

# Criminal justice and the voluntary sector: a policy that does not compute

**Andy Benson and John Hedge argue that voluntary sector services are becoming increasingly controlled by the state and compromising their independence.**

## Let's start with privatisation

To understand the government's interest in the voluntary sector, one must first take-in its pre-occupation with privatisation in the criminal justice system. Certainly, back in 1997, the New Labour government inherited a dire situation – a high prison population and a probation service whose professional identity had been under sustained threat, with Michael Howard as Home Secretary dismantling the service's entire training structure. Radical change in the configuration of criminal justice services was justified. The overall vision with a fresh approach to youth justice and an overarching model for community safety was exciting. For probation, a new training model and then a new national service established. Performance began to improve.

But by 2003, with government moving towards market-based approaches to public service reform, the direction of criminal justice services changed radically and rapidly. Their adviser of choice was Lord Carter – a businessman who founded Westminster Health Care, building it into a large private health care provider, which he sold in 1999. As the government's chief ideologue on privatisation within criminal justice he proposed not only the setting up of the National Offender Management Service (NOMS) – a joining of the Prison and Probation Services – but also the introduction of an integrated regional

management and commissioning structure. A significant assumption in the plan was to increase the capacity for these services to be provided outside the statutory sector – the term 'contestability' was coined to describe this.

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Carter was also responsible for a review of the use of custody in December 2007, calling for an immediate significant expansion of the prison programme, and larger prisons. Though 'Titan' has been abandoned we still face the building of very large prisons without, it must be said, having had the national discussion about prison and its wider implications that most senior officials and national

organisations have been calling for throughout.

## Enter the voluntary sector

In announcing the policy change on Titan prisons, Justice Minister Jack Straw restated the government's stance on who should run public services. For the Ministry of Justice press release (Ministry of Justice, 2009) revealed that 'only voluntary and private sector providers would be eligible to bid for the construction and operation of new-build prisons over the next three years'. So here we find the coupling of 'voluntary' and 'private', a coupling that has become a stock phrase right across government, for Ministers and their spokespeople. Straw said voluntary sector providers could bid to run two poorly performing prisons, Birmingham and Wellingborough, as well as five other prisons whose contracts were due to be renewed.

This perspective, of course, raises another fundamental issue about which there is apparently no room for debate – legal detention and community punishment can legitimately be dispensed on a commissioned basis with no direct system of public accountability, or put another way – that punishment can be contracted out.

Thus, at the same time as the

government committed itself to market-driven principles, and invited massive private sector involvement, the apparent virtues of voluntary sector activity – or 'Third Sector', as we have been re-branded – have also been discovered. A larger role for voluntary sector agencies is promised but on clear terms

and conditions. This translates into pressure on voluntary sector

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'providers' to conform to particular ways of working under contract – examples are command-and-control management regimes, forced expertise in competitive tendering, downward pressure on wages and employment conditions, even the legitimisation of the profit motive itself, through the active promotion of 'social enterprise'. These are private sector, not voluntary sector mores.

This phenomenon goes way beyond the world of criminal justice. Private, voluntary and hybrid private/voluntary agencies, operating according to the corporate dictates of big business, are now 'major players' in areas of public service as diverse as childcare, education, employment and training, regeneration, homelessness, even independent advice services.

Most voluntary agencies, let alone the smaller community groups, are ill equipped to survive the pincer grip of prescriptive state funding requirements and private sector competition, both of which carry the same messages about the route to organisational prosperity in this new world. Faced with this pressure, groups are either rolling over, or going under.

### The proper role of voluntary action

So far, there has been little debate about either these issues, or the impact they will have on a voluntary sector, in which the criminal justice field has always had many notable independent, campaigning and radical players. The assumption has been that the involvement of voluntary agencies in delivering public services augments, rather than diminishes, their proper role in our public life and draws them into the mainstream.

But the difference between the state, private and voluntary sectors is structural – each operates according to different underpinning principles, assumptions, expectations, intentions and imperatives. Conflating these differences, apparently to create one big, happy, 'partnership' family, is intellectually and practically flawed.

Whether it's stamp collecting or sedition, the voluntary and

community sector (VCS) represents one part of the 'ungoverned space' in which we, the people, can freely associate. This 'freedom of association' is acknowledged as a universal human right (Universal Declaration of Human Rights, Article 20: The Right to Freedom of Assembly and Association). What goes on inside ungoverned space is an important part of our civil society. Traditionally, the VCS has been a haven and test bed for new thinking, for community action, a way to provide services and support to people, and a platform for dissent, campaigning and social action. Within this mix, the role of the sector in holding to account state agencies and interests is crucial. Today, as in the past, our VCS remains an extraordinary – and precious – demonstration of public involvement in public affairs. It is important to the health of our flagging democracy.

Crucial to the role of the VCS is the freedom and capacity to take *independent action*. By this we mean the freedom and the means by which voluntary agencies, community and campaign groups decide for themselves – with their users and communities – their interests, aspirations, priorities and ways of working.

It is on the basis of these decisions – as independent organisations – that engagement with the outside world then takes place.

Such engagement will not always go smoothly or secure consensus. Where the pursuit of divergent interests or active dissent is required, the capacity of a group to take independent action is truly tested.

### The impact on the sector

The misguided intentions of the government undermine the capacity (or indeed the willingness) of the VCS to play this crucial societal

role. If we want to develop a criminal justice system in which the public has confidence, and within which there is challenge and the development of new ideas, then there should clearly be a major role for community-based independent organisations and campaigning groups. These have always been plentiful in criminal justice, but being commissioned within tightly contracted specifications creates a very different and dependent dynamic. And behind the policy and practice lies the new mood music of our times – that opposition is not expected and dissent, dangerous and unacceptable. The pressure to conform is now extreme and the sector is fragmenting into three overlapping, but distinct segments:

- Small-scale, volunteer-based community groups mostly active on local issues, sometimes wider. These have enormous potential to contribute to an effective community safety agenda, for example, but, despite ostentatious government commitments to civic renewal and 'empowerment', this slice of the sector was marginal and remains marginal;
- Locally-based, service-providing, 'professionalised' voluntary agencies. These agencies are now in crisis, many in outright

panic. They are bending to state pressures to 'modernise', to become 'fit for purpose', and in the process are losing their own purpose within their communities. They are losing funding, are hastily forming

themselves into consortia in the hope of winning contracts, and refashioning their management and governance to mimic private sector practices;

- Corporate, ambitious, often national, often predatory, voluntary organisations that

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have already 'transformed' into private sector 'look-alikes'. These agencies are best equipped to do well in this new environment, happy to compete aggressively, and with the resources to argue their 'goodness and efficiency'. In all but legal framework and lack of shareholders they might just as well be versions of Lord Carter's Westminster Group. Once NACRO starts to run prisons why will it be any different to Group 4; why should we believe its 'campaigning' rhetoric?

Given this picture, where will we find the next generation of challenging agencies, and how will they be able to carry out groundbreaking, innovative work?

### Resistance is not futile

Overall, therefore, the forces involved in reeling in and re-fashioning the VCS are very substantial indeed and include strong collusive elements from within the sector itself. Nonetheless, the stakes are high, as the risks are multiple – poorer quality, more expensive public services; diminishing popular involvement in voluntary and community action as active citizens; a less accountable state.

Resistance to these changes is therefore necessary and justified. In this, voluntary and community groups need to rediscover the courage to say 'no' and to provide alternative models, reaching for the power of collective action to help them hold to this position. This involves recognising

the structural independence of the sector and organising on that basis. And VCS alliances must simultaneously develop their own perspectives and agendas on what needs to happen, alongside their critique of the perspectives that should be resisted. ■

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