

DIRECTORY OF SOCIAL CHANGE

INFORMATION AND TRAINING FOR THE VOLUNTARY SECTOR

Critical Conditions: Investigating the Transparency of Grant Terms and Conditions¹

Paper for Presentation at the 15th VSSN / NCVO Researching the Voluntary Sector Conference

7 September 2009

Jay Kennedy
Policy Officer
Directory of Social Change
Federation House
Hope Street
L1 9BW
Tel: 0151 708 0136
jkennedy@dsc.org.uk

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July 2009

¹ n.b. this paper is a condensed version of a longer report, *Critical Conditions*, which can be accessed at www.dsc.org.uk/greatgiving

Abstract

The terms and conditions of grant funding effectively set the parameters of the funding relationship. They define what the funded organisation is obliged to do in order to receive the grant and determine how it is spent on the proposed project or service. They are implemented mainly because funders want to ensure proper accountability for the money that they give. While many terms may be reasonable and justifiable, others are not. DSC's *Critical Conditions* report examines the transparency of grant terms and conditions from three key types of funders that provide grants to the voluntary sector: trusts and foundations, central government departments, and private companies. The findings demonstrate a significant lack of transparency and an unwillingness to negotiate with applicants from central government departments. The terms and conditions of the trusts and foundations surveyed appeared more transparent by comparison, but resistance to negotiating terms was also a theme. Getting any useable data about the terms and conditions of company support proved almost impossible, which supports the perception that accessing accurate information about their funding in general is difficult.

Introduction

Grant funding remains a vital source of income for charities and other voluntary organisations. It is provided by a wide range of institutions, such as trusts and foundations, statutory bodies, and private companies. Clear and accessible information about such funding is crucial for those organisations seeking it; both in order to fundraise effectively and for their ability to build constructive relationships with funders that facilitate the best outcomes.

The terms and conditions of grant funding effectively set the parameters of the funding relationship. They define what the funded organisation is obliged to do in order to receive the grant and to a greater or lesser extent determine how it is spent on the proposed project or service. They may also be the place where other crucial requirements are stipulated, such as monitoring and reporting schedules, aspects of the organisation's structure, management, and staffing, and compliance with various legal or policy standards.

Terms and conditions do not always exist with every grant and there are variations in what they are understood to be and how they are presented. When terms and conditions are implemented as part of a grant agreement this is mainly because the funder wants to ensure proper accountability for the money that they give. Written conditions can facilitate the recovery of funds if they are misspent, or if the project or organisation fails. This is perfectly reasonable and legitimate, and in fact can be a necessary part of funders discharging their own responsibilities in the proper way.

However, whilst many terms may be reasonable and justifiable, others may simply replicate existing regulation, or seek inappropriate and even unrealistic control over processes and outcomes. They may be of dubious legal standing, of no relevance to the particular project being funded, or be out of date.

The transparency of terms and conditions is important because they are a formal expression of a power relationship that exists between funders and funded organisations – a mechanism by which a de-facto regulation is exerted by one type of organisation

over another. Crucially, there is generally no wider scrutiny of this regulation outside the individual funding relationships that exist (with the exception perhaps of the lawyers who may draw them up). Conducting any such scrutiny is next to impossible if they are not publicly available.

Aims and objectives of the research

Over several years the Directory of Social Change (DSC) has come to the view that the terms and conditions of grant funding are not sufficiently transparent. This view is based on DSC's own experience of looking at funding opportunities and receiving funding, its ongoing research and provision of funding information for the voluntary sector, and anecdotal evidence from other organisations. Too often the terms and conditions of funding are not made available with other application materials and are presented only when an offer of grant has been made, which in DSC's view has negative consequences. Specifically, that:

- applicants cannot make a fully informed decision about whether to apply
- it is difficult to negotiate terms once time has been invested in the application process, or once an offer is on the table
- applicants can be tempted to sign an agreement but ignore terms, jeopardising the organisation, the project and the beneficiaries
- terms and conditions cannot be easily subjected to public scrutiny and challenge
- neither funders nor applicants can compare notes on best practice, share common grievances or offer collective solutions.

In 2008 DSC decided to prioritise this area in its policy and campaigning work. In order to begin building an evidence base, DSC carried out an initial survey of trusts and foundations, central government departments, and companies that provide grant funding for the voluntary sector on the subject of grant terms and conditions. The findings of this research have been analysed and presented in the *Critical Conditions* report, published by DSC in June 2009.

The aims of the research were to find out more about:

- the visibility and availability of grant terms and conditions (their transparency)
- the scope for grant recipients to negotiate terms and conditions
- trends in behaviours and differences between types of funders
- what might comprise good practice and directions for future research.

Methodology

DSC has an extensive database of information about funders – around 6,000 in total. Sufficient resources were not available to survey them all for this initial research. The intention was to make some preliminary findings and to identify themes to inform future work.

The decision was taken to survey the 50 largest funders for each 'funder type', defined by the total amount of funding distributed in the most recent year for which DSC had

data. This meant the survey population would be 150 funders in total. There were several factors which led DSC to adopt this simple method and process for selecting and researching funders.

First, the significant variations in the way that charities are grant-funded by trusts and foundations, companies and government, meant that the criteria for selecting a limited sample needed to be as simple and uniform as possible. Second, the resources that DSC had available to carry out the research meant that a huge sample could not be surveyed. Finally, the decision was driven by an educated assumption that the largest funders (in terms of overall funding given per year) would have the most information available about terms and conditions.

The first stage of the research was to develop the lists of 50 largest trusts and foundations, central government grant programmes and company givers that were to be researched. Following this, a questionnaire consisting of 10 questions was developed, focusing on the themes of availability and negotiability. Then, a separate database was created for each data subset and DSC researchers began the research survey, by undertaking desk research and contacting funders via telephone and email.

The research process was concluded at the end of October 2008 and researchers compiled the responses for each data subset. The results were then analysed in detail and presented in DSC's research report *Critical Conditions*.

Key findings – data summary

What follows is a summary of the key findings that were developed from the analysis of responses to the ten survey questions:

Central government grant programmes and larger trusts and foundations are very likely to have terms and conditions that cover their grant funding:

- 100% of central government respondents said that they had terms and conditions for their grant programmes;
- 86% of the trusts and foundations that responded had terms and conditions;
- responses from companies suggested that they are least likely to have terms and conditions.

Terms and conditions from trusts and foundations are more transparent than those for central government:

- 54% of central government respondents said their terms were fully available to all prospective applicants, compared with 72% of trust and foundation respondents;
- only 23% of central government respondents claimed they made terms and conditions available online for anyone to access, while the figure for trusts and foundation respondents was 53%;
- responses from companies suggested that they are least likely to make terms and conditions available.

Government departments receive more requests from applicants to negotiate terms and conditions yet they are the most resistant to negotiating them. Trusts and foundations seemed to be more flexible, but a large percentage still preferred not to negotiate:

- 61% of central government respondents stated that they were not open to negotiating any terms and conditions with applicants, despite a majority having had requests to do so by some applicants;
- 45% of trust and foundation respondents were not open to negotiating terms, with 20% of them receiving requests to negotiate;
- none of the companies included in the dataset said that their terms and conditions were non-negotiable, yet they had the lowest percentage of requests to negotiate.

Key findings – anecdotal evidence

Anecdotal evidence was also gathered during the research, mainly offered by respondents as part of their survey responses or in conversations with researchers. The main themes for each funder type are discussed below:

Trusts and foundations

An issue that featured prominently in the feedback from trusts and foundations concerned the impact of managing large numbers of applications or grants on the question of whether terms were negotiable. Large foundations such as Esmée Fairbairn, Lloyds TSB and Northern Rock said terms were non-negotiable and indicated that the number of grants they managed was a factor. However, other major funders such as the Tudor Trust indicated that they would be willing to negotiate if asked.

It should be borne in mind that even some large trusts have fairly simple and clear terms and conditions, which are likely to be perfectly acceptable to most applicants. Although Esmée Fairbairn and Northern Rock expressed a disinclination to negotiate terms, the need for this to take place may be mitigated by the terms themselves, which are brief, easily understood and clearly available on their respective websites.

It is also worth noting that the sets of terms and conditions provided by trusts and foundations varied widely. For example, the Football Foundation's terms run to 17 pages; the Wellcome Trust's terms comprise 7 pages. Both are precisely written in legal language which is clear but formal and very detailed. Certain funders will require greater detail depending on what they do: for example, large capital projects will be complex, carry more risk and therefore may require more detail. Funding research may require detailed terms because of the complex issues of intellectual property.

Central government

The survey data analysed in *Critical Conditions* suggests that government is the most resistant to negotiating terms and conditions with applicants. The issue of limited resources which arose in the feedback from trusts and foundations also applies here, but undoubtedly a greater factor is the hierarchical structure of state institutions and the lack of discretion that individual grants managers are afforded in executing their duties.

In fact, the existence of 'standard terms' that cover entire government departments illustrates the point – there are sets of conditions that are designed to cover any number of grant programmes from a single department – the specific projects could vary from tens of millions of pounds to tens of thousands. Individual managers appear to have little authority to challenge or amend such conditions based on the more local needs of their particular programmes, much less the requirements of individual funded organisations. It is expected that all organisations awarded funding will simply agree to them, regardless of whether they are actually relevant or needed.

A recurring response from grants managers was that there was no policy to guide them in the event of a request to supply conditions along with other application materials, and still less any policy on negotiating terms with applicants. There appears to be a lack of adequate information and support for government grants managers in developing and applying appropriate conditions that ensure that they meet their own obligations, while not inhibiting the development of productive relationships with funded organisations.

Indeed, the drafting or issuance of terms often seems to be separate from the development of the grant programme and its objectives – an adjunct rather than an integral part. It may be done by the in-house legal team with relatively little input from those delivering the programme directly. This may be related to the tendency for terms to be issued after the application process is well under way (typically with the grant letter) and a cause of their relative inaccessibility.

Companies

The diversity of approaches that is characteristic of company financial support and the difficulties encountered in collecting data for this study make it hard to draw any solid conclusions. Generally speaking, companies do not view themselves as grantmakers, despite the fact that they may give considerable sums of money directly to organisations. The survey responses and the narrative information received hint at two main approaches that differ significantly from the way in which trusts and foundations and government departments make grants.

The first approach bears more resemblance to that of an individual donor – money is given as a gift with relatively few strings attached, often determined by the particular charitable interests and affiliations of company directors or senior management. The other main approach involves a formal business contract with the charity receiving the money. This approach would be expected, given that this is the way in which companies conduct business with one another, but strangely it does not necessarily appear dominant among corporate relationships with voluntary organisations.

Recommendations

Critical Conditions contains 'characteristics of best practice' and a number of 'tips for funders and applicants' which are too lengthy to describe in detail in this paper. However, DSC's main recommendations based on this initial research are relatively simple. Namely, that:

- Funders should make their terms and conditions publicly available with other application materials, online if possible
- Funders should consider negotiating terms with applicants if they request to do so
- Prospective applicants should always seek to get a copy of any terms and conditions, and review them thoroughly, prior to spending significant time on a funding application.

Conclusions

The research published in *Critical Conditions* represents the starting point in DSC's work on the subject. The main objective of increasing the transparency of grant terms and conditions is to improve their quality and relevance, and to enhance the awareness of those groups seeking funding about what the funding relationship will involve. DSC believes that if terms become more publicly available they will be easier to analyse and compare which will facilitate the development of good practice. If groups applying for funding are more aware about the full details of what they will be required to do to secure the funds, this should enable them to make better decisions at an earlier stage in the funding process.

The survey sample was intentionally limited, and DSC is currently conducting research with a much larger sample. However, the data presented in *Critical Conditions* does demonstrate that central government departments in particular have much further to go in terms of making their terms and conditions transparent. It is reasonable to expect that these should be publicly available as a matter of course, not just because it would be in the best interests of organisations applying for funding, but because they are public bodies which are distributing public funds.

The findings for trusts and foundations are more positive but with qualifications. The data received indicates that the largest trusts and foundations (which comprised the survey sample) are relatively transparent when it comes to terms and conditions. However, it is not clear to what extent this tapers off as the size of the funder gets smaller (or if, indeed, smaller trusts and foundations even have terms that govern their funding).

This study confirms DSC's more general experience of company funding for the voluntary sector – namely that they are typically not very transparent with their information overall. A company that provides clear information and clear procedures about how to apply for money is the exception, not the rule. The processes tend to be more informal, less standardised, and harder to get to the bottom of.

References

Critical Conditions: Investigating the Transparency of Grant Terms and Conditions, Directory of Social Change, June 2009, accessible at www.dsc.org.uk/greatgiving