

Legal Services Commission Response to the Consultation on the Compact on Relations between Government and the Third Sector in England
12 October 2009

The Legal Services Commission (LSC) & The Compact

- The LSC is an executive [non-departmental public body](#) that is responsible for the operational administration of [legal aid](#) in [England and Wales](#). It is sponsored by the [Ministry of Justice](#) and its work is overseen by a board of commissioners.
- We recognise that different Compact arrangements exist in England and in Wales. We therefore have to be careful when we commission across national boundaries. Equally, some charities work to deliver services from non-devolved public bodies across England and Wales. We understand that there is currently a Welsh Assembly Government Review of its commissioning policy (expected to report in Nov-09) and this may influence our policy in Wales.
- There are two areas of the Compact which are most relevant for legal aid: consultation and procurement. Both areas have their own Code of Good Practice, which the LSC is signed up to. In addition, the LSC is bound by the law in matters of procurement.
- In addition to the above, there are two distinct relationships the LSC holds with members of the third sector: the first is a contractual relationship, with agencies acting as the LSC's delivery channel for legal aid; the second is about recognising the unique position of the third sector in terms of client engagement. A much wider spread of third sector agencies contribute to this element of our relationship than the former.
- The LSC recognises the importance and value of third sector organisations, and is supportive of the role the Compact has to play in assisting partnership working between government and the third sector.

Consultation response

Question 1 – 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?**

In general, the Compact is focused on small, low-income third sector agencies with an emphasis on volunteering and advocacy for diversity groups. It is not clear how

appropriate the terms are for government's relationship with large, relatively well-funded organisations and a service provision focus.

We suggest adding a comment about larger organisations and contractual relationships, and the fact that the relationship between government and the third sector is, of necessity, rather different when it is bound by procurement law and commercial contract terms.

- **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?**

The Compact should do more to foster understanding of the constraints (budgetary, legal requirements etc) on government organisations.

Examples of the above include procurement law; statutory limitations on funding; treatment of all providers (private or third sector) on an equal basis; and availability of resources with which to apply Compact principles.

The LSC adopts Compact principles. A common difficulty in using the previous version of the Compact was that definitions were open to interpretation. Further guidance in interpreting some of the concepts in the paper may make it easier for public bodies to understand and adopt principles.

Question 2 – Does the Compact go far enough in safeguarding the independence of the third sector? If not, what changes would be required?

Yes – the LSC supports the statement made on Independence in Part 2 (page 18).

Question 3 – Does the Compact go far enough in making the third sector accountable? If not, what changes would be required?

The Compact could do more to stress some of the things government bodies require of the third sector, and we suggest including the following:

- the third sector need to ensure it provides value for money for the government.
- the third sector recognises that government may seek to deliver its policy objectives through the contracts it procures, and is bound to seek the same levels of performance from organisations of all types.
- the Compact emphasises that government should encourage consultation from the wider third sector. A more balanced tone should place equal emphasis on the third sector's responsibility to consult with government, or indeed become more consultable e.g. for smaller organisations, through umbrella bodies.
- The LSC's priority is to the client and the taxpayer. Whilst recognising that the third sector has an important part to play in delivery of services, the Compact does not make clear that, on some occasions, the private sector will be in a position to deliver better services, and value for money.

Question 4 – Do you think the national Compact provides an effective framework for Local Compact negotiations? If not, what changes would be required? How might the link between the national and Local Compacts be strengthened?

N/A

Question 5 – How can the subcontracting commitment be strengthened to ensure that the Compact applies to the entire supply chain?

The LSC agree with the principle in section 7.1 (Allocating resources and commissioning, page 31) and require all subcontractors to distribute public funds in this manner.

Question 6 - 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?

A full 12-week consultation may not be necessary where one of these applies:

- A statutory exemption applies
- Arrangements are specified by Government or other relevant third party (eg. EU)
- The issue is very specialised or specific
- There are a limited number of stakeholders
- The issue is not considered to have a significant impact, including on the third sector or members of the public
- The issue has already been consulted on previously (eg. it is a re-consultation).

In these circumstances, Government should explain the reasons for a shorter consultation, and what it is doing to ensure that the consultation is as effective as possible.

Question 7 – European funding questions

N/A. The LSC is not involved in distributing European funding.

Question 8 – How and where might a refreshed Compact make reference to the relationships between holders of personal budgets and those from whom they buy services or facilities?

This does not apply to legal aid.

Question 9 – Are there parts of this document that could be worded more economically so as to shorten the document? Are there passages that are not required?

The wording on pages 24-26 duplicates much of what is already contained in the Government Code of Practice on Consultation and the Cabinet Office document Better Together: Improving Consultation with the Third Sector.

Question 10 - Does the Compact provide enough focus on the individual needs of these groups? If not, how should this be addressed?

We believe that the Compact highlights the complex national, regional and local infrastructure of voluntary and community services that empowers communities.

However, many BME, Gender and Faith organisations would fall under the Compact definition of a small community group¹. Small Community groups will have a direct relationship with local public bodies through Local Compacts rather than Central Government. We feel that aspirations to improve representation, infrastructure and funding for equality groups require more clarity. It should adopt a two-tier strategy that reflects and accommodates local engagement and strategy national policy decision-making.

From the LSC's perspective, point 20.8 is open to interpretation. The LSC complete impact assessments on the third sector for policies, but agencies themselves may be better placed to assess the impacts on users. Within the LSC IA process, all the equality strands are considered at initial screening and full impact. Moreover, there is a small firms impact test. Does this mean that the Compact should be considered across all the strands within the equality impact or that there should be a separate section for the Compact?

The LSC would require clarity on the definition of a "board" (21.1). We suggest that diversity should be on the agenda for all decision-making boards and there should be clear plans for engaging and collaborating with diverse groups.

With regard to point 21.4 - "Provide a broad range of funding options", this may not be possible under statutory regulations. It may be more useful to measure outcomes of funding allocation and use monitoring tools to determine how many BME, disabled beneficiaries have engaged and benefited from funding. There should be clear priorities for strategic funding - managed by the EHRC in line with Government PSA targets.

The Compact paper did not provide contact details of key infrastructure organisations for diversity groups such as Voice 4 Change². This highlights previous concerns with regard to the Compact's commitment towards providing a voice for diverse groups and championing the strategic infrastructure.

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

N/A

Question 11 – What further monitoring, analysis or funding arrangements could help ensure the promotion of equality and tackling discrimination?

N/A

¹ Income less than £10,000

² Voice 4 Change is the main BME umbrella organisation for the voluntary sector, contact details c/o BTEG, 2nd Floor, Lancaster House, 31-33 Islington High Street, London N1 9LH. The general telephone number is 020-7843 6130. <http://www.voice4change-england.co.uk/>

Question 12 - 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?

(a) Page 15, 'What is the Compact'

The LSC would welcome a statement on the Compact's legal status, similar to the section below from the Government Code of Practice on Consultation, and linked to the wording in the text box on page 23:

"STATUS OF THE CODE

This Code sets out the approach the Government will take when it has decided to run a formal, written, public consultation exercise. It supersedes and replaces previous versions of the Code. The Code does not have legal force and cannot prevail over statutory or mandatory requirements. The Code sets out the Government's general policy on formal, public, written consultation exercises."

(b) Page 19, part 3

We suggest redrafting this section to make clear that NDPBs are part of the public sector, but not central government.

(c) Pages 23-27, Involvement in policy development

The LSC encourages involvement in policy development. However, this section should also recognise that independent customer research and client engagement may reflect different interests to those of the third sector. As third sector organisations may be bidding for contracts shaped by policy development, this section should also acknowledge that government may have to manage conflicts of interest.

(d) Page 24, note 1.3

"Assess all new policies, regulations, legislation, and guidance to identify implications for the sector. Keep records of such assessments, and conduct impact assessments when appropriate."

What does this mean in practice: do public bodies need to assess all policies? How is 'assessing the implications' different to an impact assessment? Impact assessment may not be required for some policies. Therefore, we recommend adding the words "as appropriate" at the end of the first sentence.

(e) Page 27, Part 4, Commitments for the third sector

Wherever possible, agencies should involve service users in developing their response and remain evidence based – identifying the interests of their users and taking account of the specific needs, interests, and contributions of minority groups and the socially excluded.

We also suggest adding the following to this section: "Include, where practicable, positive counter-proposals that engage with Government's broad policy agenda, but incorporate the insights of the third sector."

(f) Page 34, part 10.4

Providing feedback: this can be done, but to a limited degree owing to resources available.

(g) Page 35, part 11.2

We suggest adding: “Terms should also be appropriate to the market.”

(h) Page 35, part 12.2

The LSC makes standard monthly payments to organisations in advance of claims being reported on contracts. More complex work is managed on a case-by-case basis, and payments are made within 10 days of the invoice being received and an assessment of the value of the claim taking place. Whilst this work is paid in arrears at the end of the case, organisations are able to claim payment on account of up to 75% (plus full costs for disbursements incurred) at stages throughout the life of the case.

We suggest including a comment here stating: “wherever practical to do so and, subject to any conditions (e.g. assessment of work done) where a contractual relationship exists.”

(i) Page 51, Resolving differences

This section does not adequately account for commercial/contractual relationships. A suggested additional comment is: “From time to time, the Compact commitments may be in tension with the obligations under which government operates, such as procurement law, and both parties must recognise the need to treat all commercial partners equally”.

I hope you will find this response useful. If you have any queries about its contents, please do not hesitate to contact Steve Keeling at steve.keeling@legalservices.gov.uk.

Yours sincerely

Carolyn Regan
Chief Executive
Legal Services Commission