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# Critical Conditions

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Investigating the transparency of grant  
terms and conditions

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# About the Directory of Social Change

The Directory of Social Change (DSC) has a vision of an independent voluntary sector at the heart of social change. We believe that the activities of charities and other voluntary organisations are crucial to the health of our society.

Through our publications, courses and conferences, we come into contact with thousands of organisations each year. The majority are small to medium-sized, rely on volunteers, and are struggling constantly to maintain and improve the services that they provide.

DSC is not a membership body. Our public commentary and the policy positions that we take are based on clear principles, and are informed by the contact that we have with these organisations. We also undertake campaigns on issues that affect them or which evolve out of our research.

DSC views its role as that of a ‘concerned citizen’, acting as a champion on behalf of those smaller organisations whose needs may not be accounted for in public policy. We ask critical questions, often challenge the prevailing view, and try to promote debate on issues that we consider to be important.

# About this report

DSC has long campaigned for greater transparency from funders about what, how and who they fund. Over several decades, DSC has helped to achieve this goal by publishing funding information in books such as the *Directory of Grant-making Trusts*, the *Guide to Major Trusts* series and the *Guide to UK Company Giving*.

Partly as a result of DSC's work in this area, funding information is much more publicly available. However, more remains to be done. DSC believes that one important but often unrecognised area where transparency remains lacking involves the terms and conditions that govern grant funding.

This report examines the terms and conditions of grant funding from central government departments, trusts and foundations, and companies. The main themes of the research concern whether terms and conditions are publicly available, how they are made available to prospective applicants, and whether they are negotiable.

Why do we think that this is important? We believe that better information about terms and conditions would help more effective fundraising. In our own experience, we have considered plenty of funding opportunities that look attractive until we get hold of the small print, at which point we decide not to pursue them further. We know that we are not alone in this experience, and that many invest much more in application processes, which ultimately may require them to choose between not getting some much-needed funding, or complying with terms that they find objectionable. It is at this point that our main concern arises – when funding terms have an impact on an organisation's independence and even potentially on its sound management. The funding relationship by its nature is an unequal one, and the funder's approach can make a difference between a constructive partnership and a controlling relationship.

## Acknowledgements

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# Chapter 1

## Executive summary

The key findings of this report are summarised below.

### 1.1 Existence and availability of grant terms and conditions

Central government grant programmes are more likely to have terms and conditions than trusts and foundations or companies that give cash donations, with 100% of those who responded saying that they existed. More than half (54%) said that they were available to the public or to all prospective applicants, with a further 17% saying that they were partially available. Nearly one-third (29%) said they were not publicly available at all.<sup>1</sup>

The most common way that central government grant programmes provided their grant terms and conditions was via email (29%), requiring a prospective applicant to request them. Only 23% of the responses from government indicated that terms and conditions were available online for anyone to access. Although half of central government respondents agreed to send the study a copy of their terms and conditions, approximately half of these (nearly one-quarter of the total) did not actually do so.

The trusts and foundations that responded were slightly less likely to have terms and conditions than central government (72% 'yes', 14% 'in some cases'), but were more likely to provide information about their terms and conditions publicly (72% 'yes', 8% 'partially'). The most common method selected was online, with 53% of responses, or approximately twice the frequency as from central government.<sup>2</sup>

It proved very difficult to get reliable data about terms and conditions for company cash donations, as the majority of companies in the sample did not respond to the survey or declined to take part. However, the data that were captured indicate that companies are the least likely to have terms and conditions or to make them publicly available.

<sup>1</sup> The raw data and narrative responses for the 29% of central government respondents who stated that that terms and conditions were not publicly available indicate that this may be because they are drafted for each project or negotiated with individual applicants (see the data summary for Q5 on p.15 for more detail).

<sup>2</sup> This data may reflect the nature of the survey sample: larger trusts may be more likely to have application information online. However, all central government departments have websites and generally are obliged to provide information to the public through them.

## 1.2 Whether grant terms and conditions are negotiable

A majority of central government respondents stated that they were not open to negotiating any terms and conditions with applicants (61%); however, a majority also stated that applicants had requested to negotiate terms (45% occasionally, 7% frequently).

Fewer than half of the respondents from trusts and foundations said that they were not open to negotiating any terms and conditions (45%). Just over one-fifth stated that they had received requests from applicants to negotiate terms (17% occasionally, 4% frequently).

None of the companies which responded and were included in the final dataset said that terms and conditions were non-negotiable, and they had the lowest percentage of requests from applicants to negotiate.



## Chapter 2

# Introduction

DSC has developed some principles to guide its policy work, which are based on its values, mission and objectives, and which flow from its experience of supporting voluntary and community organisations over three decades. Two of them in particular are relevant to this research, namely Responsible Giving and Responsible Regulation.

DSC's principle of Responsible Giving reflects our belief that those who give money to charities and other voluntary organisations – in this case, grantmakers – have a responsibility to do more than just give money. The funding relationship should be one of constructive engagement to achieve positive outcomes. Funders have a responsibility to consider the impact that their giving will make and to provide support and feedback without being unduly prescriptive. A more functional aspect of Responsible Giving is that funders should have clear and accessible application processes, which facilitate better working relationships and achievement of outcomes, rather than acting as an obstacle.

DSC's principle of Responsible Regulation also underpins this research: DSC believes that the regulation of independent organisations that arise from, and are supported by, individual citizens should be proportionate, appropriate and enabling. It should have a demonstrable benefit, and should strengthen voluntary activity rather than hinder or control it unnecessarily. It needs to strike a fair balance between accountability and independence.<sup>3</sup>

DSC sees the terms and conditions that govern funding arrangements as exercising a *de facto* but largely unrecognised regulatory function over voluntary activity. They exist because funders feel that a written framework is needed 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, too often terms and conditions simply replicate existing regulation, or seek inappropriate and even unrealistic control over processes and outcomes. They may not even be relevant to the particular project to which they relate, having been drafted for a different purpose, or they may contain clauses which have been left in place for years simply 'because they have always been there', when in fact they are

<sup>3</sup> For more on Responsible Giving and Responsible Regulation, see: <http://www.dsc.org.uk/NewsandInformation/PolicyandCampaigning/Policyprinciples>.

no longer relevant. Especially where government money is concerned, they may be designed to transfer risk and accountability inappropriately, or seek to enforce an overweening architecture of risk management. In many cases they may not even hold up to legal challenge or even basic scrutiny.

What can we do about this? Our answer is to begin by trying to describe the problem, to investigate some of the characteristics, and to start to propose some solutions. The first step is to try to make terms and conditions more publicly available, because we know that too many funders still do not do this as a matter of standard practice.

DSC believes that the lack of transparency about terms and conditions has negative consequences for applicants, funders and anyone trying to influence change in this area. If terms and conditions are not available at the point of application:

- 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 order to gauge the scale of the problem and to investigate the various issues around terms and conditions, DSC carried out research on terms and conditions during 2008, the results of which are examined in this report. The purpose of the research was to provide a snapshot of current practice within and across funder types, to draw some initial conclusions and inform future research. The research sought information about the following themes with respect to terms and conditions:

- their general availability
- the method of availability
- some indication of how negotiable they are
- the broad differences between types of funders.

## Chapter 3

# Methodology

### 3.1 Definition

Generally, the phrase ‘terms and conditions’ is understood as the ‘fine print’ or ‘small print’. Where grant funding for charities and other voluntary organisations is concerned, the actual documents and processes that comprise terms and conditions can vary widely. Sometimes they are a distinct document clearly labelled as such, sometimes they may be included as part of an application form or guidance notes, and sometimes they may be simply the content of a grant letter. Sometimes they may not exist at all. They may be officially signed off by whoever is responsible for the grant, or accepted as part of an informal agreement outlined in a letter upon receipt of the grant.

For the purposes of the present research, ‘terms and conditions’ is defined as:

*A set of written obligations that are legally binding, which organisations must comply with in order to receive and retain the grant for the period that it is offered.*

*These are typically comprised in one or more distinct documents, or sections of different documents. They may be standard to the funder, specific to a particular funding programme, specific to a particular project or applicant organisation, or some combination thereof.*

This definition was used by researchers during the survey to explain what was meant by ‘terms and conditions’ to those funders who were surveyed.

### 3.2 The dataset

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

In constructing the dataset for the research, some judgements were necessary about which funders to include in order to maintain a certain level of consistency. This is not a simple question, because there are significant differences in the way that charities are grant-funded by trusts and foundations, companies and government; this extends to differences in the way that funding is quantified, the various ways in which information can be obtained, and even the language used to describe the funding.

It was necessary to come up with a way of selecting individual funders, which was relatively simple, uniform and manageable with the resources available. Therefore, it was decided to limit the sample for each category to the 50 largest funders in terms of the total amount of funding distributed annually. This was driven mainly by two factors:

1. an assumption that the largest funders (in terms of overall funding given per year) would have the most information available about terms and conditions
2. the need for a common but limited number of sources from each category – that is, trusts and foundations, companies and central government – to allow some level of consistency in comparing the findings.

### ***3.2.1 Trusts and foundations***

In the case of trusts and foundations, the top 50 in terms of total funds given in the most recent year for which DSC had recorded data were selected from its database. As such, this data subset comprised the largest trusts and foundations in the UK in terms of annual giving.

### ***3.2.2 Central government***

DSC's data on central government grant funding is significantly more limited, because there are relatively few grant programmes for the voluntary sector run by central government, compared to the number of trusts and foundations. Therefore, 50 central government grant programmes listed on the [www.governmentfunding.org.uk](http://www.governmentfunding.org.uk) website were used for this data subset. This included programmes that distribute tens of millions of pounds annually down to several hundred thousand pounds.

### ***3.2.3 Companies***

In the case of companies, narrowing the dataset was even more complicated, owing to the crossover between direct company giving and that done through company foundations. There is also the problematic issue of how non-cash or 'in-kind' donations are valued. Therefore, it was decided to focus on the top 50 companies in terms of their cash giving (as opposed to considering their in-kind donations), so that it most closely resembled the other data subsets. This in turn was divided into 25 without an associated foundation and 25 with an associated foundation.

## **3.3 The research process**

The first stage was to develop the lists of 50 largest trusts and foundations, central government grant programmes and company givers that were to be researched, using the selection criteria outlined above. Following this, a questionnaire consisting of 10 questions was developed, focusing on the themes of availability and negotiability (see Appendix A). This was modified slightly for companies because the term 'grant' is not always understood and terms such as 'cash donations' or 'financial support' are more common.

Then, a separate database was created for each data subset and DSC researchers began the research process, entering information in the database as it was received. The research process was carried out as follows:

1. Researchers performed an initial search for terms and conditions available on funder websites, attempting to answer as many of the survey questions as possible in the first instance (typically only the first two questions).
2. A request was made by email or telephone to speak with the appropriate person in order to complete the survey. This could be completed over the phone, or if it was more convenient, the survey was emailed or posted and could be completed and returned by the contact.
3. Follow-up telephone calls were then made several times to each contact when no further information was forthcoming.
4. Ample opportunity was given to respond to queries (several months), but after several attempts to contact the relevant person for a reply, no further action was taken.

The research process was concluded at the end of October 2008 and researchers compiled the responses for each data subset. These are discussed in the following section and full statistical analysis is provided in section 4.2 that follows.

There were wide variations in the total number of funders from each category that completed all or most of the survey. The breakdowns for responses are described in the next chapter.

# Chapter 4

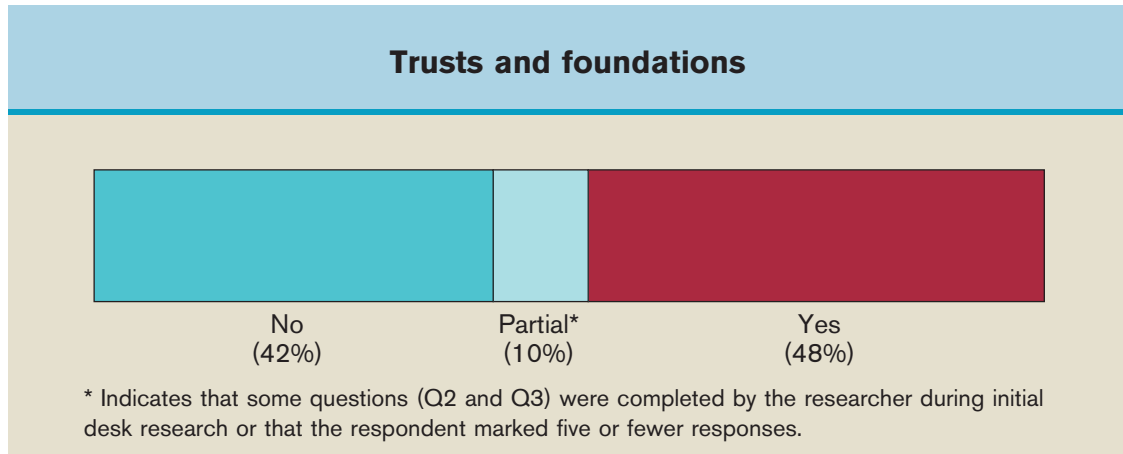
## Results and discussion

### 4.1 Response rates

#### 4.1.1 Trusts and foundations

Fifty trusts and foundations were contacted and 29 full or partial responses were received. The chart below shows a breakdown of response rates (a complete list of those contacted is available at Appendix B).

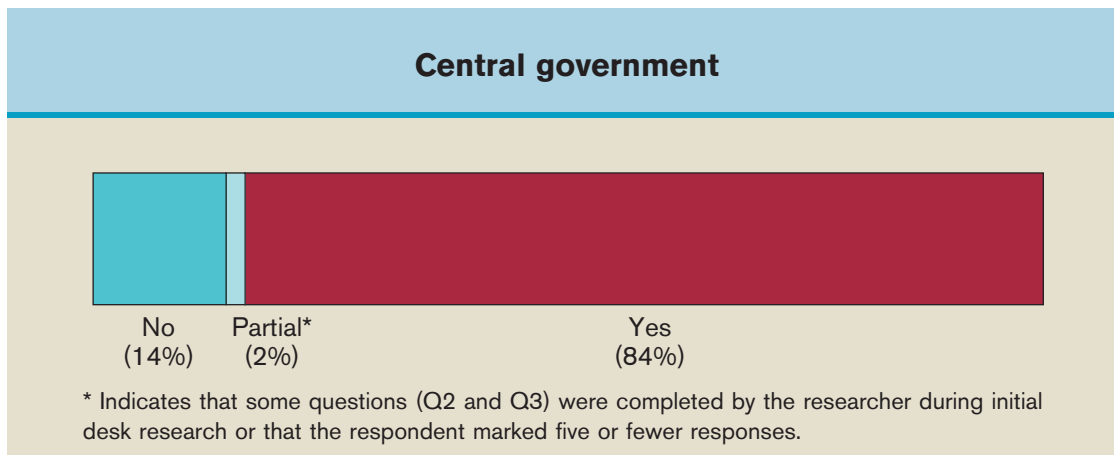
Figure 1



#### 4.1.2 Central government

Fifty grant administrators from 14 different central government departments were contacted. The chart below shows a breakdown of response rates (a complete list of those contacted is available at Appendix C). In total 43 full or partial survey responses were received.

Figure 2

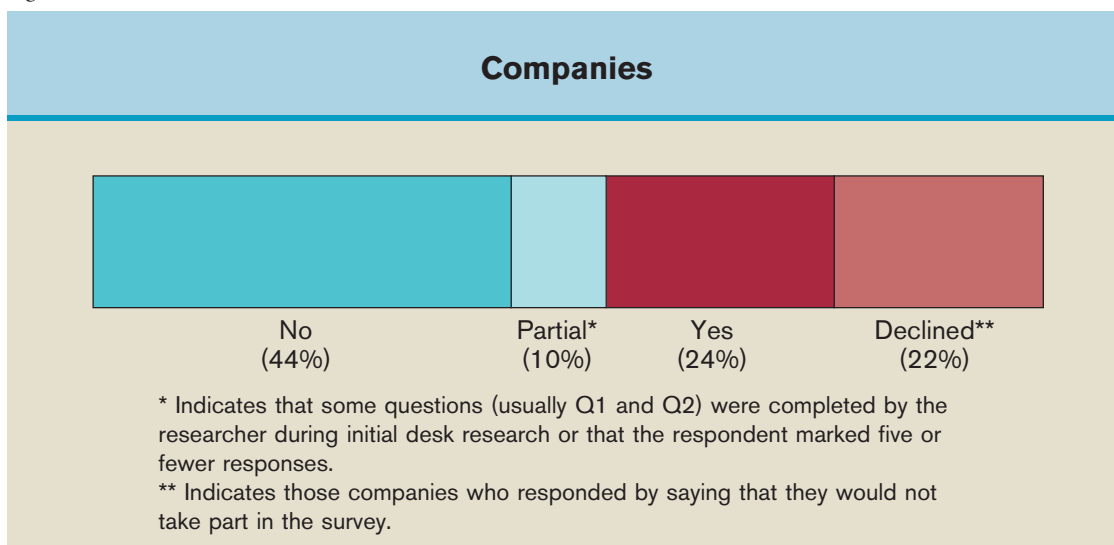


### 4.1.3 Companies

Of the total sample, 25 companies without an associated foundation and 25 with an associated foundation were contacted (the full list of companies can be found at Appendix D). The study’s intention for the 25 with foundations was not to find out about the foundation’s own terms and conditions, but about those governing any cash donations which were made by the company directly. It proved difficult to get information about any terms and conditions that may govern this money: those companies with an associated foundation that responded, clearly did so from the position of their foundation, not the company itself, even if their accounts indicated that the company did provide cash support apart from that which it provided to the foundation.

In total, eight responses from companies with no associated foundation and nine from companies with an associated foundation were received.

Figure 3



Government had by far the best response to the survey, with 84% of those contacted taking part. In fact, were it not for the total lack of response from all the programmes administered by the Foreign and Commonwealth Office, the response rate would have been close to 100%. This may be an indication that government is used to responding to requests for information from the public, and indeed has an obligation to do so. However, it may also reflect the familiarity between DSC researchers and grant administrators, due to the fact that they are in regular contact as part of running DSC's [governmentfunding.org.uk](http://governmentfunding.org.uk) website, which provides information on grant funding from government.

More than half of the trusts and foundations that were contacted provided some response. In many cases it was simply very difficult to make contact with the correct person who could answer the survey, or, having made contact, to get the survey returned within a reasonable amount of time or by chasing it up. This may indicate that trusts simply have less time or fewer resources to respond to such enquiries, rather than indicating a general disinclination to respond to public requests for information.

The responses from companies were lowest, with only one-third of those contacted providing any response to the questions. The same issues with finding the correct contact person applied to companies as to trusts and foundations. In addition, companies were much more likely to respond with a general message with words to the effect of: 'Sorry, but we don't have time to respond to your survey' (indicated as 'declined' with an additional band in Figure 3). It may be that, as they are private institutions, companies generally do not feel obligated to respond to public requests for information.

## 4.2 Data summary

The following pages provide an analysis of each question in the survey. On each page the question is presented, together with the numbers of total responses to that particular question, broken down for each funder type. A chart for each question appears on the right-side of the page, illustrating the responses for each funder type.

Following the presentation of the data for each question there are subsections entitled 'Explanations' and 'Observations'. 'Explanations' discusses the question itself – that is, what it was trying to ascertain – and any notes about the data; and 'Observations' includes general notes, comments and comparisons between the different datasets that arise when looking at them together.

A number of things should be noted.

- The total number of responses for each question varies, depending on how many respondents answered that particular question. Not all of the respondents completed all the survey questions. Partially completed surveys were included in the calculations.



- The total number of responses to each question varies because of differences in question design. Some questions were designed to be answered as ‘Tick one’, whereas others were ‘Tick any’. Where the respondents were invited to ‘Tick any’, each individual tick was calculated as a distinct response in the charts. Therefore, for ‘Tick any’ questions, a single respondent could contribute multiple answers.
- The problems encountered in getting information from companies that have an associated trust or foundation led to those responses being disregarded in the data analysis. As a result, the data from companies are from those companies that responded but that do not have an associated foundation – this reduced the original sample population for companies by half.

**Q2:** Do your grant programmes<sup>4</sup> have terms and conditions that govern the use of the grant?<sup>5</sup> (Tick one)

Total responses:

Trusts and foundations = 29/50

Central government = 43/50

Companies = 8/25

**Explanations**

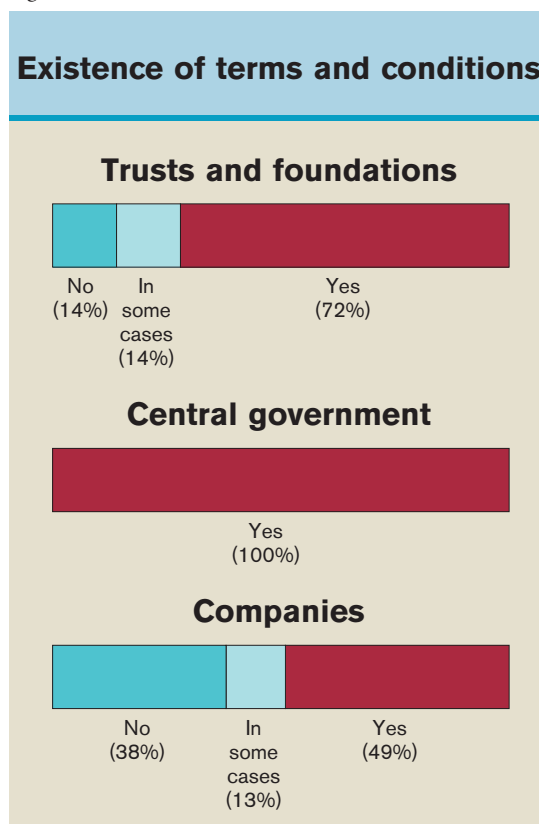
This question concerned the existence of terms and conditions. All of the survey responses received for this question from trusts and foundations and central government were counted. Where a response was not received but a researcher was able to answer the question through desk research, this was counted as well. For companies, the difficulty encountered in getting responses for direct cash giving from companies as opposed to grants made through associated foundations meant that that data has been disregarded.

Therefore, the figure of 8/25 and the correlating chart refers to those companies which responded that do not have an associated foundation.

**Observations**

Government funders appear significantly more likely to have terms and conditions than trusts or companies. All the government grant administrators who replied to the survey said that their grant programmes had terms and conditions. Companies appear to be the least likely to have terms and conditions, although more than half of the respondents from the reduced dataset said that they did have them. The high number of trusts and foundations that appear to have terms and conditions may be influenced partly by the data sample; generally the largest trusts and foundations by income are more likely to have formal application processes and procedures.

Figure 4



<sup>4</sup> For companies, read ‘community support programmes’.

<sup>5</sup> For companies, read ‘financial support’.

**Q3:** Are your terms and conditions publicly available, or made available to all prospective applicants? (Tick one)

Total responses:

Trusts and foundations = 25/50

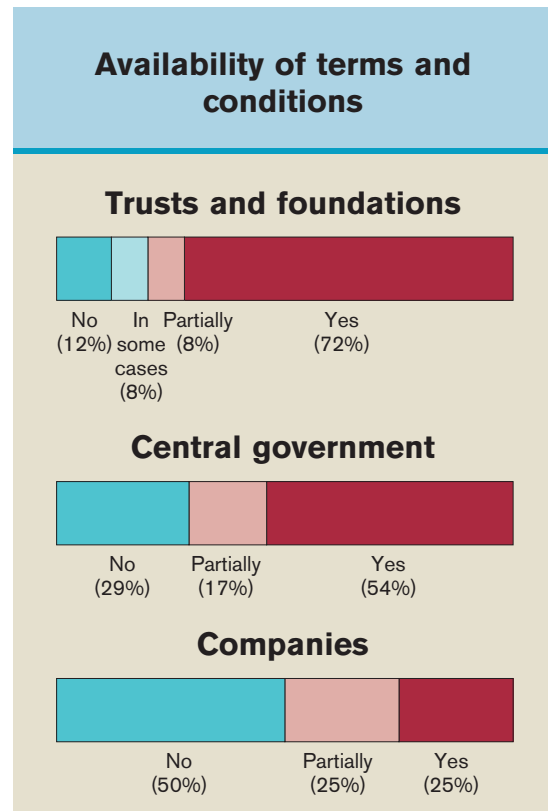
Central government = 43/50

Companies = 4/25

**Explanations**

This question sought to ascertain whether terms and conditions were available at the point of application. Where a response was not received but a researcher was able to answer the question through desk research, this was counted as well. For trusts and foundations and companies, the lower figures for total responses indicate that some partial responses did not contain an answer for this question.

Figure 5



**Observations**

Trusts and foundations are significantly more likely to make terms and conditions publicly available or available to all applicants. Although a majority of government respondents said that they were made publicly available, government funders are more than twice as likely as trusts and foundations not to make them available – nearly one-third of government respondents said that they were not available. Companies appear to be the least likely to make them available, but the sample size is too small to be able to tell with any certainty.

**Q4:** How are the terms and conditions made available? (Tick any)

Total responses (multiple answers allowed from a single respondent):

- Trusts and foundations = 26
- Central government = 61
- Companies = 6

**Explanations**

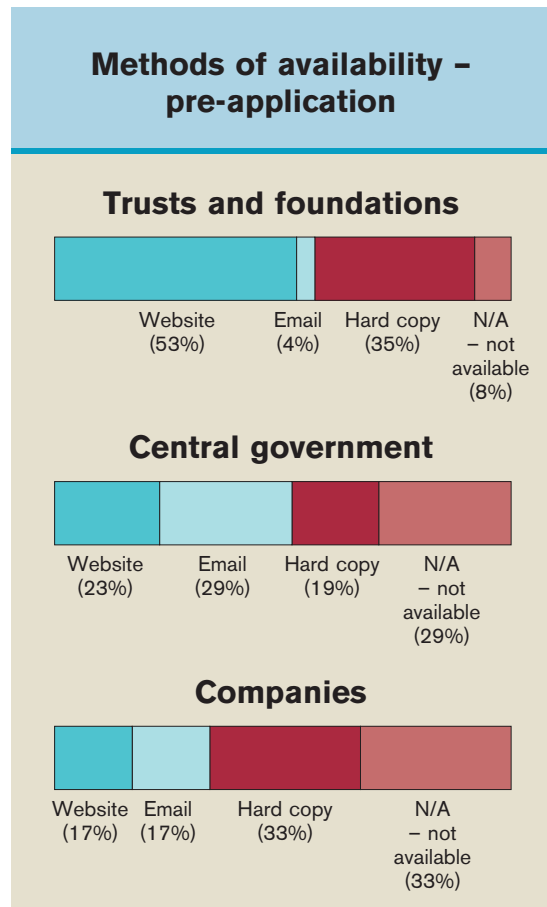
This question sought to find out the most common ways that terms and conditions are provided prior to an application being made.

**Observations**

While government grant funders are more likely to have terms and conditions than trusts and foundations (see Q2), they are much less likely to make them publicly available: nearly one-third of central government grant funders who responded do not make their terms publicly available. In addition, if terms are available, it seems that prospective applicants are required to be proactive and request them (via hard copy or email), whereas trusts are more likely to provide them online for anyone to access. A figure of only 23% online availability for central government is very low – less than half the rate for trusts and foundations.

However, trusts and companies were more likely to select hard copies as an option. Interestingly, only one trust selected ‘website’ and ‘hard copy’, whereas 23 trust respondents selected either website (14) or hard copy (9). It may be that for trusts, the existence of a website is a factor in how terms are provided.

Figure 6



**Q5:** If terms and conditions are provided after an application has been made, how is this done? (Tick any)

Total responses (multiple answers allowed from a single respondent):

Trusts and foundations = 34

Central government = 68

Companies = 9

**Explanations**

This question tried to ascertain the most common ways in which terms and conditions are provided to applicants if they *are not* made publicly available: that is, if they are provided only after an application has been made. Each respondent could tick multiple responses, which accounts for the increased total responses.

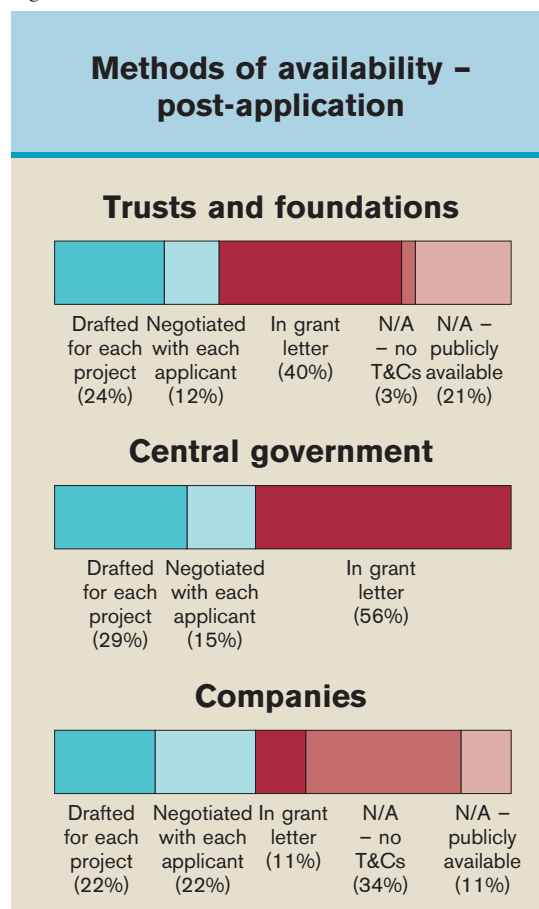
**Observations**

Of the government respondents, 15 stated that terms were not publicly available in Q4. These were from the following:

- Department for Environment, Food and Rural Affairs
- Department for International Development
- Department for Transport
- Department of Culture, Media and Sport
- Communities and Local Government
- Cabinet Office.

In response to Q5, five of these stated that terms were negotiated with applicants and ten stated that they were drafted specifically for each project. Almost all of them also ticked ‘in grant letter’. Interestingly, the figure for ‘in grant letter’ was lower for trusts than for government. It appears that for these respondents, the terms and conditions could not be made publicly available to all applicants prior to an application being submitted, because they were crafted for specific projects or negotiated with each successful applicant.

Figure 7



**Q6:** Is there more than one set of terms and conditions? (Tick one)

Total responses:

Trusts and foundations = 24

Central government = 42

Companies = 2

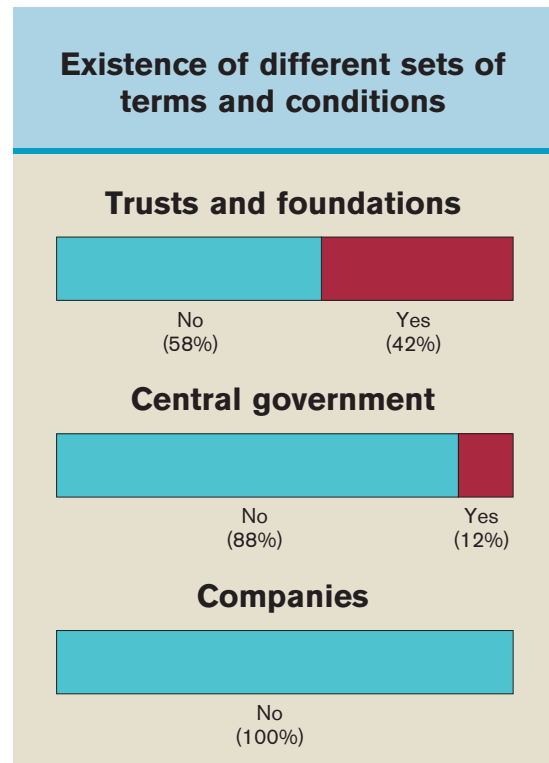
**Explanations**

This question tried to ascertain whether there was more than one set of terms and conditions: for example, if there were terms that covered the entire funding programme as well as terms that covered a specific project. The number of total responses indicates that some respondents did not answer this question.

**Observations**

It seems to be more common for the terms of central government grant programmes to be contained in a single document than for trusts and foundations. The data for companies are of limited value because there were only two responses to the question.

Figure 8



**Q7:** What types are they? (Tick any)

Total responses (multiple answers allowed from a single respondent):

- Trusts and foundations = 38
- Central government = 92
- Companies = 7

**Explanations**

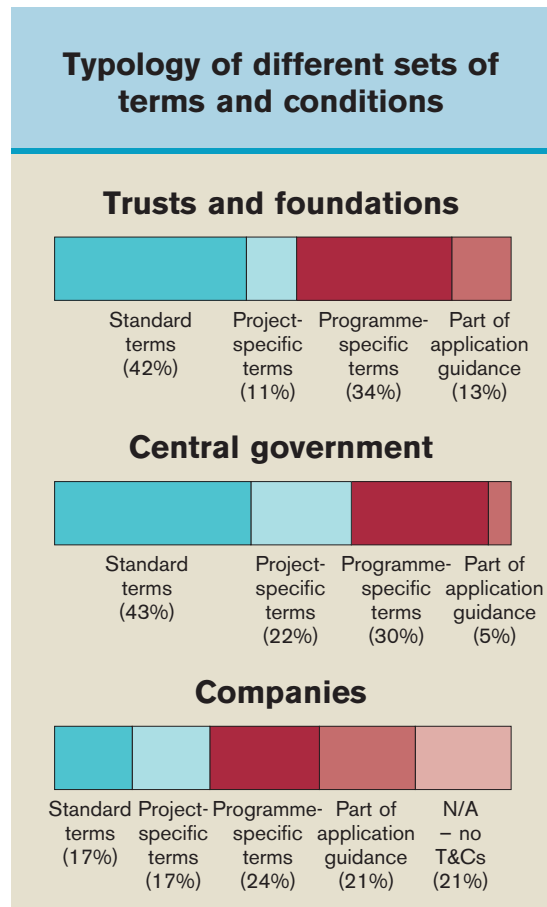
This question sought to identify the type of terms and conditions – that is, were they standard to the funder overall, or were they relevant only to specific programmes or projects? The respondents could tick multiple answers, which accounts for the higher numbers of total responses.

**Observations**

The breakdowns between trusts and foundations and central government are remarkably similar, with nearly identical percentages for ‘standard terms’. However, trusts were twice as likely as government to consider part of the application guidance to be terms and conditions, although the percentages for both were low.

Government respondents were also twice as likely as trusts to draft specific terms for projects. The raw data indicate that most of the 15 government respondents who selected ‘negotiated with applicant’ or ‘drafted for each project’ in response to Q5 also selected ‘project-specific’ for this question.

Figure 9



**Q8:** Are you open to negotiating any of your terms and conditions with applicants? (Tick one)

Total responses:

- Trusts and foundations = 22
- Central government = 42
- Companies = 6

**Explanations**

This question concerned whether funders were open to negotiating terms and conditions with applicants. The lower number of total responses indicates that not all of the respondents answered this question.

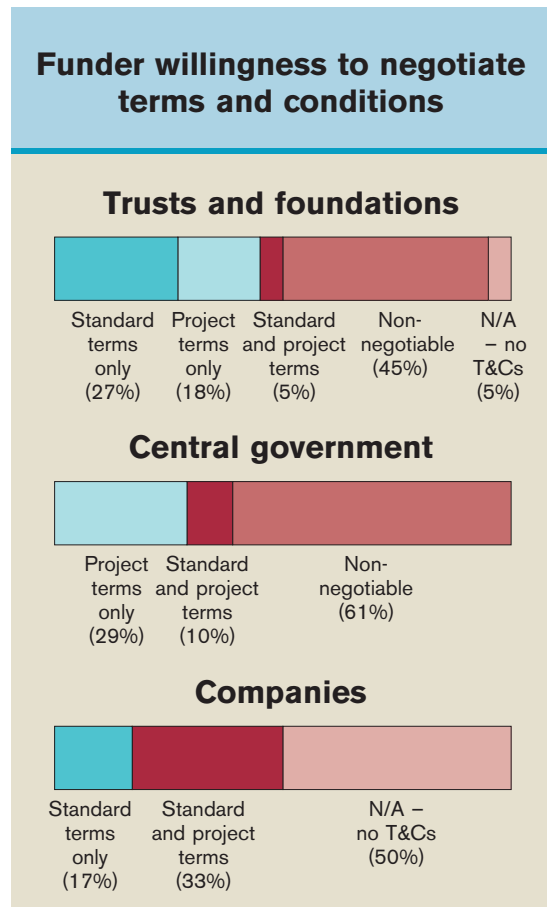
**Observations**

Of the government respondents, 61% said that they were not open to negotiating any terms and conditions, especially standard terms – no government respondent said that standard terms could be negotiated.

Standard terms for government departments typically apply across any grant programme administered by that department, and so individual grant administrators may have little authority to negotiate them. Government departments do appear to be more open to negotiating project-specific terms, but this may simply be due to programme design (as noted in the analysis of Q4 and Q5).

A large proportion of trusts also appear disinclined to negotiate, although more than one-quarter said that standard terms were negotiable, whereas no government respondents indicated that standard terms were negotiable. Interestingly, the admittedly limited data sample for companies seems to indicate that either their funding is not governed by terms and conditions, or that when it is, companies are open to negotiating them – no company respondent selected ‘non-negotiable’.

Figure 10





**Q9:** Have applicants ever requested that terms and conditions be negotiated? (Tick one)

Total responses:

- Trusts and foundations = 23
- Central government = 42
- Companies = 8

**Explanations**

This question sought to determine whether applicants had attempted to negotiate terms and conditions with funders.

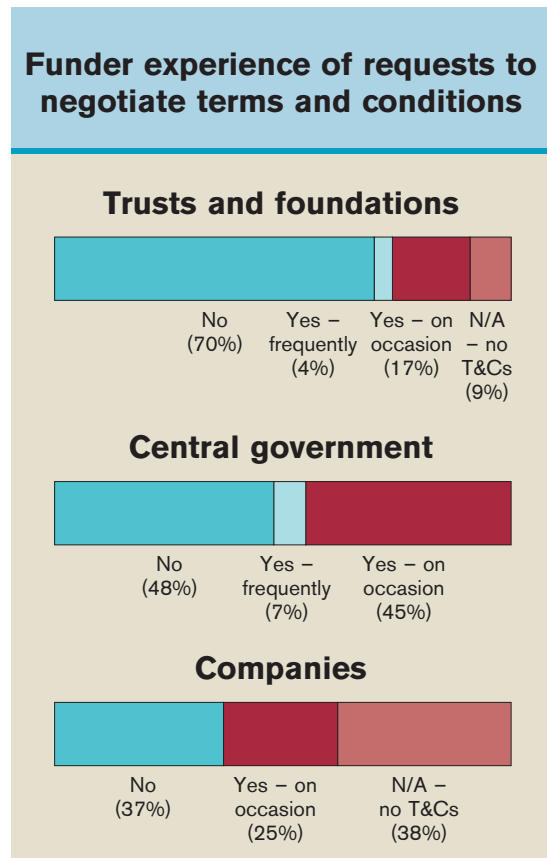
**Observations**

Applicants seem much more likely to request that central government terms be negotiated, with a majority of respondents saying that this had occurred (45% ‘on occasion’ and 7% ‘frequently’). This is notable, especially given the apparent disinclination shown by government funders to negotiate terms, especially standard terms, as shown in Q8. By contrast, a little more than one-fifth of respondents from trusts and foundations reported applicants requesting to negotiate.

It is possible that the higher incidence of requests to negotiate for central government arises because central government terms are more objectionable to applicants, or that there are more of them, which increases the likelihood that some of them will be objectionable. Or, as the responses to Q2 showed, the fact that terms seem to be more likely to be included as part of a grant programme may be a factor.

The trend of ‘N/A – no terms and conditions’ continued with the companies’ data for this question.

Figure 11



**Q10:** Would you be able to send us a copy of your terms and conditions for the purposes of this research? (Tick one)

Total responses:

- Trusts and foundations = 23
- Central government = 35
- Companies = 3

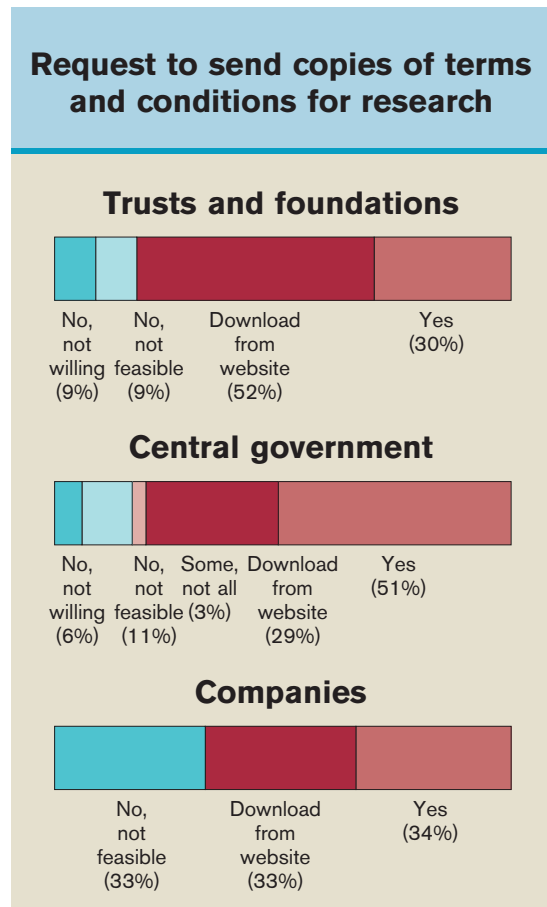
**Explanations**

This question asked whether the funder would send a copy of their terms and conditions to be examined by the researcher. Lower numbers of total responses – a reduction from 43 to 35 for central government, for example – indicate that the question was not answered by all of the respondents.

**Observations**

As with Q4, a feature of the responses from trusts and foundations is that information is provided online. Combining this with the ‘yes’ figure indicates that 82% of the trusts that responded were willing to send a copy or had made a downloadable version available. However, it is likely that these figures are heavily influenced by the nature of the dataset: generally, the largest trusts and foundations are more likely to have websites and provide application information online. On the surface it would appear that a majority of central government respondents stated that they were willing to provide copies, but in many cases they did not; approximately half who agreed to send them did not. In contrast, all of the trusts which said that they would send them did do so, and the documents were easier for the study to obtain anyway because they were more likely to be available online. The data on companies are of limited value due to the low number of responses received.

Figure 12



## 4.3 Themes emerging from this research

### 4.3.1 Trusts and foundations

An issue that featured prominently in the feedback from trusts and foundations which participated concerned the impact of managing large numbers of applications or grants on the question of whether terms were negotiable. Even large foundations such as Esmée Fairbairn said that it would be difficult to negotiate terms with applicants because of the number of grants that they manage.

Lloyds TSB expressed similar concerns and added that any requests to alter terms would need to be approved by its trustees (so this would be unlikely, and probably exceptional). Many others which responded, such as Northern Rock, City Parochial Foundation and Tubney Charitable Foundation, said that terms were strictly non-negotiable or negotiable only in exceptional circumstances.<sup>6</sup>

Still, other major funders such as the Tudor Trust indicated that they would be willing to negotiate. Their terms were helpfully available online, relatively easy to understand and generally very ‘applicant friendly’. City Bridge Trust stated that its terms were contained in all its standard application materials, and that it would be willing to negotiate if asked.

Further, it should be borne in mind that even some large trusts may 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; they each have one page of fairly standard terms, which are easily understood and which are clearly available on their respective websites.

Although the Joseph Rowntree Charitable Trust’s terms are somewhat lengthier, they are available online. The preface to the conditions is worth quoting in full, as the attitude that it conveys sums up much of what should be reflected in the relationship between funders and grantholders, but often is missing:

*The Trust recognises that its funds and the work of grant-holders are complementary. Each needs the other. The Trust seeks to establish a partnership with grant-holders in which each party is clear as to its rights and obligations.*

*These conditions are part of the process of building the partnership. They define the basis on which the Trust offers support. The Trust seeks to maintain its relationship with those it supports in a friendly, flexible, responsive and efficient fashion. When we fail in this regard, we expect to be told.*

<sup>6</sup> The funders discussed in this section volunteered more information than was the norm; their inclusion reflects their helpful attitude to the research and our intention is not that they should suffer from having cooperated in the research.

It is 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. It must be borne in mind that 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.

It is possible that the degree to which a funder feels it necessary to stipulate every possible eventuality in an attempt to limit risk is related to the question of whether terms can be negotiated. If the funder decides to go down a highly specific route which involves formal legal drafting, it would seem logical to assume that this might inhibit any negotiation. Alternatively, if terms are fairly simple and general, this might indicate a more flexible approach overall. This is something that funders may wish to consider: whether the way in which they design their funding processes actually inhibits the latitude they can express in individual funding relationships.

#### **4.3.2 Government**

As shown in the data summary, government appears most resistant to negotiating terms unless this is a necessary part of programme design. 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 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. Some were genuinely surprised at the questions and said that the issue had never come up before. They needed to check with colleagues or superiors for advice, which meant that the queries got lost in the ether. This suggests that applicants do not consider these issues at the application stage; therefore there is no policy in place to deal with queries at the front-end.

However, a number of people expressed interest in the conclusions of the present research: several grants managers – in particular from the Ministry of Justice Victims Fund, Communities and Local Government’s Young Advisors’ Fund, and the Department of Health’s Third Sector Investment Fund – said that they were interested in the conclusions and any ideas about best practice.

The anecdotal evidence points to a lack of adequate information and support for government grants managers in terms of how best to develop and apply conditions to ensure that they meet their own obligations, while ensuring that terms do not inhibit the development of productive relationships with funded organisations. 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 and a cause of their relative inaccessibility.

Clearly there is a tie-in to the Compact guidelines here, as well as broader principles of freedom of information. While overall the grants managers were fairly helpful in providing information – and as a group they provided the best response rate – the researchers regularly encountered the caution and risk aversion that is a hallmark of dealing with government bureaucracy. A few grants managers stated that they could not send copies of their terms because they were ‘confidential’, a claim that simply cannot be valid. Others wanted a written description of the research before agreeing to send anything. A number needed to get permission from senior managers before responding, or said that someone else needed to be contacted for permission. As the figures in response to Q10 above indicate, a significant proportion who agreed to send them to us never did so, despite repeated reminders.

### **4.3.3 Companies**

The diversity of approaches that is characteristic of company giving 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 donate tens of millions of pounds to associated foundations that bear their name, or dispense considerable sums directly.

In terms of cash donations which companies distribute directly, 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. The way in which this is structured and how it is determined can involve a number of mechanisms: it may be related to marketing or be part of a corporate social responsibility policy; it may be down to the particular charitable interests and affiliations of company directors or

senior management, or it may be organised by staff. It may be unorganised and in response to random requests for money – a characteristic often viewed quite positively by fundraisers because of the potential for a quick turnaround unencumbered by a formal process.

This ‘donor-like’ approach was typified by the response from Aviva (formerly Norwich Union), which told us that:

*We do not have any set Terms & Conditions. We treat all of our community investments on an individual level, we do not have an application process, all of the regional charities that we work with are nominated by and voted for by employees on an annual basis.*

What is slightly surprising is that the use of this money generally appears not to be governed by terms and conditions as a grant programme might. This contrasts with the other main approach noted in this study, which 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. Perhaps this is best illustrated by the response received from Legal & General plc, which gave one of the most complete responses received from a company.

Legal & General noted that its ‘approach to joint ventures with Third Sector organisations is based on a 1:1 contract’ and is designed to ‘create sustainable partnerships’ with organisations. This involved ‘making a 30–40% difference to the bottom line of the organisation’ and ‘a direct link with our core businesses’ among other criteria. As a result, ‘all of our contracts with Third Sector organisations are bespoke’ and ‘could not be shared because they were proprietary information’.

## Chapter 5

# Policy recommendations

## 5.1 Characteristics of best practice

Based on this research and DSC's own experience as a funded organisation, the following principles have been developed as a starting point. In our view, grant terms and conditions should be:

- *publicly available* – preferably online for anyone to access. Ideally, they should be published with any other application materials. There is no reason why grant terms and conditions should be 'confidential', especially for government funding. If they are drafted specifically for projects or negotiated on a one-to-one basis with applicants, there should be information available to any prospective applicant which describes the process, the types of information (or clauses) that will be covered and examples for illustration
- *justifiable* – they should be in place for a purpose that can be understood easily and accepted as reasonable. If funders feel that their own regulatory environment forces them to incorporate unreasonable conditions, they should object publicly to that regulation, and be willing to explain to applicants that this is the case
- *proportionate* – to the project, the organisation receiving the funding and the risk involved. Fifty pages of terms and conditions is not proportionate for a £1,000 grant
- *appropriate* – to the project, the organisation receiving the funding and the risk involved. Terms should be necessary and relevant, they should not apply to something else. Terms for a national 'strategic partners' grant programme should not be recycled simply to cover a small grants programme for community groups
- *negotiable* – this should be less of an issue if they are justifiable, proportionate and appropriate. There are understandable resource demands on funders which may make this difficult, but funders should be willing at least to enter into a dialogue with applicants to explain why terms are needed, and hopefully to achieve a solution that accommodates the needs of both parties
- *reviewed regularly* – to see if they remain relevant and are still necessary. Conditions that 'are in there because they always have been in there' should be removed if they no longer serve a justifiable purpose. Conditions that are 'in there because the legal department says so' need to be interrogated and justified, not least so they can be explained to applicants



- *clearly explained* – they should be intelligible to the average person, and not require legal expertise to decipher. Persons administering grants should be able to explain what they mean and why they are needed. The principles of Plain English, and even the Crystal Mark, should be applied
- *mutually acceptable* – terms and conditions should not be about only protecting the interests of the funder or transferring risk and liability to the funded. They should set reasonable ground rules which are acceptable to both parties, ensuring that grant money is used properly and fulfils the outcomes that it is meant to achieve.

## 5.2 Better terms and conditions: five tips for funders

1. Make your terms and conditions available to all prospective applicants along with any application materials. Ideally, everything should be available online, and clearly labelled for what it is, for anyone to access and evaluate (bear in mind that other funders, researchers and policymakers may be interested in your approach).
2. If you draft terms specifically for each project or organisation, provide an explanation along with your other application materials of what they are likely to cover and at what point in the process they will be drafted. Bear in mind that applicants may need to prepare accordingly, if successful. Consider providing an example template for illustration, clearly marked as such.
3. Be willing to discuss any issues with applicants at an early stage. Explain the reasons for the terms and why you need them. This should save time and effort for everybody involved, as it should help applicants to make better decisions, and reduce the likelihood that future negotiations or disputes could throw you off schedule.
4. Be open to negotiating terms, if applicants request to do so. Try to find out the reasons why they are objecting and find a way around the problem that suits both parties. Recognise that simply because you are giving the money does not mean that a ‘take it or leave it’ approach is justifiable or constructive.
5. Always make sure the terms are suited to the project to which they are related. If they are not, ultimately they may delay your grants award process if applicants object, or lead to further problems at a later date.



## 5.3 Better terms and conditions: five tips for applicants

1. Always ask for a copy of the terms and conditions along with other application documents if they are not available. Be wary of investing significant time in any funding application unless you have read the small print first – you may find that it is simply not worth it.
2. Raise any issues with the funder at an early stage, if possible before you submit an application. This should help to save time and energy later on.
3. Give constructive feedback to funders – were their terms available online? Were they presented in a really clear and helpful way? Were they reasonable and acceptable? Let them know. Was it difficult to find them? Do they seem irrelevant or problematic? Explain how things could be improved.
4. If you think that certain terms will be a problem, try to negotiate a mutually acceptable solution. At the very least it is your responsibility to work through what impact they might have on your organisation and/or project. Consider sending them your own version of the terms – they might be accepted.
5. Avoid signing on the bottom line, putting the terms in the drawer and hoping for the best. Do not ignore the terms you disagree with and carry on as you would have done anyway. You could be putting the whole project and even your organisation at risk.

## Chapter 6

# Potential areas for future research

This research raises a number of related issues which DSC will be considering as its Great Giving campaign develops. Some of the specific areas for future research might include the following:

- researching and categorising different types of individual terms, and interrogating them to determine what their intended purpose is, whether they realistically achieve that purpose, whether they have any legally enforceable basis, and whether they should be abandoned
- developing a best practice set of information for each type
- expanding the scope of future research to include, for example, local government, a greater number of trusts and lottery funding
- specifically researching company cash donations to find out whether there are any commonalities between the financial arrangements and whether in fact terms and conditions are not prevalent
- an in-depth examination of contractual clauses for services commissioned by government (for which many of the best practice recommendations outlined in Chapter 5 could apply)
- further research into how applicants view terms and conditions, and what they actually do when presented with them.

## Appendix A

# Questionnaire

- 1) Trust/department/company name
- 2) Do your grant programmes [community support programmes for companies] have terms and conditions that govern the use of the grant? (Tick one)
  - Yes
  - No
  - In some cases
- 3) Are your terms and conditions publicly available, or made available to all prospective applicants? (Tick one)
  - Yes
  - No
  - Partially
  - In some cases
- 4) How are the terms and conditions made available? (Tick any)
  - Website (content/file download)
  - Electronic (e.g. by email on request)
  - Hard copy (e.g. by post on request)
  - N/A – not publicly available
- 5) If terms and conditions are provided after an application has been made, how is this done? (Tick any)
  - Drafted specifically for project
  - Negotiated with each applicant
  - Contained in grant letter/with grant offer
  - N/A – no terms and conditions
  - N/A – not publicly available
- 6) Is there more than one set of terms and conditions? (Tick one)
  - Yes
  - No
- 7) What types are they? (Tick any)
  - Standard terms
  - Project-specific
  - Programme-specific
  - Part of application guidance
  - N/A – no terms and conditions

- 8) Are you open to negotiating any of your terms and conditions with applicants?  
(Tick one)
- Standard terms only
  - Specific/project terms only
  - Standard and specific/project terms
  - Terms are not negotiable
  - N/A – no terms and conditions
- 9) Have applicants ever requested that terms and conditions be negotiated?  
(Tick one)
- No
  - Yes – frequently
  - Yes – occasionally
  - N/A – no terms and conditions
- 10) Would you be able to send us a copy of your terms and conditions for the purposes of this research? (Tick one)
- Yes
  - Some, but not all
  - Downloadable from website
  - No – because we aren't willing to
  - No – because it isn't feasible
  - No – because they don't exist

## Appendix B

# List of trusts and foundations contacted

List of trusts and foundations contacted*		
Name of foundation or trust	Existence of terms and conditions	Response to survey
The Wellcome Trust	Yes	Yes
Football Foundation	Yes	Yes
Christian Aid	Yes	Partial
Comic Relief	Yes	Yes
The Gatsby Charitable Foundation	Unknown	No
Oxfam (GB)	No	Partial
The Wolfson Foundation	Unknown	No
The Coalfields Regeneration Trust	Unknown	No
The Garfield Weston Foundation	Unknown	No
CAFOD	Unknown	No
BBC Children in Need	Yes	Yes
Esmée Fairbairn Foundation	Yes	Yes
The Leverhulme Trust	Yes	Yes
Northern Rock Foundation	Yes	Yes
The Henry Smith Charity	Unknown	No
Peter Moores Foundation	Unknown	No
Lloyds TSB Foundation for England and Wales	Yes	Yes
Leukaemia Research Fund	Yes	Yes

**List of trusts and foundations contacted\* cont'd**

<i>Name of foundation or trust</i>	<i>Existence of terms and conditions</i>	<i>Response to survey</i>
Tearfund	No	Partial
The Health Foundation	In some cases	Yes
Arthritis Research Campaign	Yes	No
Wales Council for Voluntary Action	Yes	Yes
The Tudor Trust	Yes	Yes
The City Bridge Trust (formerly known as Bridge House Trust)	Yes	Yes
Shetland Charitable Trust	No	Yes
The Sigrid Rausing Trust	Unknown	No
Paul Hamlyn Foundation	Unknown	No
The Ireland Funds	Unknown	No
Community Foundation Serving Tyne and Wear and Northumberland	Yes	Yes
City Parochial Foundation	Yes	Yes
The Lisbet Rausing Charitable Fund (now The Arcadia Fund)	Unknown	No
Mayfair Charities Ltd	Unknown	No
The Jack Petchey Foundation	Yes	Yes
The Mercers' Charitable Foundation	Unknown	No
Nottinghamshire Community Foundation	Unknown	No
The Nuffield Foundation	Yes	Yes
The Parthenon Trust	Unknown	No
The Robertson Trust	Unknown	No
ARK (Absolute Return for Kids)	No	Partial
The Tubney Charitable Trust	Yes	Yes

**List of trusts and foundations contacted\* cont'd**

Name of foundation or trust	Existence of terms and conditions	Response to survey
Tesco Charity Trust	Unknown	No
The Linbury Trust	Unknown	No
Allan and Nesta Ferguson Charitable Settlement	Unknown	No
Lloyds TSB Foundation for Scotland	In some cases	Yes
Joseph Rowntree Charitable Trust	Yes	Partial
Community Foundation for Merseyside	Yes	Yes
M & R Gross Charities Ltd	Unknown	No
Allchurches Trust Ltd	Unknown	No
The Gertner Charitable Trust	Unknown	No
The Rank Foundation	In some cases	Yes

\* This information is presented in order of the total annual amount of funding distributed for the last year for which DSC has figures.

## Appendix C

# List of central government grant programmes contacted

List of central government grant programmes contacted			
Department	Grant programme	Existence of terms and conditions	Response to survey
Cabinet Office	Adventure Capital Fund	Yes	Yes
	Adventure Capital Fund – Business Development Grants	Yes	Yes
	Capacitybuilders Improving Reach	Yes	Yes
	Capacitybuilders National Support Services	Yes	Yes
	Futurebuilders	Yes	Yes
	Grassroots Grants	Yes	Yes
	Innovation Exchange Next Practice	Unknown	No
	v Match Fund	Yes	Yes
Department for Business, Enterprise and Regulatory Reform	Low Carbon Buildings Programme (Carbon Trust)	Yes	Yes
Department for Children, Schools and Families	Children, Young People and Families Grant Programme	Yes	Yes
	Independent/State School Partnerships Scheme	Yes	Yes
	Parenting Fund	Yes	Yes
	Youth Sector Development Fund	Yes	Yes



**List of central government grant programmes contacted** cont'd

Department	Grant programme	Existence of terms and conditions	Response to survey
Department for Communities and Local Government	Faiths in Action	Yes	Yes
	Young Advisors	Yes	Yes
Department for Culture, Media and Sport	Grants for War Memorials	Yes	Yes
	Historic Buildings, Monuments and Designed Landscapes	Yes	Yes
	National Capacity Building Programme for the Voluntary Sector	Yes	Yes
	Ofcom Community Radio Fund	Yes	Yes
	Regional Capacity Building Programme for the Voluntary Sector	Yes	Yes
	Repair Grants for Listed Places of Worship	Yes	Yes
Department for Environment, Food and Rural Affairs	Bio-energy Capital Grants Scheme Round 3	Yes	Yes
	Bio-energy Infrastructure Scheme	Yes	Yes
	Changing Spaces – Access to Nature	Yes	Yes
	Countdown 2010 Biodiversity Action Fund	Yes	Yes
Department for International Development	Civil Society Challenge Fund	Yes	Yes
	Conflict and Humanitarian Fund	Yes	Partial
	Development Awareness Fund	Yes	Yes
	Development Awareness Fund – Mini Grants	Yes	Yes

<b>List of central government grant programmes contacted cont'd</b>			
<i>Department</i>	<i>Grant programme</i>	<i>Existence of terms and conditions</i>	<i>Response to survey</i>
Department for Transport	Road Safety Partnership Scheme	Yes	Yes
Department of Health	Opportunities for Volunteering Scheme	Yes	Yes
	Social Enterprise Fund	Unknown	No
	Third Sector Investment Fund – Innovation	Yes	Yes
	Third Sector Investment Fund – Strategic Partners	Yes	Yes
Foreign and Commonwealth Office	Global Opportunities Fund – Economic Reform	Unknown	No
	Global Opportunities Fund – Human Rights	Unknown	No
	Global Opportunities Fund – Overseas Territories	Unknown	No
	Global Opportunities Fund – Low Carbon, High Growth	Unknown	No
	Global Opportunities Fund – Reuniting Europe	Unknown	No
HM Revenue & Customs	Grant-in-Aid Funding Programme	Yes	Yes
Home Office	Connected Fund	Yes	Yes
	European Refugee Fund	Yes	Yes
	Independent Sexual Violence Advisors Fund	Yes	Yes
	Sexual Assault Referral Centres: Fund: Provision for Sexual Assault Provision Centres	Yes	Yes

<b>List of central government grant programmes contacted cont'd</b>			
<i>Department</i>	<i>Grant programme</i>	<i>Existence of terms and conditions</i>	<i>Response to survey</i>
	Victims Fund: Supporting Victims of Hate Crime	Yes	Yes
	Victims Fund: Supporting Victims of Homicide	Yes	Yes
Ministry of Defence	Veterans Challenge Fund	Yes	Yes
Ministry of Justice	Innovation Fund	Yes	Yes
	National Offender Management Service Grants	Yes	Yes
	Victims Fund: Provision for Victims of Sexual Offending	Yes	Yes

## Appendix D

**List of companies contacted**

<b>List of companies contacted</b>			
<i>Company</i>	<i>Existence of terms and conditions</i>	<i>Response to survey</i>	<i>Associated trust or foundation</i>
The Royal Bank of Scotland Group plc	Unknown	No	No
Lloyds TSB Group plc	Yes	Yes	Yes*
Northern Rock plc	Unknown	Declined	Yes
Barclays plc	Yes	Yes	No
HSBC Holdings plc	Unknown	No	Yes
Tesco plc	No	Partial	Yes
Fidelity Investment Management Ltd	Unknown	No	Yes
Diageo plc	Unknown	No	Yes
HBOS plc	Unknown	No	Yes
Shell	Unknown	No	Yes
Centrica plc	No	Partial	No
Vodafone Group	Unknown	Declined	Yes
Ecclesiastical Insurance Group plc	No	Partial	Yes*
Deutsche Bank	Yes	Yes	No
Co-operative Group	Yes	Yes	Yes*
GlaxoSmithKline plc	Unknown	No	No
British Sky Broadcasting Group plc	Unknown	No	No
British American Tobacco plc	No	Partial	No
Prudential plc	Unknown	Declined	No
Marks & Spencer Group plc	Unknown	No	No

**List of companies contacted** cont'd

<i>Company</i>	<i>Existence of terms and conditions</i>	<i>Response to survey</i>	<i>Associated trust or foundation</i>
Pearson plc	Unknown	No	No
WPP Group plc	Unknown	Declined	No
British Nuclear Fuels plc	Unknown	Declined	No
Dyson Ltd	Unknown	No	Yes
Unilever UK	Unknown	Declined	No
Rio Tinto plc	Unknown	Declined	No
Morgan Stanley International Ltd	Yes	Yes	Yes
ScottishPower plc	Unknown	No	No
BUPA Ltd	Yes	Yes	Yes
BT Group plc	Unknown	No	No
Man Group plc	Unknown	No	Yes
Nationwide Building Society	Unknown	No	Yes
Legal & General plc	Some cases	Partial	No
EDF Energy	Unknown	No	Yes
McDonald's UK	Yes	Yes	Yes
ICAP plc	Unknown	No	No
John Lewis Partnership plc	Unknown	Declined	No
Camelot Group plc	Unknown	Declined	No
Royal Mail Group plc	Unknown	No	No
UBS	Yes	Yes	No
Zurich Financial Services (UKISA) Ltd	Unknown	No	Yes
Aviva plc	No	Yes	No
Nestlé UK Ltd	Yes	Yes	No
Associated British Foods plc	Unknown	No	No

**List of companies contacted** cont'd

<i>Company</i>	<i>Existence of terms and conditions</i>	<i>Response to survey</i>	<i>Associated trust or foundation</i>
Abbey	Yes	Yes	Yes*
PricewaterhouseCoopers	Unknown	Declined	No
United Utilities PLC	Unknown	No	Yes
Alliance Boots	Unknown	No	Yes
BAA plc	Some cases	Yes	Yes*
The Body Shop International plc	Unknown	No	Yes

\* Evidence that the survey was answered on behalf of the foundation rather than the company itself – as a result of this, responses from companies with associated trusts and foundations were discounted from the calculations in Chapter 4.