



The Devil's in the detail

Jay Kennedy looks at the maze of terms and conditions within grants and offers a route through the complexity of clauses and sub-clauses

That letter you have been waiting for has finally arrived. It seems that all your hard work has borne fruit – you've been offered a grant. The funding means you will be able to continue delivering a crucial project for your beneficiaries, and hopefully develop it further.

Or will you? Attached to the letter is a set of 'terms and conditions' running to nearly ten pages. You must accept them to bank the cheque, but this is the first time you've seen them. You furtively scan the document, hoping to find nothing too out of the ordinary. Something catches your eye: 'All intellectual property rights of funded activity will remain with the funder'. But how does that fit with our exit strategy, you think to yourself – we need the right to use the materials we develop as we see fit later on. Can't they see the potential conflict with the project's sustainability? Another says: 'You will use our logo and recognise our grant in all your publicity for the duration of the grant'. All publicity? At significant cost you've just arranged to print 10,000 pamphlets – you think, will we need to bin these now? And didn't your Finance Director tell you something once about whether this could be a VATable cost because it might qualify as advertising? The document goes on to state that the funder may attend all your board meetings to monitor your progress. You wonder if this is just reserving the right to drop in for a friendly progress report, or an attempt to keep tabs on what you're doing and influence the delivery of the project. What will your trustees think? The Chair is on holiday and you need to respond to the funder by the end of the week...What do you do in this situation? Sign on the dotted line and hope for the best? Ring the funder up in the hope that they'll be willing to amend or scrap the most problematic terms? What if that delays things further and jeopardises the project? Or, after seeking

further advice, do you take the painful decision simply not to accept the funding?

Had you known about this stuff before you spent all that time on the application, you might have made some very different decisions. You might have discussed these requirements at an earlier stage – giving you and the funder the opportunity to iron out any problems in a less pressurised situation. Or, you might even have decided it wasn't worth it and looked elsewhere.

Lack of transparency

At the Directory of Social Change (DSC), we think there is lack of transparency about the terms and conditions that govern funding. This is much more than an obstacle to effective fundraising; it is a largely unrecognised but significant threat to organisations' independence. It can put organisations in difficult situations where there is real pressure – financial pressure – to make decisions that may not ultimately be in anyone's best interests.

These documents are also a de facto form of regulation that is subjected to almost no wider scrutiny in terms of being proportionate, appropriate, necessary, useful or even legally sound. Many of us who receive funding will recognise some aspect of the fictional situation described above as true, but we tend to think of it as simply an issue between us and our funder. In fact, it is replicated across thousands of different funding relationships. Taken as a whole this comprises a complex but significant regulatory system – where funders exert influence over the actions of those they give money to through legally binding written agreements. Of course there are valid reasons for having written conditions governing how money should be used. Charitable funders have to meet their own obligations and must ensure that their funds are used for charitable purposes and are expended properly. Statutory bodies

have a duty to manage public money responsibly. Our argument is not with these principles per se; rather that the diverse processes that are used to try and achieve them are not sufficiently visible.

As a first step, we conducted a survey of grant funders to try and get an idea of the scale of the problem. There were three main aims of our research: to find out whether terms and conditions were made publicly available by funders, whether there was any prospect of negotiating them, and any broad differences between types of funders – specifically trusts and foundations, government departments, and companies. The findings are presented in DSC's forthcoming report, *Critical Conditions*. It forms the platform for one part of our Great Giving campaign, which aims to improve the relationships between funders and funded organisations. Our first objective in this respect is to do away with 'hidden small print' – we want all funders to make any terms and conditions that govern their funding publicly available to anybody.

Of course greater transparency is only a starting point. The information then has to be examined and used. In the future we plan to conduct further research to delve deeper into the detail and examine specific areas, so that we can start to develop a picture of what good practice looks like. In the meantime, funders should provide this information as a matter of routine with any other application information, preferably online for anyone to access. And applicants should always check the fine print before spending too much time on an application. Those devilish details may come to haunt you. *Critical Conditions* is published this month. Download a copy at www.dsc.org.uk.

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