



# The impact of regulation on voluntary organisations

by Margaret Bolton

## Contents

Foreword	2
Executive Summary	3
Introduction	5
Section 1 Regulation in theory	7
Section 2 Regulation in practice – voluntary sector experience	12
Section 3 Conclusions and recommendations	19
Annex 1 Bibliography	26
Annex 2 Interviewees and discussion group participants	27
Annex 3 Government policy on regulation	29

## Foreword

Earlier this year NCVO commissioned Margaret Bolton to write a discussion paper on the impact of regulation on the voluntary and community sector. Her report examines both the theory and practice of regulation: not only setting out what regulation is, but also describing what it is like to be regulated, drawing on the voices of voluntary and community organisations themselves. This approach enables her to bring new insights to current debates.

This is a useful and, indeed, a timely report. It is published as government policy is moving towards a more developmental model of regulation and a greater emphasis on self-regulation and as the Joint Committee on the Charities Bill recommends ‘an independent review of the burden of regulation that charities face ... to ensure that regulation is fair and proportionate, especially to smaller charities’. As the Committee noted, charity law is only one aspect of regulation. This report focuses on another: the regulation of voluntary organisations as service providers and how this adds to the regulatory impact on the sector overall.

As this report shows, many voluntary and community organisations recognise that appropriate regulation is both necessary and beneficial: not only does it provide a level of protection to their organisation and to their users or beneficiaries, it also promotes public confidence in the sector. But this support in principle is matched by frustration with the way regulatory processes work in practice.

Many of the criticisms raised by voluntary organisations are shared by other sectors, for example concerns that too often the process is target-driven, not needs-led, or that drives towards national consistency leave little flexibility to meet local needs. However, it is important to understand the specific impact of such issues on voluntary organisations, many of whom provide services to hard to reach groups or those with complex needs not met by mainstream provision. This is part of the added value of the sector and it is essential that regulatory processes recognise and support this way of working. Regulators need to understand the sector as well as the service.

The report considers what a good model of regulation might look like. For example, it identifies a clear need for greater involvement of practitioners in the process, both in developing regulatory systems and when monitoring individual organisations, as well as a need for dialogue between regulators to create more joined-up regulation.

NCVO is keen to take this debate forward and we would welcome your ideas about what a good model of regulation should be. If you would like to give us your views or discuss this further please contact Belinda Pratten on 020 7520 2558 or email [belinda.pratten@ncvo-vol.org.uk](mailto:belinda.pratten@ncvo-vol.org.uk).

Stuart Etherington  
Chief Executive

## Executive Summary

It is undoubtedly the case that the scope of regulation has expanded in recent decades. As the role of the state has changed from providing public services and utilities directly to ensuring that these are provided, so the focus of regulation has shifted from relatively simple questions of probity to more complex questions of performance. And it encompasses a wider range of providers, including those from the private and voluntary sectors.

This report examines how regulatory processes impact on voluntary and community organisations, particularly those processes that relate to their role as providers of public services. It identifies their costs and benefits to voluntary organisations, their users and beneficiaries, and considers what a model of good regulation for the sector might look like.

### *Regulation: means and ends*

This report is not anti-regulation, rather it aims to promote better regulation. There are a number of reasons why regulation is important, for example to:

- protect the wider public interest;
- protect the interests of individual consumers, particularly where they may be in a weak or vulnerable position, and those of employees;
- ensure that public money is used efficiently; and
- ensure that services are delivered effectively.

Few people would disagree with these aims. More contentious is the question of how they can best be achieved. Designing and implementing appropriate and effective regulatory schemes is not an easy task, particularly when it is not clear whether their purpose is to police bad practice, to name and shame those organisations that do not meet minimum standards, or to promote good practice, supporting and developing organisations so that they can perform better. Although Government policy is moving towards a more developmental approach to regulation, voluntary organisations report that in practice the emphasis remains on monitoring compliance with external standards and targets.

Many of the concerns raised by voluntary organisations are similar to those identified by other sectors, for example:

- key indicators of quality are not easily quantifiable or measurable;
- there is a tension between national standards and local flexibility; and
- the *process* of regulation and ensuring compliance has become more important than the aims, the focus is on ticking the right boxes, rather than meeting peoples needs.

However, a characteristic of the voluntary sector is that it can provide innovative services to people with specialist or more complex needs that other sectors are unable to meet. For this reason the relationship between means and ends may be particularly ill matched: by definition voluntary organisations do not fit the standard service model on which regulation is often based.

Regulation and performance improvement are related but distinct spheres: both regulators and frontline service providers have a shared interest in improving performance. Effectively meeting the needs of beneficiaries is a key motivation of voluntary organisations and for those who

choose to work in the sector. There is a need for a more open dialogue between regulators and practitioners: regulators should take greater account of an organisation's internal monitoring and review procedures; practitioners should be more involved in developing standards and determining outcomes. And regulation should not be seen as the only, or even the most effective way of driving up performance.

#### *Multiple regulation*

Voluntary organisations may be subject to a number of different, but overlapping regulatory regimes, including both generic regulators (such as the Charity Commission and/or Companies House) and specialist regulators whose role is to oversee particular services, for example supported housing or residential care (for example, the Commission for Social Care Inspection). And funders will include their own monitoring and reporting requirements as a condition of funding. Whilst each one may not be unduly burdensome, multiple regulation can be a source of considerable frustration. Voluntary organisations report both duplication of effort in meeting these requirements and inconsistent treatment by different inspectors reviewing the same service.

#### *Recommendations*

Drawing on voluntary organisations' experience of regulation, this report considers what changes to the regulatory environment would contribute to a model of good regulation for the sector. It suggests that:

- regulatory systems need time to become established and develop their role;
- practitioners should be involved in developing these systems and there should be an on-going dialogue between regulators and regulated organisations;
- inspectors need to have an understanding of both the service and the sector they are regulating;
- regulators should work with providers to ensure that service users are involved in the regulatory process (and not in a tokenistic way); and
- regulators should support self-assessment and take account of internal processes developed by organisations to monitor and review their activities;
- regulators need to talk to each other and to develop more joined-up regulation, for example by establishing a lead regulator approach; and
- there needs to be greater clarity about regulatory objectives, for example, how to balance approaches that are designed to achieve national consistency with those that seek to promote flexibility to meet local needs.

#### *Taking the debate forward*

This report is intended to stimulate debate about voluntary sector regulation, particularly in relation to public service delivery. It builds on NCVO's work on charity law and regulation and contributes to wider debates currently taking place, for example in response to the Better Regulation Task Force and the Audit Commission's work on strategic regulation. NCVO will be taking these issues forward in collaboration with key sector regulators as well as with our members in order to develop a consistent, proportionate and appropriate model of regulation for the sector as a whole.

## Introduction

It is generally agreed that regulation is now ‘pervasive’ and that we are all ‘enmeshed within an elaborate web of regulatory requirements’<sup>1</sup>. The last few years have seen an increase in regulation. This has been driven by the following political and social trends:

*Public accountability:* there is now an expectation that taxpayers should have access to information about how public money is being spent.

Deleted: -

*From welfare state to regulated state:* the government seeks, as a matter of principle, to reduce direct provision of services by the state. As a result, new systems have been established to monitor the performance of arms-length providers.

*‘During the 1980s, the welfare state began to evolve into the regulatory state, despite political rhetoric about de-regulation, the movement was in the opposite direction. Every privatisation initiative led to the creation of new regulatory agencies or to the strengthening of old ones’.*<sup>2</sup>

*Changing attitudes to risk:* people are less tolerant of risk. They consider that they should be able to avoid risk all together, be protected from it where it exists, or be compensated for its consequences.

*‘There is a collective mania with risk.’*<sup>3</sup>

*Increased public expectations:* it is now assumed that service users have a right to certain minimum standards of performance.

*A decline in public trust and confidence in institutions:* regulation is often described as a means of addressing declining public trust and confidence in particular sectors or industries<sup>4</sup>. However, regimes designed to increase trust and confidence may reduce it because, for example, they appear to confirm that particular individuals or organisations require scrutiny.

*‘Evaluation and inspection are public assertions of societal control which violate the assumption that everyone is acting with competence and good faith.’*<sup>5</sup>

<sup>1</sup> R Baldwin, C Scott, C Hood, 1998, *A Reader on Regulation* OUP

<sup>2</sup> P Day and R Klein, *Inspecting the Inspectorates*, 1990

<sup>3</sup> H Sapolsky, *Consuming fears – the politics of product risk*, 1986

<sup>4</sup> The evidence about public trust and confidence is mixed. There is some evidence that while individuals may express disquiet about particular service areas for example, the NHS or the police, they report high satisfaction ratings when asked about their own personal experience of such services. In other words they say that they do not have confidence in the health service but also claim that they both trust and have great confidence in their GP or hospital doctor.

<sup>5</sup> J W Meyer and B Rowan, ‘Institutionalised organisations: formal structure as myth and ceremony’, in *American Journal of Sociology*, 1977, 83(2):340

Regulatory change has been greatest in some of the service areas in which voluntary organisations play a major role, such as supported housing, daycare for children and residential care for older people and other vulnerable groups. New regulatory regimes have been established with some or all of the following features:

- registration requirements, akin to a license to trade, e.g. to provide daycare to children;
- enhanced inspection, e.g. the establishment of an inspectorate for housing associations;
- national standards, e.g. for residential care for the elderly and other vulnerable groups;
- comparative service ratings, e.g. for care services generally;
- targets – these are currently very basic, e.g. the number of institutions being inspected in any one year, but the intention is to make them more sophisticated.

This increase in statutory regulation has generated more self-regulatory activity as voluntary organisations develop and embed their own quality assurance systems, for example benchmarking or peer review systems.

Regulation is only merited if its costs justify its benefits and therefore the acid test is whether this growth in regulation and the expenditure it entails is justified by an improvement in services and outcomes for end users. This report considers whether, from the perspective of voluntary sector service providers working in the three policy areas identified, this test has been met. In doing so it considers whether regulatory schemes reduce the capacity of voluntary organisations to ‘add value’, for example because they are overly stipulative and inflexible and because the bureaucracy they generate discourages voluntarism.

The main research for this paper comprised:

- desk research: annex 1 provides a list of sources;
- interviews with voluntary organisations and other experts: annex 2 comprises a list of those consulted;
- three small discussion groups respectively covering supported housing; daycare for children; and residential care for older people and other vulnerable groups.

Section 1 describes regulation, considers its benefits and the difficulties of designing appropriate, effective regulatory schemes and government policy on regulation. Section 2 focuses on voluntary organisations’ experience of regulation and its impact on the services they provide. Section 3 comprises conclusions and recommendations for voluntary organisations, regulators and their sponsoring government departments.

## **Section 1 Regulation in theory**

### **Defining regulation**

Regulation may be developed by industry bodies for their members (self- regulation) or it may be developed by the state. In some instances it may be a hybrid of the two, i.e. a code of good practice developed by an industry body but with statutory backing<sup>6</sup>. This report concentrates on regulatory schemes developed by government departments and implemented by other public sector bodies. For its purposes therefore regulation is:

*a set of rules (generally based in law) with compliance monitored by a public sector agency.*<sup>7</sup>

Organisations, including voluntary organisations, are regulated for a variety of reasons:

- to secure transparency and accountability, for example through compliance with reporting and disclosure requirements;
- because some of the activities they undertake present particular risks, for example data processing or fundraising; - to protect vulnerable service users?
- to secure the health and safety of employees; and
- to ensure and/or improve standards for service users;

This report is concerned with regulation which impacts directly on quality of services and therefore focuses on the last of these.

Regulatory schemes generally have three main elements:

- the setting of standards or targets;
- information gathering, for example standard returns or inspection visits; and
- mechanisms for changing behaviour, i.e. sanctions for non-compliance.

However, there is significant variation in the way schemes are implemented and in the regulatory style adopted. The standards set may take a variety of forms including more or less prescriptive legislative provision or statutory codes of practice. They may concentrate on processes, outputs, outcomes, or a mix of these.

### **The benefits of regulation**

Regulation is expensive. It imposes compliance costs on regulated organisations. Standard setting, monitoring and enforcement are also very resource intensive. These costs need to be justified by commensurate benefits.

Regulation has many benefits. Indeed, in some areas service providers have pressed for regulation because:

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<sup>6</sup> An example is the code of practice on advertising.

<sup>7</sup> Two other meanings are discussed in the literature: regulation as state interference in the economy,- for example through taxation, and regulation as encompassing any mechanism for changing the behaviour of individuals or companies including, for example, education and awareness-raising programmes

- it can improve the reputation of an industry, sub-sector or profession;
- by establishing basic minimum standards it helps to secure fairer price competition; and
- it can help medium-sized enterprises, i.e. those without a strong local base or a national brand, gain custom.

Voluntary organisations acknowledge that regulation has many positive benefits, that it:

- provides assurance that provision meets a basic standard;
- contributes to accountability and transparency through external scrutiny;
- provides an objective view leading boards and staff to question how they do things;
- focuses attention on standards;
- increases their credibility because they generally compare favourably with public and private sector organisations;
- provides assurance that public money is being spent appropriately;
- increases funder confidence; and
- supports sector advocacy for higher standards for service users and for the funding to meet these standards (see the box below).

### **Case Study 1: Leonard Cheshire**

Leonard Cheshire lobbied for higher care standards than were originally proposed. They did this in spite of the fact they knew they would have difficulty raising the funding to meet the new standards.

*‘Regulation does encourage poorer providers to pull their socks up’*

Provider of supported housing

*‘Regulation can have an upward pressure on standards. For example, most regulators now have an agenda around service user involvement’*

Supported housing provider

*‘Regulation can help organisations to realise that the world has moved on – that a different sort of provision is needed’*

Supported housing provider

### **Difficulties in developing regulatory schemes**

Regulation can have significant benefits but it is very difficult to design and implement appropriate and effective regulatory schemes, i.e. schemes that focus on the most important issues and are effective in changing behaviour. This means that much regulation is perceived as costly relative to its benefits. This is for a number of reasons, including the following:

*The law and regulation is a blunt weapon*

Regulation is generally introduced in an attempt to change behaviour. This means changing hearts and minds. However, the law and regulation is a very blunt weapon and not adequate to the task for the reasons set out below.

- *Specificity limits flexibility*

To be capable of implementation the law and regulation has to be specific and detailed. Specificity is also needed in the interests of fairness to help ensure consistency and also so that individuals and organisations know what to expect. However, this specificity reduces flexibility.

- *Resistance to regulation*

Professionals often resist regulation because they regard it as limiting their discretion. They therefore consider that it undermines their professional judgement. They may seek to sidestep it by developing strategies of ‘creative compliance’: they avoid the intention of a law or regulation without breaking it.

- *Performance measurement difficulties*

It is often difficult to measure quality of service, for example in residential care. However, increasingly regulators are expected to make comparative performance assessments. The inevitable criticism is that they tend to focus on things that are easy to measure, for example whether organisations have particular policies in place rather than the quality of the service as experienced by service users.

## **Government policy on regulation**

### **Government policy on regulation**

#### **1. The establishment of the Better Regulation Task Force**

Set up by government in September 1997. The Better Regulation Task Force advises government on the action needed to ensure that regulation and its enforcement complies with its five principles of good regulation. Regulation should be

- transparent (open, simple and user-friendly);
- accountable;
- targeted (focusing on the problem and minimising side effects);
- consistent (people should know where they stand and be able to predict consequences);
- proportionate (the remedy should fit the risk).

#### **2. Guidance produced by the Prime Minister’s Office for Public Service Reform on Inspection**

Recently published guidance on inspection from the Prime Minister’s Office of Public Service Reform specifies that inspection should:

- be focused on achieving good outcomes for the end user;
- encompass a user perspective;

- be proportionate to risk – so that for example, organisations assessed as good performers might be inspected less frequently than others;
- be based on rigorous self-assessment<sup>1</sup>.

It also says that regulators should ensure that inspection is cost effective i.e. that it does not impose a burden on organisations that exceeds its benefits. It also says that inspectors should work together on cross cutting issues and share good practice amongst themselves.

### 3. Guidance produced by the Cabinet Office on Enforcement

The Cabinet Office has also produced an Enforcement Concordat for central and local government, which ‘sets out what businesses and others being regulated can expect from enforcement officers’. It covers both policy on enforcement and enforcement procedures. It says that prevention is better than cure and that the role of regulators is to work with the organisations they regulate to advise on and to assist with compliance.

See annex 3 for more information

Because of the difficulties discussed above, and because the general perception of regulation is a negative one (too much ‘red tape’), government policy emphasises the importance of self-regulation. Self-regulation is regarded as preferable to statutory regulation because:

- it is based on the specialist knowledge of the particular industry or profession and therefore more likely to address key issues;
- organisations or individuals are more likely to comply with a system they have helped to develop;
- systems can evolve and develop as they demonstrate their worth (it is difficult to amend statutory regulation);
- generally systems are based on a continuous improvement model and seek to develop and encourage good practice; and
- the cost is met by the industry or profession rather than government.

Self regulation by itself has not been regarded as sufficient in most policy areas where the interests of vulnerable groups need to be protected, for example the provision of services for older people and children. In these instances statutory regulation is considered necessary to:

- secure the health and safety of service users;
- provide reassurance to those organising or purchasing the service; and
- enable purchasers to make informed choices about provision.

However, the general view is that regulatory judgements should be based on an organisation’s self-assessments. In theory this means statutory regulation based on robust self-regulation (see the box below for more details about government policy on regulation).

This section has considered the theoretical benefits of regulation, difficulties in designing and implementing appropriate and effective regulatory schemes and government policy on regulation. The next section surveys voluntary organisations' experience of regulation.

## Section 2 Regulation in practice – voluntary sector experience

Many of those interviewed for this report cited very positive experiences of, and attitudes towards regulation:

*‘Regulation has been really effective in driving the participation of service users and carers.’*

*‘Positive inspection reports have helped us to secure funding and have raised staff morale.’*

*‘We thought we had developed a very robust risk assessment tool. We compared it with the regulations and realised it had an important gap in it.’*

Generally, these organisations consider it to be a good thing in principle. However, they identify problems or issues with current practice. Five main problems or issues with a detrimental impact were identified in the research:

- an ambiguity about the purpose of regulation;
- a lack of flexibility;
- regulators and funders not ‘joining up’;
- difficulties in assessing value for money; and
- unnecessary bureaucracy.

These are discussed below.

### **An ambiguity about the purpose of regulation**

Most regulators say that their purpose is to encourage best practice and to promote continuous improvement. But while this is the theory, practice is often different (see the box for case study). Experience suggests that most regulators are focused on ensuring that minimum standards are achieved. Monitoring or inspection generally concentrates on compliance rather than support and development.

*‘Every regulator seems to talk about continuous improvement but most are so target orientated it’s really about compliance.’*

Supported housing provider

*‘It feels as if we are always being checked to see if we are breaking the rules. The emphasis should rather be on support and development.’*

Provider of daycare to children

*‘The bar isn’t set high enough to raise standards.’*

Provider of daycare to children

Respondents also reported that many regulators emphasise financial probity and general management over the quality of experience for service users. They also tend to look at whether organisations have developed particular policy documents or make particular reports without giving adequate attention to whether these policies are implemented effectively or whether follow up action is taken on any issues identified in reports. For example, one voluntary organisation referred to the fact that it is required to report any incident that presents a danger to residents, but it is not required to report what action has been taken as a result. They commented:

*'What's important is not whether you make a report but what you do as a result of the incident and the regulator doesn't really seem interested in that. We have developed a system of near miss reporting and we use it to identify trends and therefore management gaps and training needs.'*

*'Its easy to have the policy – what's difficult is making sure that you are implementing it to a high enough standard.'*  
Provider of daycare for children

*'Inspectors tick the relevant box if you have a care plan for each resident. They don't appear to be entitled to look at their quality just to question whether certain elements are in place.'*  
Residential care provider

*'Badly managed provision can be examined and fare well because inspectors/monitoring officers can tick all the boxes on the form.'*  
Supported housing provider.

### **Case Study 2: The regulation of daycare for children**

The government decided that it wanted to see an expansion in daycare. One of the things it needed to do was to give parents confidence in the service by strengthening existing legislation and ensuring that provision met basic standards. However, the standard set is regarded by many as too low precisely because the main policy objective is to encourage more provision. Some voluntary sector experts suggest that this could lead to stagnation in the sector and erode the general standard. They are pressing for higher standards to be set.

### **A lack of flexibility**

Most voluntary organisations welcome the development of national standards as marking greater clarity and transparency. However, it also causes some difficulties:

*Important subjective judgements tend to be missed out*

It can mean that important subjective judgements (for example, whether residential care premises have a friendly atmosphere and are welcoming) are missed out of the equation. One voluntary sector provider said:

*'You immediately get a sense when you enter a home if people are happy there. That's the main thing. However, it's not clear that this has any relevance to inspectors.'*

#### *General standards make it difficult for organisations to meet specialist needs*

Two concrete examples were given of general standards making it difficult for voluntary organisations to meet specialist needs:

i). There are different standards for residential care provision for the 55-65 age group and for the over 65s. Residents are expected to move once they reach the age threshold. A voluntary organisation running homes for holocaust survivors found that they did not want to move when they reached 65.

ii). The standards for residential care specify a minimum room size but people with autism, for example, may feel safer and more comfortable in smaller rooms. They might prefer more space dedicated to communal use.

#### *Unhelpful interpretations by inspectors*

In a number of instances voluntary organisations referred to the problem as lying not in the content of the regulations (or the standards imposed), but in the way they were interpreted by inspectors. Some inspectors are very flexible and consider whether practice conforms to the spirit of regulation, others are less flexible.

### **Regulators and funders are not 'joining up'**

This problem has a number of elements:

#### *Regulatory gaps*

Some voluntary organisations pointed to gaps in regulation. For example, while residential and domiciliary care are regulated, daycare is not. Similarly, childcare in nurseries is regulated differently from childcare provided in schools. The general view is that regulation should relate to the client group and not the setting. Otherwise voluntary organisations working across a number of settings experience difficulties: for example, operational managers may find it difficult to persuade staff and trustees of the need for common training and consistent standards, particularly when budgets are tight.

#### *Inconsistent practice within regulatory bodies*

Voluntary organisations reported that different inspectors often take very different approaches to exactly the same issues. One might praise an organisation's policies and procedures manual while another, working in a different area, might suggest that it needs significant work. Organisations are left uncertain about how to respond. As one voluntary provider of supported housing put it:

*'It's difficult to plan to take remedial action when inspectors often have very different views about things.'*

Some voluntary organisations also indicated that they had incurred additional expense because of the tendency for regulators (particularly new regulators) to change their mind about requirements, for example qualification and training requirements.

#### *Inconsistent practice between regulators*

Difficulties are also caused where different regulators examine exactly the same issues but make different stipulations about what is required, for example in relation to fire safety.

#### *Disparities in overall assessments*

Different regulators may rate the same service or aspects of the same service very differently. One voluntary organisation reported that a particular service was rated high quality by one regulator and as unsatisfactory by another. Both regulators were looking at the same issues but they approached the rating of the service in very different ways. Regulation is generally regarded as useful because it provides a benchmark against which organisations can assess their performance and plan for service improvements. However, a marked discrepancy in regulatory judgements makes this very difficult.

#### *Overlapping requirements*

Voluntary organisations report that funders and regulators often require exactly the same information in slightly different formats. They are concerned about many of the same issues but they are not prepared to accept other regulators' or other funders' views about the adequacy of different aspects of the organisation's management or service quality.

*'Its the cumulative effect of regulatory and funding requirements that's the problem.'*  
Provider of supported housing

#### *A lack of passporting*

There is also a tendency for funders, particularly local authorities, to expect/require voluntary organisations to adopt off the shelf quality assurance systems such as PQASSO or Investors in People (IiP). However, often these systems are not accepted by other funders and regulators as providing assurance that the organisation has appropriate policies and procedures in place.

## *Complexity*

Overall, these points add up to significant complexity in the system. This means considerable unnecessary costs for both service providers and regulators. Specific examples were given of additional expense incurred as a consequence of this, such as the need to employ additional staff to repackage monitoring information in order to meet the requirements of different funders and regulators.

The complexity of the system not only imposes additional monetary costs on voluntary organisations, it can also undermine regulatory objectives. One voluntary organisation expressed concern that front line managers are not always able ‘to see the wood for the trees’ because of the number of risk assessments required for people in residential homes: in the scramble to demonstrate that all the requirements are met the tendency is to rate each risk equally, whereas specific risks are obviously more pronounced for particular residents.

This complexity or lack of ‘joining up’ also makes partnership working much more difficult, as one provider of daycare to children commented:

*‘We are involved in a range of multi agency partnerships and we have difficulty working out how we can best meet a range of standards which impose slightly different requirements.’*

## **Assessing value for money**

There is an increasing trend for regulators to make comparative judgements about whether organisations are providing value for money. Voluntary organisations have nothing against this in theory but express concern about whether the judgements made are sophisticated enough. For example, they tend not to take account of the total funding available to the organisation only its public funding. They may also fail to take into account the particular needs of an organisation’s service users and the cost of addressing them (i.e. a particular group of service users may require higher levels of care than the norm).

Comparative value for money assessments generally mean adopting a particular service model as the norm. This can make it very difficult for voluntary organisations that are attempting to provide a service that meets all the individual’s needs. One example quoted was of a service in which certain sorts of support were classified as emotional support and therefore outside the regulator’s (and funder’s) sphere. However, this emotional support fulfilled a valuable preventative function for the high proportion of service users with undiagnosed mental health problems: for many, it arrested a slide into chronic illness.

## **Unnecessary bureaucracy**

Some voluntary organisations gave instances of unnecessary bureaucracy, for example:

- they were required to have particular policies even if these were patently irrelevant to their particular service: for example, a policy on dispensing medication even if they did not house anyone on medication;
- each premises was required to have its own policy, for example on smoking, regardless of the fact that each was covered by an organisation wide policy;
- staff records had to be kept in each home rather than at the headquarters office;
- where they managed a number of homes centrally, they had been required to register each one separately.

*'There are lots of silly rules. It makes no sense to require personnel files to be kept on site in a home for six people. It reduces the space available for service users.'*  
Residential care provider.

### **The impact of regulation on voluntary organisations**

All the problems cited above are also likely to have an impact on private sector and public sector providers of services. However, they may effect voluntary organisations particularly badly because:

*They are more likely to cater for people with complex needs*

Many of the voluntary organisations whose views were canvassed were working with service users with complex or multiple needs. They were therefore providing a range of services, for example: housing; employment and career advice services; and mental health services. They were working to 'join up' services. However, this meant working with a range of regulators and funders who are not 'joined up'. A number had therefore invested significant time in bringing together different regulatory requirements and attempting to make sense of them for front line managers.

*'Housing is a significant part of the service but we also run care homes and an employment service and regulators can't get their head around the whole service.'*  
Supported housing provider

*They are more likely to provide highly specialist services*

Many also provided highly specialist services, for example for holocaust survivors or for homeless people with chronic but undiagnosed mental health problems. They reported that regulatory regimes tended to reflect 'general needs' rather than the specific needs of their client groups.

*'The information we provide is interpreted by people who do not understand our bit of the sector – they know about general needs. We have to keep going back to give them more context.'*  
Supported housing provider

*They often rely on volunteer labour*

One of the voluntary organisations participating in this research explained that they were undergoing a fundamental restructuring because core services had previously been provided by volunteers. This was no longer tenable given regulatory and funding requirements.

*Staff are attracted into the sector because it has a reputation for more user-focused services*

A number of voluntary organisations pointed to the difficulty of recruiting and retaining staff. Some choose to work in the voluntary sector because they assume it will be less bureaucratic and more user-focused. They are then disillusioned by the volume of paperwork and the extent to which it reduces the time available for direct contact with service users. Even worse, staff may feel disempowered because they consider themselves obliged to comply strictly with regulation even when requirements are not appropriate.

*They are more likely to have a mixed funding base*

Voluntary organisations are more likely than other providers to have a mixed funding base. This means that they are reporting to, and subject to monitoring by a range of different bodies.

*They are more likely to innovate in social policy areas*

Voluntary organisations tend to be established as a result of market failure, i.e. the public sector does not recognise or does not cater appropriately to a particular need and the private sector cannot make money out of it. Voluntary organisations are therefore more likely to be innovators in service delivery. This can mean that they are a bad fit with regulatory schemes that assume a standard service model.

*‘Often regulators are not sympathetic when providers say we can’t do it your way but we can tackle the same issue in another way.’*

Supported housing provider

### Section 3      Conclusions and recommendations

Voluntary organisations consider that regulation is in principle a good thing and they are able to point to a number of examples of good practice (see box below). General experience, however, is that regulation is often flawed. The last section illustrates that it may in particular instances be insufficiently targeted, inconsistent, inflexible and/or disproportionate. These flaws affect all service providers, but they impact on the voluntary sector particularly badly because they reduce the flexibility and responsiveness which is deemed to constitute its 'added value'.

#### **Positive experiences**

*'Audit Commission inspectors managed to get their heads around a very complex service very quickly. They spent a considerable amount of time gathering views from service users. We wondered what they would make of the feedback but they handled the process very skilfully. Their assessment was fair and very helpful. The inspection report praised us for the things we were good at and also helped us to focus on what we needed to achieve.'*

*'Four of our daycare projects have been inspected. The approach taken was really positive. Hearing the inspectors views and concerns has really helped us to improve the service.'*

#### **A model of good regulation**

Voluntary organisations were asked what changes they would like to see in regulatory practice. They said that regulation should:

- be proportionate to risk, i.e. targeted on those with the greatest need to improve their performance;
- be flexible and not overly prescriptive;
- be concerned to secure the best outcomes for individuals;
- encompass a user perspective;
- be supportive and developmental;
- drive up standards;
- ensure that service users with multiple needs are not forgotten; and
- be based on challenged self-assessment.

Voluntary organisations also expected that regulators should:

- be accountable, consistent and operate in a transparent way;
- share good practice; and
- share information and work together effectively.

They emphasised that regulatory regimes would only promote public trust and confidence if the practice of regulators promoted confidence. As a representative from an umbrella organisation for providers of daycare to children said:

*'Regulation can't promote trust unless people have confidence in the quality of monitoring and inspection.'*

This voluntary sector wish list reflects government policy on regulation and guidance on inspection and enforcement (see the box at the end of section 1 and annex 3). It also fits the Audit Commission's description of 'strategic regulation' (see the box below).

#### **The Audit Commission and Strategic Regulation**

'Strategic regulation' is based on four key principles:

'First, it goes beyond merely providing assurance that taxpayers' money is not being misused and looks for ways of driving up standards, thereby delivering real improvements in public services.

Second is a focus on the needs of all those who use public services. Regulators must add to the three e's of efficiency, economy and effectiveness a fourth – equity, to ensure that vulnerable groups are not forgotten.

Third is ensuring that regulatory resources are allocated in a way that is proportionate to risk. By leaving the excellent alone, relatively speaking, regulators can focus their attentions on those with the greatest need to improve their performance.

Fourth is to ensure that regulators work much more closely together to avoid any unnecessary duplication of effort and that those being regulated see a significant part of regulation as being a productive tool for improvement. Subjective judgements derived from challenged self-assessment and peer review can be invaluable in achieving this.'

Edited extract from *Strategic Regulation*. The Audit Commission (November 2003).

However, generally speaking voluntary organisations consider that government policy on regulation is not being effectively implemented. In their view there are a number of explanations for this and a number of changes that need to be made.

#### **What needs to change?**

##### *a. New regulatory systems need time to bed down*

There has been significant regulatory change in the last few years. Not only have new regimes been introduced but they have been subject to constant change (for example, a

change in the body responsible for the inspection of housing associations and two re-organisations of regulatory bodies for health and social care). The work involved in establishing new organisations and systems has left little time for significant development in practice.

**New regulatory schemes should (unless they have already been judged irredeemably flawed) be allowed to bed down before any further fundamental changes are proposed or implemented.**

*'There is a constant moving of goalposts about what is required.'*

Residential care provider

*'Let's stick with what was decided last year and make it work rather than being in a constant state of revolution.'*

Supported housing provider

*b. Practitioners are not sufficiently involved in developing regulatory systems*

Practitioners, i.e. those responsible for the direct day-to-day running of services, are not sufficiently involved in formulating regulations and standards or targets. Often this sort of advocacy work is undertaken by senior managers in the voluntary sector. The lack of involvement of those with first hand experience of the relevant services can mean that regulations are unrealistic or inappropriate.

**Front line practitioners should be involved in formulating regulations and standards or targets.** Both voluntary organisations and government departments and other public bodies have a responsibility to ensure that this happens.

*c. Insufficient dialogue between regulators and regulated organisations*

There is a lack of opportunities for regulated organisations to feed back to regulators about problems and issues. This seems to be partly a symptom of new regulatory bodies considering that they lack time for reflection and partly an issue about how regulators are regarded by voluntary organisations: generally they are perceived to be concerned with strict compliance rather than support and development (discussed further below under conflicting regulatory purposes).

Regulators should invite comment from regulatees about their practice and how it might be improved for the benefit of service users. **Regulators should establish forums for regulatees so that problems and issues can be brought to their attention.**

*'Effective consultation bodies are needed – people delivering the services need to have a say and voluntary and community organisations should have a stronger voice.'*

Provider of daycare to children

*d. The recruitment and training of inspectors*

Regulatory regimes are only as good as the people implementing them. In some instances inspectors were praised for their common sense, expertise and helpfulness. In others inspectors were perceived to lack adequate expertise in the relevant service area. They were described as having been recruited to a very tight timetable and as having received insufficient training. Lack of confidence may mean that they take a ‘by the book’ approach rather than demonstrating appropriate flexibility.

**Inspectors should have practical experience of the services they are inspecting. This could have been gained as paid worker, volunteer, service user or carer.** More inspectors should be recruited with a voluntary sector background.

*‘Inspections need to be undertaken by staff who understand what a service is all about and it should be light touch for high performing services.’*  
Supported housing provider

*‘Some inspectors are looking for faults – others make a real effort to try and help us iron out any difficulties.’*  
Provider of daycare to children

*e. A lack of ‘joining up’*

Regulators and funders have to meet due diligence requirements and are themselves subject to scrutiny and review. This means that they often feel obliged to repeat the checks undertaken by other funders and regulators. There is a real need for effective ‘passporting’ between different systems.

**A ‘lead’ regulator approach should be developed and piloted by the Audit Commission.** The pilot should examine the feasibility of the approach including its practical limits.

*‘The overall burden is too great because regulators do not communicate. The system could be operated much more cost effectively if regulators pooled information.’*  
Supported housing provider

Government departments should also take greater responsibility for ensuring that the burden of regulation in their policy areas is not too great. **Government departments should work with funders and regulators to support and encourage more rational use of regulatory and monitoring resources.**

*f. Conflicting regulatory objectives*

It is generally believed that regulation should be consistent. This is both in the interests of fairness and also to remove unfair competition. National standards are an effort to achieve greater consistency. However, in some areas they are perceived as undermining flexibility because of their specificity. There is also concern that they may not always focus on the issues that really matter.

**National standards should be based on good outcomes for service users, for example whether a provider promotes their independence.** They might also set requirements for staffing levels and the training provided to staff. Such a model should allow greater flexibility.

Assessment will involve some subjective judgements by inspectors. This will place a greater premium on specialist knowledge and high quality training (see d. above).

*'Rather than splitting regulatory standards up into age ranges or conditions – it might make more sense to focus on issues like the degree of independence achieved by service users.'*

Residential care provider

*'Sweden has a one pager on standards for childcare provision. They place the emphasis on highly qualified staff.'*

Provider of daycare to children

This is related to the problem of the purpose of regulation discussed in the last section. Regulation may be introduced in an attempt to ensure that all providers meet a basic standard. The focus then will be on compliance with this standard, rather than on continuous improvement and the development of practice. This also affects regulatory style, which in turn effects the degree to which providers feel confident about discussing problems and issues with inspectors. This lack of real dialogue reduces the effectiveness of regulation.

*'Regulation is perceived as punitive – seen in this way it has precisely the opposite effect to the one intended.'*

Supported housing provider

**There should be greater clarity about regulatory objectives. If the main objective is to achieve compliance with basic minimum standards this should be clearly stated. However, inspectors should see their role as the provision of advice and support enabling organisations to meet the standard.**

**Regulators should, however, have a subsidiary role of developing best practice in a particular industry or sector and adequate resources should be dedicated to this function.** This means that organisations should, if they want it, be able to access advice and

support on best practice either provided directly by the regulator or preferably funded by the regulator and provided at arms length (see h. and i. below)

*g. Addressing key regulatory questions*

Regulators now place an emphasis on service users views. Voluntary organisations welcome this development but some express concern about tokenism. Some inspectors do not communicate with service users directly but rather concentrate on whether an organisation has a policy for involving service users. Others are sometimes unrealistic about the extent to which service users want to become involved or the methods that might be used to involve them.

**Regulators should work with the voluntary sector and other service providers to develop appropriate guidance on service user involvement.**

*h. Knowing what makes a good service*

Voluntary organisations express some scepticism about whether regulators can identify and assess appropriately the elements that comprise a high quality service. This is particularly the case when services are highly specialist. It is generally believed that significantly more work needs to be undertaken on this topic. As one provider of residential care put it:

*‘Regulators don’t know how to make a real difference in the lives of service users but they do know how to measure the size of a room.’*

**Regulators should support work in their sectors examining service quality and performance improvement. The forthcoming performance improvement ‘hub’, established as part of the Government’s investment in voluntary sector infrastructure, would be ideally placed to work with regulators to take this forward.**

<p><i>‘Regulation should be used to drive up standards. It shouldn’t just be about compliance.’</i> Umbrella organisation for provider of daycare to children</p>
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*i. Developing robust self assessment*

It is generally agreed that self-regulation or effective internal monitoring and review is the best means of securing well managed organisations that are genuinely user-centred. Despite this, regulators appear to be reluctant to base their regulatory judgements on an organisation’s own self-assessments. This is likely to be because of their need for assurance (see point e. above). It may also be because they question the robustness of self-assessments or lack confidence in their own ability to challenge them. However, some of the voluntary organisations participating in the research had developed their own specialist service standards and/or peer review and auditing systems. One provider of residential care services said:

*'Our peer monitoring system picks up important issues that inspectors miss because peer reviewers understand the particular needs of our service users.'*

Some voluntary sector providers had also developed, or were developing key performance indicators to enable them to monitor their own performance more effectively.

**The work recommended above in h. should cover the development of key performance indicators for different services including highly specialist services.**

*'The emphasis should be on self regulation – quality assurance schemes and high quality training.'*

Provider of daycare to children

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## **Annex 2 Interviewees and discussion group participants**

Victor Abdewole – Turning Point

Sheila Bamford – Horton Housing Association

Richard Best – Joseph Rowntree Foundation

Stephen Burke – Daycare Trust

Bob Cook – Barnados

Trish Davies – National Care Standards Commission

Jane Edwards – Knightstone Housing Association

Martin Ensom - RNID

Jonathan Farrow – St Christophers Housing Association

Roger Gale – Sense

Angela Gibson – Jewish Care

Fameeda Gill – National Housing Federation

Philippa Gitlin – Family Services Unit

Dominic Gunn – the Audit Commission

Maggie Hizal – Richmond Fellowship

Brian Horner – Coram Trust

Brian House – Abbeyfield Society

John Oram – Mencap

Steve Keable – 4 Children

John Knight – Leonard Cheshire

Deborah Lightfoot – National Childrens Homes

Karen Maryon – Sue Ryder Care

Rosemary Murphy – National Day Nurseries Association

Sue Owen – National Children’s Bureau

Su Sayer – United Response

James Strachan – Audit Commission

Claire Tickel - Stonham Housing Association

Vicky Stark – Look Ahead Housing Association

Julia Unwin – Independent Consultant

Vivien Webster-Jones – Central and Cecil Housing Trust

### **Annex 3 Government policy on regulation**

#### **Better Policy Making: A Guide to Regulatory Impact Assessment. Cabinet Office (January 2003)**

The Cabinet Office has recently re-issued its guidance on better policy making. The Prime Minister's foreword contains a commitment that no proposal which has an impact on businesses, charities or voluntary bodies should be considered without a regulatory impact assessment (RIA) being prepared. This RIA should include details not only of the direct costs and benefits of the proposals but also information about the wider social and environmental impacts.

The guidance makes clear that a number of approaches should be considered including taking no action and self-regulation. It also says that work on the RIA should begin early in the policy-making process, that information about the impacts on various groups with an interest should be collected and that a draft RIA should be published to accompany consultation papers. The aim is to ensure that regulatory proposals are based on a better understanding of the costs and benefits of a range of options, more effective consultation with interested groups and therefore better information about consequences including unintended consequences.

Government has not only been re-assessing how regulation is designed. It has also been considering best practice both in the inspection of services and enforcement.

#### **The Government's Policy on Inspection of Public Services. The Prime Minister's Office of Public Service Reform (July 2003)**

The principles of best practice in inspection of services paid for by public money:

*The purpose of improvement.* There should be an explicit concern on the part of inspectors to contribute to the improvement of the service being inspected. This should guide the focus, method, reporting and follow up of inspection.

*A focus on outcomes,* which means considering service delivery to the end-users rather than concentrating on internal management arrangements.

*A user perspective.* Inspection should be delivered with a clear focus on the experience of those for whom the service is provided, as well as on internal management arrangements. Inspection should encourage innovation and diversity and not be solely compliance based.

*Proportionate to risk.* Over time, inspectors should modify the extent of inspection according to the quality of performance by the service provider. For example, good performers should undergo less inspection, so that resources are concentrated in areas of greatest risk.

Inspectors should encourage rigorous self-assessment by managers. Inspectors should challenge the outcomes of managers' self-assessments, take them into account in the inspection process, and provide a comparative benchmark.

Inspectors should use impartial evidence. Evidence, whether quantitative or qualitative, should be validated and credible.

Inspectors should disclose the criteria that they use to form judgements.

Inspectors should be open about their processes, willing to take any complaints seriously, and able to demonstrate a robust quality assurance process.

Inspectors should have regard to value for money, their own included:

- Inspection should look to see that there are arrangements in place to deliver the service efficiently and effectively.
- Inspection itself should be able to demonstrate it delivers benefits commensurate with its cost, including the cost to those inspected.
- Inspectorates should ensure that they have the capacity to work together on cross cutting issues, in the interests of greater cost effectiveness and reducing the burden on those inspected.

Inspectors should continually learn from experience, in order to become increasingly effective. This can be done by assessing their own impact on the service provider's ability to improve and by sharing best practice with other inspectors.

### **Extract from the Enforcement Concordat, The Cabinet Office (1998)**

#### Principles of Good Enforcement: Policy

*Standards.* In consultation we will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. We will publish these standards and our annual performance against them.

*Openness.* We will provide information and advice in plain language on the rules that we apply and we will disseminate these as widely as possible. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

*Helpfulness.* We believe that prevention is better than cure and that our role therefore involves actively working with businesses to advise on and to assist with compliance. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

*Complaints about services.* We will provide well-publicised, effective and timely complaints procedures which are easily accessible.

*Proportionality.* We will minimise the costs of compliance for business by ensuring that the action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action. We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

*Consistency.* We will carry out our duties in a fair and equitable manner. While inspectors are expected to exercise judgement in individual cases, we will have effective arrangements in place to promote consistency including effective arrangements with other authorities and enforcement bodies.

#### Principles of Good Enforcement: Procedures

Advice from an officer will be put simply and clearly and will be confirmed in writing on request, explaining why any remedial work is necessary and over what time-scale and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible resolve points of difference, unless immediate action is required (for example, in the interests of health and safety.)

Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within five working days and, in all cases, within ten working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.

The author

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Perspectives in Policy

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*Accountability and Transparency* (July 2004)

*Standing Apart, Working Together: A study of the myths and realities of voluntary sector independence* (February 2004)

*Voluntary Sector Added Value: A discussion paper* (July 2003)

*A Little Bit of Give and Take: A report on voluntary sector accountability in cross-sectoral partnerships* (April 2003)

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