Response to 'Refreshing the Compact: A framework for partnership working'**

**October 2009**

**Jay Kennedy**  
Policy Officer  
Directory of Social Change  
Federation House  
Hope Street  
Liverpool  
L1 9BW  
[jkennedy@dsc.org.uk](mailto:jkennedy@dsc.org.uk)

---

© Directory of Social Change  
October 2009

## About the Directory of Social Change

The Directory of Social Change (DSC) has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of charities and other voluntary organisations are crucial to the health of our society.

Through our publications, courses and conferences, we come into contact with thousands of organisations each year. The majority are small to medium-sized, rely on volunteers, and are struggling constantly to maintain and improve the services that they provide.

DSC is not a membership body. Our public commentary and the policy positions that we take are based on [clear principles](#), and are informed by the contact that we have with these organisations. We also undertake [campaigns](#) on issues that affect them or which evolve out of our research.

DSC views its role as that of a ‘concerned citizen’, acting as a champion for those smaller organisations whose needs may not be accounted for in public policy. We ask critical questions, often challenge the prevailing view, and try to promote debate on issues that we consider to be important.

## Preface: the state of the Compact

The ‘refreshed’ Compact presents a tidier, more accessible document. Important gaps raised in previous consultations have been addressed in the draft, if imperfectly in places. This in itself is of some value, as it should make it more likely that people read and use the Compact, and that it is relevant to current conditions. The consultation process has been clearly explained, there has been adequate time to respond, and for the most part the language of the new document is clear and easy to understand. The time taken to note the source of original Compact undertakings and where they have been transferred into the new document is a model of transparent thinking in a consultation.

However, that is really the minimum of what we would expect to have been achieved over a year since the process of revising the Compact began. It is hard to avoid the feeling that the ambition that was building up during 2008 to really revive the Compact has dwindled. The sense of urgency and the vibrant debate that occurred seems to have been lost. Why? Is this just the inevitable product of a consultation process (several actually) which includes so many different stakeholders?

The political situation is in our view a major factor. Despite repeated assurances that the Government is ‘fully committed to the Compact’, there has been no commitment from the Government for any Bill that might change the terms of reference and powers of the Commission for the Compact. We appear to be no closer to a Commission that might be able to investigate cases of poor practice – in our view, a central component of the consensus view which has developed against the ‘make it statutory’ argument. We also wonder whether the sheer complexity of the different players now involved in the Compact at national level is making achieving real progress more difficult.

The main thing the sector wants from the Compact is something which helps balance the scales. Not necessarily a stick to beat government bodies with, but something which gives organisations more power and leverage with them; something which helps them influence the behaviour of public bodies which are inherently more powerful. They want it to reinforce and embody principles of *public law* – even if the sentiment is not articulated in those terms.

Does this refreshed document go far enough in this respect? We're not completely convinced. It could be more ambitious in its tone and vision. It should more explicitly illustrate the fundamentally different nature of the two 'partners' and the asymmetry of power between funder and funded, between government bureaucracy and citizens' organisations. It needs to more clearly reinforce public law principles; that public bodies have a duty to act in a reasonable and responsible manner; that they must take decisions fairly and not act 'irrationally'.

If the Compact continues to pretend that the relationships between government and voluntary organisations are partnerships between equals, it is destined for irrelevance – no matter how clear and updated the guidelines are. The bulk of the sector will remain uninterested, many of those organisations which do care will continue to lose faith, whilst those which are influential enough to assert their own position will do so with little reference to the Compact.

Before the Commission's 'big discussion' consultation began over a year ago, we felt the Compact was on life support. We were hopeful that the consultation process, a revised document, and an empowered Commission might be able to bring it back from the brink. Despite this refresh, we think the outlook is still doubtful. The refresh is an improvement, but not in itself the fundamental change that is needed. That change doesn't seem to be coming anytime soon – and time is of the essence, especially in the coming era of public spending cuts. We hope we're wrong.

## Recommendations for the Refresh

Beyond the more general impressions and views outlined above, our main recommendation in response to this consultation is fairly simple. We think references to the terms and conditions of funding agreements should be included in the refreshed Compact and/or the planned implementation guides.

Such terms are the formal expression of funding relationships between statutory funders and voluntary organisations, and the Compact should be an important part of the framework through which they are negotiated and agreed. There is also scope for including commitments to Compact principles within the terms themselves.

Specifically, we think the following wording should be included / changed in the refresh:

- 1) Reference 8.2: We think an additional sub-clause about the comprehensiveness of application information is called for here. Under 'Ensure documents are:' we suggest adding:

*Comprehensive of all relevant information needed to make an informed decision. Provide access to detailed terms and conditions to facilitate this where appropriate and reasonable.*

- 2) Reference 11.1: An absolutely crucial word is missing here which is present in the corresponding reference for the sector [17.1] – NEGOTIATE, as in 'negotiate and agree terms before a financial agreement is signed'
- 3) Reference 11: We think another clause needs to be added, along these lines:

*Make terms and conditions publicly available to all applicants or bidders at the application or tender stage. If terms are negotiated, explain how this process will take place and provide examples for illustration.*

- 4) Reference 16 / 17 – we think a commitment for the sector that correlates with our suggestion for Reference 11 above should be included here:

*Seek out and review funding terms and conditions at the application or tender stage. If terms are negotiated, gain an understanding of how this process will take place.*

We would welcome a dialogue with the Commission for the Compact and the other Compact partners about our recommendations and how they might be discussed and moved forward.

We have also made further recommendations in our responses to the consultation questions, and have provided detailed feedback on the wording in a number of other sections of the refreshed Compact at the end of this paper.

## Recommendations for the Compact more generally

In previous consultations we have recommended the following, which focus on 'practical and possible' ways to improve engagement with the Compact:

- The Compact documents should include practical advice, case studies, and signposting not just principles – it should be a problem-solving tool that is relevant to everyday situations (it sounds like this will be the purpose of the forthcoming 'implementation guides').
- There needs to be better resource at local level to support the Compact, including:
  - An externally identifiable person or contact point in each local authority, PCT, etc who is responsible for the Compact.
  - Getting the Compact fully integrated into the workings of each LSP, and part of the LAA and CAA evaluation process.
- Including a copy of the national and relevant local Compacts in the induction programme of anyone working in a public body that is likely to interact with voluntary organisations.

- Developing a secondment programme for people in public bodies and the sector, to facilitate the sharing of information, experiences and perspectives.
- The Compact should form the basis all funding programmes at the design stage, including clear and helpful references to key undertakings within the application documents. The proposed 'implementation guides' could include a commissioning checklist, with key Compact-centred questions to be asked and answered during the design process.
- Greater clarity and leadership from the national Compact partners about how the refresh relates to local agreements. There needs to be a balance between the independent nature of each local Compact but also clearer expectations about whether they should also be 'refreshed', and whether the national 'refresh' should be used as the starting point in that process.

## Responses to the consultation questions

### 1. Scope of the sector

*The Compact should be relevant and applicable to the wider third sector. However, the level of engagement of individual organisations with the Compact depends on their relationship with public bodies.*

- *Is the Compact relevant and applicable to the wide range of organisations that make up the third sector? If not, who is excluded and what would need to change in the refreshed Compact to secure their engagement?*

See our Preface above – it is applicable if it is meaningful; if it can show that it makes a difference then people will want to be engaged.

- *What further steps need to be taken to ensure that the Compact is adopted and implemented by organisations in the public sector beyond central government, including organisations in the NHS, specifically Primary Care Trusts, who will already be party to Local Compacts?*

See our Recommendations for the Compact above. We believe that there are many practical actions that can help, and we have listed some possibilities. Legislation to enhance the Commission's powers should be given greater priority by the Government, as continued lack of action sends the wrong message to statutory bodies.

### 2. The independence of the third sector

- *Does the Compact go far enough in safeguarding the independence of the third sector? If not, what changes would be required?*

Not far enough in our view – the refreshed document does not devote any discussion to the issue of independence outside of the introduction really. In the section where it

needs the most emphasis in our view – ‘allocating resources and commissioning’ – it is not mentioned once. The funding relationship is where the issue of independence is most under threat; it’s all very well to say that government recognises the sector’s right to campaign but if this isn’t put in the context of the funding process it isn’t worth much.

### **3. Accountability of the third sector**

- *Does the Compact go far enough in making the third sector accountable? If not, what changes would be required?*

We do not believe that the ‘third sector’ can or should be collectively accountable to undertakings under the Compact. The so-called ‘third sector’ simply does not exist in the same way as the official organs of the state. Individual organisations may be accountable, and should ‘sign up’ to abide by Compact principles, but the sector as a whole cannot. Indeed, Sir Bert Massie has recognised this point on many occasions. We also think that where representative organisations claim to ‘sign up’ on behalf of their membership, this is problematic.

The text on pp 19-20 recognises the diversity of the sector, but it needs to go further in explaining how ‘accountability’ must inevitably have different meanings for government and the sector in the context of the Compact. It should reinforce the idea that the Compact is a framework that an individual organisation should commit itself to, and why, but also why a corresponding commitment from government must be different in nature.

In our view accountability has very different meanings when talking about public bodies and citizens’ organisations. Government bodies are accountable to Parliament, which is an extension of the will of citizens. Voluntary organisations *are* citizens’ organisations. Even if they are accountable to or regulated by public bodies such as the Charity Commission, their accountability should be first and foremost to their beneficiaries, but also to donors and volunteers who support them. Of course, aspects of the Compact already reinforce this.

If there is a funding relationship, one practical way for an organisation to ‘sign up’ to the Compact principles might be through the funding terms and conditions. Mutually agreed clauses in grant terms or contracts along the lines of ‘we agree to adopt a Compact way of working’ and perhaps spelling out some of the specific undertakings that are to be emphasised might lend a more practical and concrete meaning to ‘signing-up’ to the Compact principles. The implementation guides could potentially be a place where this would be illustrated.

### **4. The relationship between national and Local Compacts**

- *Do you think the national Compact provides an effective framework for Local Compact negotiations? If not, what changes would be required?*

For the most part it does, but it is silent about what impact the refreshed national Compact should have on these local agreements. Local partners may be looking for guidance – are they now expected to revise their agreements? Can they just leave them as they are? Is this happening separately somehow?

- *How might the link between the national Compact and Local Compacts be strengthened?*

There needs to be more discussion about the relationship between the two. Perhaps this has occurred within the national Compact partners and local networks but it doesn't seem to have escaped into a wider debate in the sector.

## **5. Prime/subcontractor relationship**

- *How can the subcontracting commitment (Allocating resources and commissioning, reference 7.1) be strengthened to ensure that the Compact applies to the entire supply chain?*
- Reference 7.1: The issue of subcontracting probably deserves more than one undertaking as it will only become more important in future years. Perhaps add separate but wider-reaching clause(s) along the lines of: 'consider the impact and costs of outsourcing and supplier chain issues as part of the commissioning process. Ensure proper monitoring of the conditions of service delivery and relationships between contractors and subcontractors as part of managing the supply chain'. An illustrative example for the implementation guidance might be to look at TUPE.

\*n.b. – we have provided detailed feedback for many of the undertakings in the 'Allocating resources and commissioning' section at the end of this document.

## **6. Consultation**

- *What are the circumstances in which a 12-week consultation would be unnecessary or undesirable? In these circumstances, what action should the Compact require to ensure consultation is meaningful and effective?*

The issue of length of time can't really be considered apart from other issues about the nature of the consultation, such as:

- What breadth of input are you looking for? For example, in certain cases it might be legitimate to consult only strategic partners – who are being paid to provide a view to government – within a much shorter timeframe.
- How accessible or widespread does the consultation *need* to be? How accessible *can* it be? If it is buried on a webpage somewhere but never actively publicised, then 12-weeks will never be enough to get a sufficiently wide response. If it is highly technical policy, then the public body will need to take a more targeted and proactive approach to solicit responses from organisations that will be able to feed in – the issue of length is not so important.

In general however, the 'Christmas surprise' consultation provides a case study of what NOT to do. There are plenty of real examples to choose from – for example, the Office of the Third Sector's consultation on the 'Recession Action Plan', which took place for

around three weeks over Christmas 2008. Also, Wirral council's 'Strategic Asset Review', which proposed closing a large number of libraries and leisure centres, and removing funding for local community halls, during the same short holiday period.

It is important that in every case a clear explanation is provided for why the 12-week rule it is not being followed, and that this is publicised appropriately.

## 7. Europe

*The refreshed Compact contains a new commitment for the Government and public bodies to apply the Compact when distributing European funding. This commitment was added in response to concerns that Compact implementation in this area is sometimes problematic, and that there is confusion about whether the Compact applies to European funding.*

- *Do you agree that a specific commitment on European funding (Allocating resources and commissioning, reference 6.4) should be included in the Compact?*

We do think this clause is worth including, but there will be limits to what UK public bodies will realistically be able to achieve here.

Problems with European Funding are mainly because the UK-level funder has less control over, and perhaps less accountability for, the funding process. The main problems will be around:

- serious delays in agreeing funding awards, launching new funding rounds, and policy development
- difficulty in resolving conflicts between UK priorities and EU requirements
- difficulty in translating EU guidance or requirements for the UK audience
- the sheer bureaucracy of the application process, monitoring and reporting systems

However, making the Compact *'the start of a conversation on how best to address outstanding concerns'* doesn't go quite far enough. It is important that *both* providers and recipients of EU funding give a response back to the EU about the negative impacts of the issues above. UK-level providers of EU funding could play a much more representative role on behalf of recipients of funding in this context.

- *Are there other ways in which the Compact can address concerns about the distribution of European funding to third sector organisations?*

If an EU-level Compact does develop as part of the emerging pan-European network of civil society organisations, it is obvious that the UK would be well-placed to play a leading role in shaping and developing it.

- *Should the Compact go further than this, so that it covers working with the European Union more generally, beyond the distribution of funding?*

We think so – but it will be difficult to do in a concise way because everything to do with the EU is so complicated. The implementation guides should include analysis of EU

procurement rules – which is more of a commissioning issue than strictly an EU funding issue. Examining some case studies around State Aid and the different ‘schedules’ would be really valuable.

## **8. Personalised/individual budgeting**

*There is an increasing emphasis on personal budgets where individuals are given public money to buy their own services from the public, private or third sector.*

- *How and where might a refreshed Compact make reference to the relationships between holders of personal budgets and those from who they buy services or facilities?*

Can it? Should it? In theory personal budgets are about trying to create a marketplace for the recipient of services to buy what they need. They are about the relationship between the recipient of services and the service provider – not about a partnership between the voluntary organisation and a public body. In personal budgets this partnership is almost circumvented; the state has a direct relationship with the recipient of services (providing the money), as does the voluntary organisation (providing them the service). This would seem to make the Compact irrelevant in this case.

However, we wonder whether in practice the things will in fact work as cleanly as that. We can foresee that public bodies will still wish to exert control over providers of such services – perhaps as part of some kind of ‘preferred provider’ type of list – in which case the Compact would still be relevant.

## **9. Content and length**

- *Are there parts of this document that could be worded more economically so as to shorten the document? Please identify.*
- *Are there passages in this document that are not required? Please identify.*

We think on the whole it is as economical as possible, although we think that some editing and redrafting is still required to give the statements the greater impact and force that is required (see in particular our responses to Question 5 above).

The onus really is on the implementation guides to provide practical illustrations of these principles in practice.

## **10. Equalities strands**

- *Does the Compact provide enough focus on the individual equalities strands and the needs of these groups? If not, how should this be addressed?*

We think added references to other equalities and faith groups are an improvement but are not able to offer a view at this time about whether there is sufficient focus. The additional information is mainly descriptive and does not connect directly to specific undertakings.

- *If your organisation falls under an equality strand, please let us know the impact of the revised Compact on your organisation/ beneficiaries.*

## **11. Monitoring and analysis of funding arrangements**

- *What further monitoring, analysis or funding arrangements could help ensure the promotion of equality and tackling discrimination?*

We are unable to provide a view at this time.

## **12. Further comments**

- *Is there anything missing from the Compact that you would like to see included, or do you have any other comments on the consultation document?*

We think that the use of the term 'third sector' in the document is unhelpful, as it reinforces a flawed impression that there is such a thing and that it can collectively agree to anything. In fact, supposing that Government is a collective entity is also problematic as *the* Government is not the same as the organs of the state or local government for example. It would be an improvement to refer instead to 'third sector organisations' where appropriate, and perhaps to 'government bodies', or 'public bodies' where appropriate.

For example on p. 23, '*How involving the third sector [organisations] early on in policy development helps the Government [government bodies] to make informed policy decisions*'.

It is also worth considering that the Conservative party is ill-disposed to the term third sector and has recently mooted a different one – 'social sector'. If they do win the next election the refreshed Compact may need to be revised again with still different terminology.

## **Detailed responses to 'Allocating resources and commissioning'**

We think there are a number of points about the undertakings in the 'Allocating resources and commissioning' section that need to be made. We suggest below some changes in phrasing and additional issues to be considered for the final draft.

- Reference 5: '*involving organisations in the design of services...does not compromise competitive neutrality*' – the implementation guidance needs to provide an analysis of why this is perceived to be a problem with commissioners, and ways to deal with it effectively. The challenge is to clearly outline the

beginning of the commissioning process (clearly related to ‘involvement in policy development’), how it relates to successive stages of tendering and selection etc., and how to address/explain issues of ‘competitive neutrality’ at each point.

- Reference 6.1: *‘consider the full range of financial options...[and] provide an explanation for the chosen decision’* – it needs to be clear that a sufficient ‘explanation’ is not simply a boiler-plate phrase such as ‘contracts ensure value for money’. At a minimum, ‘justification’ or ‘clear justification’ instead of ‘explanation’ would communicate a stronger message about expectations.
- Reference 7.1: The issue of subcontracting probably deserves more than one undertaking as it will only become more important in future years. Perhaps add separate but wider-reaching clause(s) along the lines of: ‘consider the impact and costs of outsourcing and supplier chain issues as part of the commissioning process. Ensure proper monitoring of the conditions of service delivery and relationships between contractors and subcontractors as part of managing the supply chain’. An illustrative example for the implementation guidance might be to look at TUPE.
- Reference 8.2: We think an additional sub-clause is called for here, under ‘Ensure documents are: - Comprehensive of all relevant information needed to make an informed decision. Provide access to detailed terms and conditions to facilitate this where appropriate and reasonable’
- Reference 9.2: we don’t understand the clause about *‘recognising volunteering time as a match funded contribution’* – commissioners won’t either.
- Reference 11: We think this is a fundamental section and there are some elements missing. We think another clause needs to be added:
  - Make terms and conditions publicly available to all applicants or bidders at the application or tender stage. If terms are negotiated, explain how this process will take place and provide examples for illustration.
- Reference 11.1 – an absolutely crucial word is missing here which is present in the corresponding reference for the sector [17.1] – NEGOTIATE, as in *‘negotiate and agree terms before a financial agreement is signed’*
- Reference 13 – this section could usefully reference recent OTS guidance *Principles of proportionate monitoring and reporting*, which is excellent. It is particularly relevant in the context of 13.2. See: <http://www.cabinetoffice.gov.uk/media/216752/principles.pdf>
- Reference 14: -- the phrase ‘decommissioning’ is very odd here – it brings to mind nuclear submarines...the most obvious ‘reason’ which isn’t mentioned is budget cuts – surely something that is going to come to the fore in the next few years.
  - Reference 14.3 – *‘provide clear reasons as to why the decision was taken’* should be firmed up – i.e. ‘clear justifications’ or ‘a clear rationale’. The importance of an ongoing dialogue between both parties (which ties

back to the consultation/policy development principles) and not being presented with a decision out of nowhere is crucial to mention here.

- Reference 15.2 – *‘be transparent about who is being represented and where the legitimacy comes from’* – we don’t understand this conceptually. Is not representing someone or a particular organised set of interests less legitimate? In representative or membership bodies, different members will have different and even conflicting views, and not all will agree with the representative body’s line. Is the point just to be clear about this? Would it be useful for membership bodies to declare either a) the proportion of members which support or do not support a particular policy position, or b) that the membership body is speaking on its own behalf without reference to members’ opinions?
- Reference 16.1 – this clause is really important, and we think it would be helpful to reword to say *‘Be clear on the reason for bidding or applying to deliver services or programmes, how the project or service will meet the funder’s aims, and how the tender or application process will be managed.’*
- Reference 16 / 17 – we think a commitment for the sector that correlates with our suggestion for Reference 11 above should be included here:
  - Seek out and review funding terms and conditions at the application or tender stage. If terms are negotiated, gain an understanding of how this process will take place.
- Reference 18 – we think a useful clause around learning and evaluation could be included, such as: *‘Try to ensure that monitoring and reporting feeds into a process of organisational learning and evaluation.’*
- Reference 18.2 – says *‘Ensure that there are systems in place to deliver the reporting prior to commitment’* – this may not be realistic as there are likely to be 17 different reporting regimes for 17 different funders.
- Reference 19 – the clause says *‘Contribute positively to any review of programmes or services to inform future practice’*. Why should a voluntary organisation do so if it feels that the entire decision-making process has been flawed? If, for example, a public body chooses to end a grant, and replaces it with a contract for which the previously funded organisation is ineligible, why should the organisation contribute to anything? At a minimum the word ‘any’ should be removed.

## Detailed responses to ‘Involvement in policy development’

- Reference 2 – we think some additional wording along the lines of ‘seek as wide a range of views as is appropriate and manageable’ should be included somewhere in this section.
- Reference 3 – some mention of the importance of clear language (plain English?) would be useful.

- Reference 3.4 – this is a really strong and important clause, and could be made stronger by stressing reasons for why policy *was not* changed as a result of consultation. What are the reasons that the public body decides to retain a policy even if this goes against the weight of views expressed in the consultation responses?
- Reference 3.5 – we don't agree that it is necessarily easier for larger professionally-run organisations to develop responses, especially if they have to undertake another internal consultation exercise with members, which can be very complicated and time-consuming.
- Reference 4 – we don't know what 'good quality responses' means – this is a subjective judgment. The quality of responses will inevitably vary depending on the capacity of the organisation responding, their knowledge of the subject, and indeed the quality and clarity of the consultation documents. Public bodies should not consider responses which are more clearly presented to them as more valuable or more influential.
- Reference 4.2 – we don't understand what this is getting at – is there a standard or preferred way of presenting views? See our notes to Reference 15.2 above.