

Strategy & Partnerships Team, Office for Civil Society
Department for Digital, Culture, Media & Sport
100 Parliament Street
London
SW1A 2BQ

21 May 2018

Response to the Civil Society Strategy Engagement Exercise

Founded in 1866, the Howard League is the oldest penal reform charity in the world. We have some 12,000 members, including lawyers, politicians, business leaders, practitioners, prisoners and their families and top academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.

The Howard League works for less crime, safer communities and fewer people in prison. We aim to achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's work.

The Howard League is a campaigning charity, a legal practice representing children and young adults in custody aged under 21 and the instigator of demonstration projects – such as Barbed, the first social enterprise to ever be run within a prison. The organisation therefore has a unique perspective on civil society and its development.

Our response does not seek to answer all the questions in the consultation paper but covers areas in which we have relevant knowledge and expertise.

The definition of civil society

The history of civil society in England and Wales is lengthy in comparison to many other jurisdictions in the world. The Howard League, founded as it was in 1866, is itself an organisation rooted in that history. As a charity we led on reforms during the 20th century that are hallmarks of our criminal justice system today – from the abolition of capital and corporal punishment to the creation of a probation service, the formation of a distinct youth justice system and of services for victims.

At the same time England and Wales is also further ahead than some jurisdictions on more recent developments around social enterprise and social impact investment. These innovations have created new forms of 'mission-based' activity which go beyond the traditional sector definitions of public/private/voluntary.

It is therefore understandable that in setting a strategy for how government should work with civil society, the definition of civil society is itself a matter for debate.

The Department has chosen the following definition for the purposes of this Strategy:

we interpret civil society to be inclusive of all those outside of the public sector, who share the mission of building a stronger society and improving lives, regardless of traditional sector boundaries such as charity or private, and for profit or not. This mission-based interpretation will encompass individuals, movements, groups, organisations and businesses.

This definition strays away from the definition outlined by the United Nations:

Civil society is the “third sector” of society, along with government and business. It comprises civil society organizations and non-governmental organizations.

Whilst the Department’s “mission-based interpretation” allows for a flexible approach, the Howard League is concerned the new definition is too broad.

A mission of “building a stronger society and improving lives” could encompass such a breadth of activity as to render the definition meaningless. Many would subscribe to such a definition – who would not say they believe in ‘improving lives’ (although the question might be begged: *whose* lives)? And how does government seek to assess the authenticity and/or efficacy of those who claim to have such a mission, particularly if they fall without established regulatory frameworks such as charitable status?

Whilst a global technology company such as Google – founding motto “Don’t Be Evil” – might at times aid activities within the civil society space, there are sufficient concerns in the public domain about Google and other companies such as Facebook to suggest that at the very least their position as potential agents for good (if not ill) within civil society is nuanced, at the very least.

Such a broad definition can allow for vague thinking and insufficient interrogation of difficult issues when it comes to government’s interaction with people and those civil society organisations that purport to help both. Similar issues have been seen when government has considered civil society organisations to be simply competitors in a succession of public service ‘markets’ (see below). If this Strategy seeks to avoid the mistakes of the past, then the definition requires development.

The danger of lumping organisations together without sufficient thought as to their differences is particularly acute in an area such as prisons. Whatever the aspirations for prisons might be, these are institutions primarily founded for the purpose of punishing people through the deprivation of liberty. There are moral questions as to whether private companies run for profit should see shareholders make money on the basis of inflicting misery on other human beings, whatever the justification. In the United States of America, there are widespread concerns as to the lobbying power of private corrections companies and their ability to sway policymakers in favour of the status quo of mass incarceration. Equally charities with an interest in helping prisoners risk distorting their charitable goals if they become overly complicit in regimes which are inflicting harm on their beneficiaries.

The government should attend more to these questions and not less. More specificity would at least help to ensure policymakers and commissioners keep such issues in mind.

A Civil Society Strategy should make more effort to define the different categories of organisation working in or around the civil society space. This is particularly important when government is considering how best to work in partnership with different organisations from different sectors.

Working in partnership

The overall principles government uses to engage with civil society are crucial to the Strategy's stated goals of ensuring that "civil society is at the heart of our efforts to create a better and fairer society".

Successive governments of different political stripes have pushed market reforms in various areas of public service delivery, leading to transactional relationships with the voluntary sector in particular. More often than not, this is the opposite of working in partnership. In criminal justice, the most recent example of such reforms is the government's Transforming Rehabilitation (TR) programme.

The Howard League characterised the impact of TR in a recent submission to the Justice Select Committee

(<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/transforming-rehabilitation/written/73757.html>):

The Ministry of Justice has created companies and lengthy contracts that are "too big to fail" and companies are effectively being rewarded for failure. As is becoming apparent, such is the sorry state of the TR programme that we now have people in the system being set up to fail by companies that are themselves too big to fail.

As a reform programme TR was often advertised by ministers as an opportunity for voluntary sector providers at all levels and yet the logic of marketisation and of commissioning to scale resulted in less local and one-size-fits-all services which left the voluntary sector in particular at a major disadvantage. These concerns were repeatedly spelt out to the Ministry of Justice by the Howard League, and those other charities who felt able to voice their disquiet openly (many did not), and yet TR was pushed through. A recent report produced by Clinks, the National Council for Voluntary Organisations and the Third Sector Research Council has laid bare the reality of TR's negative impact on voluntary sector organisations and on the specialist services they can help provide (<https://www.clinks.org/resources-reports/under-represented-under-pressure-under-resourced>).

In short, Transforming Rehabilitation provides the Department with a model of how *not* to engage with civil society.

The Howard League is currently considering a model of 'Community Justice' which might succeed the landscape created by Transforming Rehabilitation. This envisages a model of national strategic direction and of local service delivery:

- At the local level, commissioning arrangements should be based on cooperation and joint purpose rather than competition. Efficiencies can be achieved through local organisations, including the voluntary sector, sharing mutual investment in services and co-commissioning to reflect local need.
- At the national level, government has a part to play in setting clear targets around service expectations but these targets should be developed by local partnerships to give more attention to their specific circumstances and to ensure professional discretion can be exercised where appropriate. Such targets would include measures to ensure proper regard be given to delivering and commissioning for particular groups, such as gender-specific and BAME-specific services (areas the voluntary sector in particular can add value).

While the Howard League is at the early stages of formulating this model for probation services, the principles outlined above offer a way forward which speaks to other areas of public service delivery.

Campaigning voice

It is regrettable campaigning is not acknowledged and addressed in the consultation as it is a key role for many organisations in the civil society space. Whilst a great deal of attention has been paid to the chilling effect of legislation such as the Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014, the impact of two decades of market reform has had a far larger impact on the independence of voluntary sector organisations and their voice. Service delivery and campaigning for change should ideally go hand in hand, not see the former prioritised over the latter for fear of jeopardising government contracts.

Statements by ministers on charities and campaigning in the last few years have also been regrettable. The Howard League therefore welcomes these recent remarks by the Secretary of State:

I want to see civil society recover its confidence to speak into our public life. The greatest social and political changes in our history have come about because independent people formed associations to press for change. If that means respectful criticism of government, so be it.

This is a profoundly important point. Government should safeguard the ability of charities to speak up for their beneficiaries and to campaign for change.

Youth participation

The Howard League welcomes the consultation's focus on youth participation in national and local policy and services. For the last ten years the charity has worked on developing models of youth participation and social action alongside public legal education and campaigning with young people in contact with the criminal justice system.

The UK government has been criticised for failing to facilitate participation for its children and young people, particularly those who are most vulnerable and disadvantaged. In its recent report on the implementation of the UNCRC in this country (2016), the UN Committee on the Rights of the Child called on the Government to, *“Establish structures for the active and meaningful participation of children and give due weight to their views in designing laws, policies, programmes and services at the local and national level ... Particular attention should be paid to involving younger children and children in vulnerable situations, such as children with disabilities”* (page 6).

A focus on working with the most vulnerable, rather than those it is easiest to access, is key; these are the children and young people most likely to be impacted upon by government policy. The benefits of facilitating participation are potentially very significant, not only for the children and young people but also for society. For example, children and young people in the criminal justice system are experts in their own experience and the most expert voice when it comes to what does and does not work within the system. By listening to and encouraging their voices professionals are supporting the development of the highest possible quality policy advice and practice development. The potential long-term economic and societal benefits of working for more positive outcomes for these disadvantaged children and young people should not be underestimated, as ongoing research into adverse childhood experiences highlights.

The Howard League has developed a unique and distinctive model of participatory education in response to the problems children and young people raise through its specialist legal service. The model seeks to educate (often very marginalised) children and young people about specific legal issues and to enable their active, genuine and meaningful participation in policy and practice development to drive significant improvements and change.

An example of an outcome of this work is a suite of materials on children and sentencing which has been produced for both children and the adults who work with them:

<https://howardleague.org/legal-work/sentencing-toolkit/>.

An evaluative write-up of the Howard League's participation model has just been completed and can be made available to officials on request.

Yours faithfully

A handwritten signature in black ink that reads "Andrew Neilson". The signature is written in a cursive style with a long, sweeping horizontal line extending to the right.

Andrew Neilson
Director of Campaigns