Enabling or disabling? Increasing involvement of charities in social housing

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Introduction

Since 1997, there has been a general policy trend towards the inclusion and use of the third sector to provide some public services, services which have traditionally been regarded as the responsibility of the State. Over this time, the Government has viewed the third sector as a, “key partner in a mixed economy of public service provision, alongside the public and private sectors”. The third sector includes organisations, which are charitable, “not for profit”, voluntary and community sector, social enterprise, mutuals, co-operatives, and non-governmental organisations and all work independently of governmental direction. Statistics indicate that there are around 250,000 voluntary and community organisations in addition to the 150,000 general charities in existence. It is further thought that the sector contributes at least £7 million to the UK economy. In 2002, the Rt Hon Paul Boateng, MP, stated:

“[O]ur aim must be to build a new partnership using the sector's strengths to challenge and stimulate new ideas, complement our shared objectives and take forward the development of social policy generally. This partnership is about fresh ways of thinking through the role and structure of government and the voluntary sector and the way we deliver public services.”

This paper seeks to consider the role of charities in housing, and the increased focus on charities actively discharging rather than supplementing housing services, as part of government initiatives and beyond. In a sense, there is strong feeling that, at the time of writing, the “credit crunch” in the United Kingdom and impending global recession will lead to a “new dawn” for the social housing sector, in which charities may have a significant role to play. The purpose of this paper is to consider the effect of the wider involvement of charities in public service provision in housing the mentally vulnerable. The focus is narrow to allow for clear exposition of the issues, but many of the issues raised will be of interest to all charities dealing with public services and property. The question ultimately is would charitable involvement as a third arm of public service provision exacerbate the existing problems of fragmentation, as well as destroying some of the key advantages of the charitable sector? Answering the questions posed requires the context of charitable involvement to be established, which involves an examination of the role that the charitable, public and private sectors have played in social housing to identify what is new in current thinking; before analysing how charities as primary, rather than supplementary, providers of public housing services might either enable or disable effective service for the mentally vulnerable.

Charity involvement in housing: a historical perspective

The relationship between housing and charitable involvement is a long standing one and has been influenced by the fluctuating level of state involvement in social housing provision, as well as the input of the private housing sector. What follows is a brief history of social housing, and the inter-relationship of state, private and charitable sectors in providing it.

State provided public housing was not a feature of English law until the late 19th century. Prior to this, housing, along with other social needs, were met either through the private sector by employers providing cheap housing for the urbanisation of the workforce through the private sector, or through individual or collective charitable activity; while state responsibility lay exclusively with the provision of workhouses under the Poor Laws.

The emergence of centralised state responsibility for social welfare in the late 19th and early 20th
century did not originally include housing (see, for example, education for all through the Education Act 1870 and provision for the elderly through the Old Age Pensions Act 1908), which remained in charitable and private hands. The State was, however, forced to take responsibility for housing in the interests of public health and sanitation, as private sector landlords had scant regard for either in their pursuit of maximum profits from housing and the reach of charities could neither cover all those that needed to be housed nor reverse the slum conditions that many lived in. State reluctance dissipated following the impact of the First World War on housing conditions and social attitudes, so that by the passing of the Housing Act 1930 a complete system of council housing has been established as an alternative to private and charitable provision. This revolution in social housing meant that, in the inter-war years, one in ten new householders was a council tenant. Nevertheless, charities played an important supplementary role as the most vulnerable social groups were still not catered for and the financing, standard, and acceptance of council housing was variable.

Despite all efforts, demand for housing far exceeded supply, and by the end of the Second World War, there was a housing crisis. This led to increased state responsibility--the “high period” of social housing, which ran from 1951-1964, in which the number of new build properties never fell below 100,000 dwellings per year. The Welfare State, particularly the establishment of the National Health Service, continued to expand and to encompass all areas of charitable activity. Such was the success of the Welfare State that the very existence of charities was called into question, culminating in the Nathan Committee report which led to changes in charity law and accountability, but argued for the continued existence of charities. In the housing market, charities evolved and began to provide specialist services that the state did not and to fill the gaps that the private rental market could not support.

State responsibility for housing had been reluctantly granted, and was to come under attack in the 1960s and 1970s. The creation of housing associations to build low cost, low rent housing, and the Housing Corporation to oversee and help finance such building, saw the state move from a situation of direct to devolved provision, although it represented a major investment of public funding. It also represented a change in charitable involvement, as the tax benefits of charitable status, and the response to need, meant that the majority of these associations were charitable at the outset.

However, by the 1980s, devolution of state involvement in housing had become more acute. First, the importance of the private sector as a solution had grown, as part of a general shift under the prevailing political wind of Thatcherism to roll back the frontiers of the Welfare State and encourage private welfare through the privatisation of public enterprise. Secondly, social housing was squeezed by reductions in funding, and the deliberate de-municipalising of provision through Large Scale Voluntary Stock Transfers to housing associations. Against this backdrop, the role of charities both increased and decreased. Charities filled gaps in provision and worked with other agencies to help meet social housing needs, but due to prevailing market conditions, were very much seen as junior providers and focussed on supplying specialist services. Housing associations, many now Registered Social Landlords under the Housing Act 1996, had grown in number but were shaking off charitable status, as increased competition and higher financial risks:

“[U]ndermined the voluntary movement and produced a commercial ethos which...changed the services they offer[ed], the type of people catered for, and the type of housing being built.”

*CONVPL 213 By 1997, social housing was considered a “sector of last resort”. Demand still outstripped supply for decent, social housing; and although the current government has pledged to build new social homes and has made revisions to, and expressed support for, the housing association sector, owner occupation is still viewed as the most appropriate route to house the majority of the populace. The role of charities has continued to fill gaps and provide specialist services and charity law has grown to meet new concerns in housing, such as the recognition of urban regeneration as new charitable purposes. In more recent years, there has been a greater emphasis on involving charities in discharging public service functions by focusing on the quality of provision, rather than the sector which provides it. What is emerging is that charities will be increasingly expected to directly provide public services, rather than supplement them or provide alternative services as in the past. The third way focuses on the state acting as a provision enabler, and includes, amongst other things, the supply of housing through partnership and joint working.

The third way, at its political zenith, came in several forms: Blair called it, “the best label for the new politics which the progressive centre-left is forging in Britain and beyond”. However, since this, much of the political rhetoric has now fallen into disfavour but many of the underpinning social and policy ideas remain valid and remain prominent features within contemporary social provision. Indeed,
Gamble argues:

“[T]he third way continues to express the essence of the social democratic project, how best to combine economic efficiency with social justice, free markets with universal welfare.”

The development of the third way sought, amongst other things, to harness the role of the third sector in public service provision. *CONVPL 214* and it is in this particular area, in relation to social housing provision, that this paper is focused. Alan Milburn MP stated in 2004 that:

“[T]he voluntary sector provides a new third way. Over this next decade it should become integral to public service delivery in Britain as either the public or private sectors.”

Several policy documents have been published since 1998 with the aim of embracing the third sector as a means of public service provision. These include: *The Compact* in 1998 *CONVPL 215* which outlines the relationship between government and voluntary and community sectors in England and Wales in response to the *Deakin Commission Report* in 1996 and provides a framework to guide partnership working between the state and the third sector; *CONVPL 216* the *Social Enterprise--a strategy for success* in 2002 which set out the government's three-year programme to promote and sustain social enterprise, *Getting Britain Giving* in 2000, *Private Action, Public Benefit* in 2002, *Futurebuilders* in 2003 and *ChangeUp* in 2004 which incorporates an £80 million investment to build up the capacity and infrastructure of the third sector. This has more recently been followed by the publication of the *Public Service Delivery Action Plan* in December 2006 and a one-year follow up document in December 2007 which provides a practical plan to cut across government departments in an effort to reduce barriers to third sector organisations who become involved in delivering and designing public services.

In 2006, the sector’s importance to government policy was further strengthened through the establishment of a new Office for the Third Sector within the Cabinet Office, and the appointment of a Minister for the Third Sector. These initiatives, along with continued support for embracing the third sector, have ensured that the role of the voluntary sector in public service provision is regarded as integral to modern provision. Giddens argues that one component of the third way is to invest heavily in public services. However, this is not to say that such services should be wholly publicly funded:

“Public services… [must be]… more effective, responsive and transparent. Choice and competition are essential to these aims …[CONVPL 217] The public sphere is not synonymous with the state, and has to involve a diversity of agencies, including business, voluntary associations and NGOs.”

Charities have seen a significant increase in recent years in the proportion of their income which comes from the public sector.

Despite the clear evidence that charities are increasingly engaged in this work, the political beliefs that underpin the third way have been the subject of debate. A lack of consensus as to the merits of voluntary sector involvement in public service provision has emerged within the political arena. In 2007, Phil Hope M.P., Minister for the Third Sector, argued for an enlarged role for the third sector as it had much to offer:

“[T]he third sector can deliver a range of services that combine innovation, precise targeting of need, measurable outcomes--and also admirable efficiency.”

Yet, by 2008, evidence of emerging political doubt exists as to whether the third sector can and should be involved in public service provision. Tony Wright MP and chairman of the public administration select committee has acknowledged that although emphasis upon the third sector as a new way forward to meet public needs has been and continues to be supported as a policy, regarding the third sector as a panacea to all difficulties plaguing service provision would be ill advised. This apparent sea change has also been expressed by Giddens who notes that:

*CONVPL 218* “[R]esponsibilities have to accompany rights; and third sector groups should pay a part in delivery of welfare measure, especially at community level. However, it is surely plain that such groups must be in some way regulated by the state and that the state has to continue to play the main role in welfare delivery. Voluntary groups by their very nature tend to be unstable, since they have no regular funding and depend upon a continuing moral commitment from their members.”

The changing role of charities
While the political debate about the reliance on the third sector as public service providers continues, the Charity Commission has recognized that there are many charities involved with this work to a greater or lesser degree. The original “contract culture” that provided the foundation for public service provision has been replaced over the last few years; the emphasis moving beyond contracts to wider issues of funding and delivery.

The role that charities currently play in housing the vulnerable is very complex. Many charities combine housing management, support provision and housing ownership; although they are predominantly managers or support providers for larger, housing associations. Charities are also dealing with some of the most vulnerable groups in society, such as those presenting with multiple needs in addition to their mental health difficulties.

How might this be increased? The law underpinning charity involvement in public services has also been subject to change. It was an accepted proposition of charity law that, while a charity could supplement services that a public authority had a duty to provide, it was not normally possible for a charity to utilise funds to pay for services that a local authority had a duty to provide. Part of the rationale was that charities should not be using public money to pay for a service that the public purse was already financing, as there was a duty on organs of government to provide the service directly.

This changed with the landmark decision of the Charity Commission in the Trafford case in which it was held the Commission will no longer consider that the fact that a charity is supplementing or providing a service which public bodies are under a duty to provide as excluding charitable status. The Commission considered that the distinction between duties and powers of local authorities was no longer tenable, and that charities should be free to undertake public services of whatever nature, provided the normal characteristics of a charity are present and that the charity remains independent. The Trafford decision thus sets the legal platform to allow charities to become major providers of public services. In allowing a departure from their traditional role of innovating service provision or filling the gaps left in public provision this marks an important change from past practice.

The foundations to allow charities to act as public service providers are now in place; the legal barriers have been removed and the political climate is ripe for their direct involvement and the political rhetoric of the third way provides the impetus to achieve this. So while it has been established that charities could provide direct public services, the question remains whether they should become so involved. Part of the answer to this is to consider the modern decline in charitable giving, before weighing the benefits and potential difficulties of charities becoming a major arm of public service provision in housing the vulnerable.

The modern decline in charitable giving

It is worth noting that Hibbert et al., speculate that a third of adults in 2005, “are not in the habit of giving to charity and a great deal of giving potential lays dormant much of the time”. For many in Britain, the question of whether their actions are directed by altruistic or egoistical motives is largely irrelevant. Reasons for such charitable inaction include negative attitudes towards the helping of others; the concern that charitable organisations are using intrusive fundraising methods; the use of for-profit enterprises in the collection of donations and the perceived (un)trustworthiness of the charitable organisation in the way in which it carries out its functions. The Henley Centre found that confidence in voluntary and charitable organisations has vastly reduced since the mid-1980s. “In 1996 the number of people having ‘a great deal’ or ‘quite a lot’ of confidence in charities stood at 33%.” Better than the Church (25 per cent), the Government (11 per cent) but worse than the National Health Service (40 per cent), banks (46 per cent) and the police (58 per cent). At the time of this research, clearly a large proportion of British society still maintained trust in charities, yet by 2000, the National Council for Voluntary Organisations (NCVO) “expected that public trust in voluntary organisations’ motives [would] decline”. Hibbert et al.’s work in 2005 suggests that this trend has undoubtedly continued. However, more recently, data obtained by an Ipsos MORI survey in mid-2008 for the Charity Commission suggested that an overall increase in charitable giving was beginning to emerge:

“In 2008, a comparable figure of 85% of the public, as in 2005, donates money to charity. The proportion of people donating time and goods has, however, increased significantly since 2005 with 47% of the public donating goods, compared with 37% in 2005; whilst a third have given time to charity compared with 23% as in 2005.”
This data suggests a welcome, though potentially short-lived, shift towards charitable giving; the current economic climate may have a significant impact upon the public's ability and willingness to give in the future. Evidence is already emerging that some charities are beginning to feel the pinch with the need for job cuts\textsuperscript{51} and charity shop stock levels declining.\textsuperscript{52} Despite the brief recent rise in charitable donation in Britain, it is likely that sustaining this trend will be difficult in the months to come. This raises some interesting questions as to the perceived relevance and value attached to the activities of charities in the provision of services and the meeting of unsupported social needs. It also highlights how economic volatility can be highly damaging to charities and other voluntary organisations in the pursuit of their objectives and raises the question whether public service provision should be reliant on such an unsteady source.

**Motivators for charitable organisations**

There are many motivators to charitable activity, noted in the vast literature on the subject. These include altruism\textsuperscript{53}, egoistic motivation\textsuperscript{54} and impure altruism. To take the latter as an example, placed in a charity context:

"[C]harity is or should be the exercise of thoughtful benevolence … Charity [however] should not be so altruistic as to overlook one's duties to self and the nearer home.\textsuperscript{55}"

At a basic level, impure altruistic motivation recognises that few individuals who give to charitable activities do so for one reason alone. Many may be instigated by personal involvement, such as the donation of money or time to a cancer charity following a relative's diagnosis. Some may be asked to donate on the street and do so partly as a result of how they may be perceived by others. Some may respond to highly publicised activities such as the LIVE 8 campaign or may wish to fit in with the current trend of wearing the charity wristband. Classing involvement in a charitable activity as impurely altruistic should, in no way, be viewed as an action of less moral or practical worth. Instead, one should, perhaps, view such action as a more realistic response to charitable endeavour in the modern age where individuals work harder and for longer hours, have fewer rest days per annum and frequently face the strain of juggling work and family. Such factors apply to individuals who decide to contribute (or not) to the charitable process. These motivators are universal, in that they can apply to anyone, and tend to be used according to a particular charitable activity. Many of these motivators can be applied to charitable organisations too, most notably a strong desire to help.

Charitable organisations are, however, more frequently limited to particular aims. The focus of the charity and its activities are directed by the charitable objects of that particular organisation. Such objects may have been established many years in the past, perhaps, through the direction of an initial benefactor or a charity may have been recently established in order to meet a newly perceived social need. What is important to note is that irrespective of the values a charitable organisation and its employees and volunteers hold, it is limited in what it can do by the organisation's fixed remit.

Furthermore, other factors have a role to play in terms of what the charitable organisation can actually do. Funding and resource limitations inevitably mean that a decision to provide is likely to be guided by the monetary worth of a particular action. For example, in the context of housing the mentally vulnerable, would it be more cost effective and time efficient to house several mentally vulnerable individuals who are regarded as having medium level needs to focusing upon an individual who has very complex mental health needs, where property destruction is more likely to result? Such practical factors for consideration stretch well beyond the altruism versus egoism analysis. Although charitable organisations are generally perceived by society as, "doing good in terms of social issues and causes … [and a] general expectation of honest behaviour, based on shared values [exists]", the reality of what motivates a charity to act in the way it does is far more complex.\textsuperscript{56} A charitable organisation may adopt a certain moral standpoint and may seek to reflect this position when possible, but other pragmatic matters inevitably play a role in shaping the organisation's direction.

**Benefits of charitable involvement**

The benefits of charitable involvement in housing the vulnerable have been considered by the authors in detail elsewhere.\textsuperscript{57} What follows is a brief overview of the principal benefits.

It is a trite proposition that the key to any charity is the objectives it holds. Charities have defined objects and the organisation's goal is to achieve these wherever possible:
“Third sector organisations exist to promote social, economic and cultural objectives in order to benefit society in general or particular groups within it.”

Similarly, the focus of a charity is primarily on the needs of those it seeks to serve. As such, charities are often described as “value-driven” in that they exist to promote and reflect their values rather than to make profit. Where profits are made, through trading subsidiaries for example, the surplus income is reinvested to further the organisation's goals. These features enable a good level of practical support to be offered at ground level to those in need.

Campbell60 states that:

“[T]alk of new... [policy]... initiatives that will enable the wholesale handover to large sections of services to the voluntary sector is dangerous... [as]... it represents a fundamental misunderstanding of the principal reason why the sector welcomes the current governmental efforts to lift barriers to more service delivery by voluntary organisations. Namely, that it will provide opportunities for some, working in specialist areas, to widen their impact on the communities they exist to help—not fill gaps in service provision or replace the state.”

However, despite this statement, charitable organisations have undoubtedly been viewed as bodies which have, whether rightly or wrongly, met social needs that are not provided through other means as their historical role in housing demonstrates. In specialist provision, research on housing the mentally vulnerable illustrates this gap-filling role, as many charities have become involved in housing this group due to a shortfall in homeless *CONVPL 222* duties and the implementation of community care without proper housing support.61 It may be argued that filling service gaps is core to the working ethos of charities.

It is also recognised that many charities are directed by a genuine interest in meeting their service users' needs.62 Indeed, many charities involve users in the governance of the organisation, or are established to deal with particular local problems or gaps in provision. In many, workers have a special understanding of and commitment to user needs. The combination of these factors means that charities may reach out more effectively to user groups, and meet need more successfully than an impersonal corporate or public sector body. The ability to adapt quickly to changing patterns of need is perceived as a common feature of well run charities; governing boards are less bureaucratic and unfettered in comparison with other public service providers.

One of the major strengths to be derived from charities is their role in innovating both new services and finding more effective ways of delivering existing services. While it might be thought that the commercial sector is the more obvious home for innovative thinking, such thinking is essentially market driven in the search to improve profitability in a competitive sector. The context of social housing does not offer the same opportunities for profit maximisation, and it perhaps unsurprising that failure of a sustainable private rental market for social housing has contributed to innovative practice coming from charities instead. Indeed, as demonstrated above, charities have always been particularly strong in the housing sector at innovating new services. Charities are also largely free from state pressure to deliver established services at the lowest possible cost, which hamper public bodies, allowing charities to create more imaginative and reflective methods of service delivery.

Charitable organisations are perceived as independent. “Independence” has a variety of meanings, but in the present context, it can be understood as the freedom from external influences in the overall governance of a charity, including the capacity *CONVPL 223* for independent decision making and action,63 which are exercised in the best interests of the charity alone. Independence is seen as providing the foundation of public trust and confidence in charities as organisations. Indeed, the sector's freedom from influence is a source of value in itself, as it allows charities to act as a constitutional check on government, through scrutiny of existing governmental strategies. Of importance is the capacity for independence in charities; rather than actual independence from the public sector. If this was not possible, charities would be unable to supplement any public function. Instead, what is required is that charities:

“... exist in order to carry out its charitable purposes,...[rather than]...implementing the policies of governmental authority, or of carrying out the directions of a governmental authority.”64

A final beneficial characteristic of charities is their accountability and the public trust they engender. “[T]rust is the voluntary sector exchange rate”65 and public trust is connected to the core ethos and social objectives of many charities and other voluntary organisations. An effective charity is seen as accountable, not only because it accounts to regulators who can exercise direct sanctions against
recalcitrant organisations, but also because it, “is accountable to the public and other stakeholders in a way that is transparent and understandable”. In considering the needs of users as stakeholders, charities are providing a “voice” to them, by ensuring their needs are met in service provision. Charities also play a role in providing “choice” to users, as the existence of an alternative service by a charity, and the possibility that it might be taken up in preference to a service from a non-charitable body, acts as a motivating factor when designing and delivering services. Despite an array of regulators, there are weaknesses in the accountability framework of charities, as there are in most regulatory frameworks.

Following recognition that the current mechanisms for accountability are weak, the Charity Commission, as principle regulator, has sought to make improvements in regulatory practice, including the adoption of the five principles recommended by the Better Regulation Task Force; that their work will be transparent, accountable, consistent, proportionate and targeted. There is, of course, a need not to place, “too great an emphasis on holding organisations to account…[as it]…will undermine their authority and purpose”. Indeed, returning to the concept of trust, over-regulation, which is designed to promote confidence in charities, might actually reduce levels of trust. As such, the key characteristics of accountability and trust, which often allow charities to be more favourably perceived by the public, need to be nurtured to ensure neither characteristic is impeded by the development of the other.

The realities of charitable involvement in social housing

Despite recognition that charitable involvement can introduce some clear advantages to housing provision for the vulnerable, there remain some apparent difficulties with the provision of public services falling within the remit of charitable activity. It is contended that these problems may become more difficult to overcome if charitable participation increases in public service provision.

Structural fragmentation from within

One important question is whether the third sector's infrastructure can meet the increased demands of public service provision and whether structural fragmentation is an inevitable result. It is also clear that several associated difficulties exist such as, whether there are effective funding regimes, the question of multi-agency working and whether reliance on a multi-tier system of service provision ultimately results in a fragmented system which is of benefit to none.

The government is adamant that initiatives to involve charities directly in public service provision are not about “getting services on the cheap” but rather seeks to provide “better quality services for users”. However, for large numbers of charities, their service focus has tended to be small-scale where the needs of their users have been met through local methods at a micro level, which has been one of their strengths. Such small scale provision fails to meet the increased service demands that wholesale public service provision would place on charities and major structural changes will be required by charities and other third sector organisations. It is suggested that such changes will inevitably mean organisations have to re-focus their efforts and will seek to offer a more homogenous service that could potentially cater for many more service users. Although some benefit may result from this move, clearly, it could also reduce an organisation's ability to respond appropriately to individual need.

The fragility of funding streams is a constant worry for housing charities, both in terms of obtaining initial capital and finding ongoing funding. These funding difficulties have a knock-on effect as charities and other third sector organisations cannot put the necessary infrastructure in place in order to increase capacity. Increased reliance on charities and the third sector generally in the provision of public services would place an immense burden on such organisations if funding remains poorly administered and regulated. Furthermore, funding streams need to be guaranteed as a more consistent source in order to allow organisations to put in place necessary changes for capacity growth. Current funding behaviour has tended to restrict what a third sector organisation can do. For example, variable and short term funding reduces an organisation's ability to engage in longer-term planning; payment for the provision of services is frequently paid in arrears; frequently full cost recovery is avoided so that the charity or third sector organisation finds itself out of pocket when the funder fails to meet all the costs which relate to service provision; and funders have tended to overlook the wider benefits such as social cohesion and the growth of community spirit, that accrue from using charities in service provision and as a result, do not place a monetary value upon these wider benefits.
Within charities, multi-agency working is frequently less effective than it should be. Existing research shows that multi-agency working is an ongoing problem in housing the mentally vulnerable. Charitable housing bodies will have objectives and agendas, which do not always correspond with their public sector counterparts. Good multi-agency working may not be achieved owing to a variety of factors, such as, inadequate communication channels between different agencies and mistrust between them. This is not a problem which is easily overcome, and requires major changes in culture and governance in the agencies concerned, and charities themselves.

Increasing involvement may lead to greater levels of fragmentation within and without public service providers--too many arms of service provision exist leading to a multi-tier system where communication failures are inevitable, multi-agency working is ineffectual and charities are squeezed to the point where the services they offer fail to meet the needs of their clients owing to increased demands. Fragmentation already exists within the system where charitable and third sector organisations regularly experience inadequate information disclosure and miscommunication. It is hard to see how this situation will improve as the scale of provision increases.

**How independent is independent?**

The increased role of the third sector in housing provision in partnership with government also has the potential to strain the independence of charitable organisations. There is a clear recognition within the sector and the government of the need to protect independence, both in the current climate and in the vision of charities (and the wider not-for-profit sector) as the third arm of provision. The NCVO, for example, has identified precise mechanisms necessary to aid the independence of organisations, which include good governance, transparency and accountability, improved funding and partnership working and an assertion of the value of sector organisations. If charities were not viewed as being independent of government, public donation and support would reduce, as charities would be viewed as organs of the State. While independence is not about maintaining distance in the provision of services from a partner organisation, but about maintaining freedom from influence from the partner organisation in charity decisions relating to the provision of the service and in the management of the charity as whole, it is suggested that it is difficult to maintain this distinction in practice.

When deciding whether an organisation can be registered as a charity, the Charity Commission have now made it clear that as:

> “... independent regulator of charities, the Commission's position on whether charities engage in public service delivery is neutral; we neither encourage nor discourage it”.

Provided the legal characteristics of charity are present, the Commission will no longer consider that the fact that a charity is supplementing or providing a service which public bodies are under a duty to provide as excluding charitable status.

In recent guidance, the Commission has recognised the need for independence in these endeavours and has suggested that:

> “To those charities that choose to engage in public service delivery, we advise:

• stick to your mission;

• guard your independence; and

• know your worth.”

While simple to state, these tenets are difficult to follow in practice. Indeed, the requirement of independence, postregistration, is about independence in governance, which is the freedom to make decisions in the best interests of the charity as a whole in carrying out its purposes. Independence is therefore not about maintaining distance in the provision of services from a partner organisation, but about maintaining freedom from influence from the partner organisation in charity decisions relating to the provision of the service and in the management of the charity as whole. While this distinction is clear, it is suggested that it is not so easy to maintain in practice.

One area in which the degree of independence can be compromised is in the provision of funding. In the housing context, charities require robust funding sources to ensure the freedom to make decisions and plan strategically, as well as to cover the everyday costs of service.
delivery and the provision and maintenance of accommodation. Public donations and the tax savings provided through charitable status are, of course, a major source of funding for charities, but funding from government schemes, such as the Supporting People fund, are an even more significant source.

The change in government practice within the sector from giving block grants to charities to making them tender for bids, the “contract culture”, has had a profound effect on the way charities conduct business. Garton notes that the cumulative effect of charities involvement with the contract culture has been that funders enjoy too much influence in the operation of charities, and co-operation in the charitable sector is weakened by charities competing with each other. These influences can be felt in a variety of ways, from the extreme, where funders insert provisions in the funding contracts which gives them, for example, a right of veto over appointment or other decisions within a charity they fund, to the more recognisable, which sees charities altering the nature of the service they provide to fit in with the funding criteria, rather than to focus on the best provision for their beneficiaries. This latter presents a potential inroad into independence, as, “by allowing financial decisions to take over core service decisions in this way, charities risk being manipulated by funders”.

The influence of funders in decision making is demonstrated in the housing context by empirical data where a charitable organisation noted that it:

“... is about the charitable housing body performing according to a given set of criteria rather than trying to work with the individuals who come to them with a recognised need.”

The loss of decision-making freedom is likely to increase if charities become directly involved in providing public services. The autonomy of charities in decision-making is not aided by what charities perceive as their relatively weak bargaining position in securing funding even though there is evidence to suggest that this is more perception than reality. The loss of freedom to make decisions is likely to increase if charities become directly involved in providing government funded services, as the funding source will come from one source, which is subject to changes in political will in how it conducts business.

A necessary, yet unwelcome, corollary of a lack of financial independence from government will mean a loss of charities' ability to criticise the nature of the service being funded. This would erode one of the principal benefits of charitable involvement in service delivery and is something which all parties are alive to in the debate over charitable involvement in public services. Supporters of greater public service involvement suggest that charities will have more influence, as they will be better placed to change a service from within; they will be arguing from a position of strength rather than on the fringes of provision. Research undertaken by the Baring Foundation also suggests the concern that charities will lose the ability to criticise funders is ill founded, as, “it is hard to identify any organisation actually losing funding as a result of criticising either policy or programmes”.

It would be a mistake to assume that all housing charities will want to become public sector providers, especially as those dealing with the mentally vulnerable tend to be smaller scale housing providers. There is no compulsion to do this, nor may it suit many organisations' focus or desire. Nevertheless, where a housing charity forgoes the temptation of following funding and getting involved in direct line provision, it is questionable whether they would survive financially. The sector has already seen groups merge and change to meet the challenges of competition from larger, more commercialised providers. Funding for non-governmental providers might be affected, especially where the charity is supplementing services provided by existing charities; as is already the case today:

“... it is not easy to get money from other sources and do things that the statutory services don't want, or you are going to have the problem year on year of finding new funding”.

Competition, and the homogenisation of services, may well drive charitable housing into the mainstream, by squeezing out those organisations that are not involved in direct line provision of public services.

The public perception of the independence of charities is also important. Charities must not simply be independent, but must be seen to be independent, as public concern is motivated by the fact that public monies are given to charities either directly or in the form of tax relief. Existing research reveals that the public already believes that professionalized organisations have compromised their independence to obtain funding from government, and that it is only the smaller organisations, which retain their independence as they have little or no relationship with government. While this perception is not particularly accurate, the gap between perception and reality is a cause
for concern in itself. This situation is unlikely to improve if charities begin to provide public services, as they may well be viewed as organs of the State.

Nevertheless, where the roles of charities and state provision become fused, either through service provision where public authorities already have a duty to provide such services or where the major funding for activity is state based, there is the potential for independence to be lost.

**The compromising of trust**

As accountability and trust go hand-in-hand, the public’s perception of trust is important, as without trust, public confidence in, and public donations to, charities will decrease. It is here that public perception of charities is demonstrated to be “fickle”, as the:

“... public... appear to have “blurred vision” when it comes to VCOs [Voluntary and Community Organisations]... high expectations exist alongside a perception that ‘proper’ charities are and should be amateur... [and]... the freedom and flexibility of VCOs to determine how best to meet their aims also means that the sector is largely unregulated.”

That this perception exists, against clear evidence of regulation in the sector, suggests at best that charities and interest groups must be more proactive in championing the sector, and at worst that such ingrained perceptions will be very difficult to combat.

Interestingly, Charity Commission funded research, based on a survey conducted by Ipsos MORI, suggested amongst its key findings that the index of public trust and confidence in charities had actually increased in the surveyed period (from 2005). Indeed, using the professions as an index, only trust in doctors and the police placed higher than charities. Nevertheless, within these findings, 75 per cent of people agree that most charities are trustworthy and act in the public interest. However 16 per cent do not believe that charities are trustworthy. It is also of note that younger people had (marginally) higher trust and confidence in charities.

One very significant finding was that it seems the majority of the public know very little about how charities are run and managed. Perceptions of charity are therefore based more on public perceptions, rather than on reality. Good reputation also plays an important role in trusting a charity more (16 per cent of those polled).

It is clear that, whatever public levels of trust and confidence in social housing provision, there are problems with trust between organisations. These can be detrimental to effective delivery of service provision, which, in turn, can lead to a reduction in public trust. This is raised in Cowen et al., in a major study into housing allocations:

“In both Camberwick Green and Springfield, an increased emphasis on performance monitoring was regarded by some RSLs to be at the expense of creating sustainable communities. Individual performance meetings in these areas could become sites of contestation in which institutional mistrust became prominent, particularly in respect of the alleged failure by some RSLs to re-house homeless households.”

Clear evidence that a lack of trust extends beyond the general public view of charities is clearly demonstrated in the housing context. One of the major reasons found for a lack of information sharing between organisations working together to provide support and housing for the mentally vulnerable was a lack of trust between organisations. Similarly, the current anti-terrorist political climate has the potential to undermine charities, which have already, albeit unfairly, come under scrutiny at a European level through a supposed need to harmonise regulation of not-for-profit organisations within the European Union to prevent them, inter alia, being used to conceal terrorist funds. Fragility to external influences, and to a, “media ... more ready to criticise VCOs” are a disadvantage of the need to enjoy public trust and confidence, but can present very real concerns for charities and, ironically, can lead to trust being undermined.

The potential involvement of charities in public service provision, discharging public functions, has already come under criticism for the damage it might do to public trust and confidence in the charity sector. MacLennan suggests that charitable involvement might permit public authorities to raise additional funds under the cover of charities. Of greater concern is that close working relationships between charities and government will lead to public confusion as to the identity of charity trustees and a loss of public confidence in charities. The net result would be that, “[t]he spirit of the gift will be weakened by the prospect that any gift is a gift to the Chancellor of the Exchequer at the time
and donations to charity would decline.

**Conclusions**

It is clear that charities already play a very important role in social housing, particularly for vulnerable groups. They have demonstrated their traditional strengths in this area through their ability to improve service provision by providing templates to grow general provision through better alternatives and through pressure exerted as independent entities, focused on the needs of individuals rather than tied to any overarching agenda; characteristics which have interested the government in harnessing their talents as a third arm of public service provision.

Any structural problems in the current system of provision, such as poor multi-agency working, are not the fault of charities alone. They have had to deal with increased business coming their way due to factors beyond their control. They have had to adapt their objects and functions to meet a community care policy without adequate housing support, the primacy of home ownership in policy initiatives and the squeezing of the social housing sector, the failure of the private rental system to provide a credible alternative route and others, meaning that charities have already taken on more mainstream services than they might wish, simply because that is where the need has arisen.

Ironically, the quality and scope of charitable housing provision is as much a weakness as a strength. In meeting needs well, they have detracted from public criticism of government led services. In taking over tasks which the public perceives as state responsibilities, they have weakened public trust and confidence in their actions. Nor has the sector been particularly good at successfully challenging these perceptions. Alongside this, the public believes that some charities are already too close to government, and the sector is paying through the decline in charitable activity from donors.

In housing provision, charities are just one part of multi-layered provision, the boundaries of which are constantly changing. That this current approach to provision may not work as well for individuals as a directed, centralised service is a matter for argument, but not worthy of debate while the status quo persists. Indeed, it is contested that current provision is fragmentary and at times ineffective, not through a lack of capable agencies working in the area, but through the lack of strategic thinking from the centre. It is difficult, in this context, not to see increasing charity involvement as a method to further devolve government responsibility and thinking for social housing. Rather than growing state provision to meet what charities have been doing better, it is “pensioning off” provision to charities as an alternative to state provision. This is delegation, not strategic planning. There is still no clear social housing agenda--there are a number of differing policies, but no sense of where they are all leading, except away from government as a provider of these essential services.

Even if it were to work as a concept, it has been argued that charities have neither the ethos nor the infrastructure to support the volume of work involved. Services would inevitably become homogenised, and public confidence and trust would be further compromised, with potentially serious consequences. There is currently a necessary informal partnership between state provision and charities, even if it does not work as well as one might like. Current provision already leans too far towards a marriage of many different agencies and states; a polygamous relationship.

One issue not mentioned so far relates to the public perception of social landlords, and a clear recognition that regulation of the housing system is currently intensely problematic. This will only make things worse in terms of trust and independence if charities get themselves too involved in this at grass roots level, rather than in their current position of implementing and improving on these matters.

Taken together, these concerns strongly suggest that rather than enabling good provision for the mentally vulnerable in housing, the opposite may well be true. They will exert a disabling influence to the detriment of charities as service providers, and, more significantly, the very people social housing seeks to protect--those who need housing. This should at least give policy makers, the Charity Commission and charities themselves pause for thought.

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Conv. 2009, 3, 209-235
37. The proportion of public services spending that goes into the third sector is around 2 per cent. The majority of third sector organisations
36. Office of the Third Sector/Cabinet Office,
35. NAO,
34. The NCVO notes that the sector's income grew by 28 per cent in 1995, to 38.5 per cent or £10.7 billion, in the financial year 2004-2005,
33. A. Giddens
32. A. Giddens,
31. Office of the Third Sector/Cabinet Office,
30. Office of the Third Sector/Cabinet Office,
29. H.M. Treasury,
27. H.M. Treasury,
26. DTI,
24. Compact Working Group/Home Office,
23. Rt. Hon Alan Milburn MP, “Let Charities Run Public Services”,
20. Charity Commission,
19. Glover-Thomas and Barr “Housing an Individual: Property Problems with the Mentally Vulnerable” in Hudson (ed.),
18. ODPM,
17. See the Housing Act 2004, which seeks to help the most vulnerable social groups and increase regulation of social landlords.
16. Housing Corporation,
15. D. Hughes and S. Lowe,
13. J. Alder and C. Handy,
10. S. Merrett,
9. P. Malpass and A. Murie,
8. D. Hughes and S. Lowe,
6. See further the findings of the Wolfenden Report, which was set up to consider the future of voluntary sector involvement within welfare
5. The call for increased social housing provision is coming from various sectors, due to the increase at the time of writing in repossessions
It is also important to identify what charities are, as compared to other third sector organisations, as this paper deals with charities in the strictest sense. Charitable bodies are distinct from the voluntary sector at large. They are registered with and regulated by the Charity Commission and enjoy the fiscal and other advantages associated with charitable status. To be eligible for registration, such organisations must be of charitable character: they must have as their object a recognised charitable purpose, must be for the benefit of the public and be wholly and exclusively charitable (see P. Luxton, The Law of Charities (Oxford: Oxford University Press, 2001). Failure to follow the charitable objects can lead to trustee liability and ultimately to the de-registration of the organisation with the corresponding loss of all advantages. Wider voluntary and third sector organisations do not enjoy the same legal controls or advantages as charities nor are they as restricted to particular purposes.


P. Davy “NSPCC cuts jobs as income drops” Third Sector, November 12, 2008.

H. Jordan “Charity shop stick levels decline” Third Sector, October 8, 2008.


80. Barr and Glover-Thomases “Housing the Mentally Vulnerable: The Role of Charities”, Charity Law Unit (2005). This arose from an ESRC research award ref: RES-000-22-0286, Ch.4.


85. For a detailed overview of the potential problems raised by the “contract culture”, and some suggestions to help overcome them, see D. Morris and J. Warburton, “Charities and the Contract Culture” [1998] 62 Conv. 419. For an exploration of the problems in practice, see D. Morris, Chari...Charities, [1999] Charity Law Unit, University of Liverpool at p.40.

86. Such clauses are now unlikely to be permitted by charities, following guidance issued by the Charity Commission to small charities, who are likely to be the most susceptible to the insertion of onerous terms, due to the inequality of bargaining power that exists--see Charity Commission, CC37–Charities and Public Service Delivery: An introduction and overview, (2007).

87. D. Morris, Chari...Charities, [1999] Charity Law Unit, University of Liverpool at p.42.


89. D. Morris, Chari...Charities, [1999] Charity Law Unit, University of Liverpool at p.42.

90. See, for example, Blackmore et al., The Reform of Public Services: The Role of the Voluntary Sector, (NCVO: 2005) at p.10, in which a charity surveyed said: “… we are very powerless compared with the people offering the contract. It’s a very imbalanced relationship.”

91. See, however, Blackmore et al., The Reform of Public Services: The Role of the Voluntary Sector, (NCVO: 2005) at p.14, in which one of the funding providers noted that charities “are not perceived as core, which makes them vulnerable”.

92. There are other legal problems in charities becoming closely aligned with the public sector. For example, as noted in Charity Commission Charity Commission Study into Public Trust and Confidence in Charities, (2008). “[p]ublic authorities have a number of responsibilities under human rights, freedom of information and equality legislation. Charities that deliver services under contract on behalf of a public authority may be required under contractual terms to comply with these duties, creating additional administrative requirements and costs. The charity should consider its obligations carefully. This area of law is currently under review”.


94. Baring Foundation, Speaking Truth to Power (London, 2000). It should be noted that just because something is difficult to identify or quantify, does not mean that it is not happening--there are many difficulties associated with research into this particular area, not least that participants in the research may be reluctant to air their true views for whatever reason.

95. Barr and Glover-Thomases “Housing the Mentally Vulnerable: The Role of Charities”, Charity Law Unit (2005). This arose from an ESRC research award ref: RES-000-22-0286.


100. The sector is aware of this difficulty. See, for example, ImpACT Coalition–Principles, available from the NCVO website at http://www.ncvo-vol.org.uk/render.aspx?siteID=1 &subID=18 &subSID=92 &documentID=892 [Accessed April 20, 2009]. The two foundation principles are to increase public understanding of charity work and values and to communicate with clarity and openness. This is also one of the reasons that the Charity Commission defines its new vision of itself as a champion of the voluntary sector, as well as its regulator.


103. Barr and Glover-Thomases “Housing the Mentally Vulnerable: The Role of Charities”, Charity Law Unit (2005). This arose from an ESRC research award ref: RES-000-22-0286,Ch.4 at p.49.

104. See Quigley, Response to European Commission Consultation on Code of Conduct for Transparency and Accountability by Non Profit Organisations (NCVO: August 23, 2005), which notes that the link between charities and terrorism is given disproportionate coverage, given the lack of evidence of such problems in England and Wales.


108. The Charity Commission is alive to this “shell” charity idea and will not permit registration of an organisation as charitable where, under Charity Commission, RRT7–The Independence of Charities from the State, (2001) at p.2 at para.6 it is “necessarily dependent upon a government authority for funding; it receives that funding on terms that enable the government authority to make decisions about what services are to be provided and who is to benefit from those services, and in making those decisions, the governmental authority is able
to pursue its own wishes and policies (without having a duty to act solely in the interests of the new body).".

110. This is currently being addressed by the Law Commission Housing: Encouraging Responsible Letting (Law Com. No.312).