

Dear Matthew Hancock MP

Sustain wrote to you on 1st March 2016 to ask for clarification of the proposed 'anti-advocacy clause' (sometimes called the 'anti-influencing clause' or 'anti-lobbying clause') that the government proposes to introduce into all government grant agreements, announced in a government press release on 6th February 2016. At that time, we wrote asking for clarification to enable our risk-assessment of a change in government policy and grant conditions, which is mandatory under UK charity law. Unfortunately, to date, we have received no response.

In the absence of any further clarification of this clause, and in response to your pause for review, we are therefore writing to you now to express Sustain's strong concerns about the 'anti-advocacy clause'.

Sustain is the alliance for better food and farming, bringing together hundreds of charities and not-for-profit organisations working at grassroots, local, national and sometimes international level. We tackle issues of common concern in relation to, for example, good farming livelihoods, better living and working conditions for food workers, children's health, household food insecurity, ethical food procurement, animal welfare, the environment and biodiversity. Sustain has around 100 national members and works with hundreds more at local level. Some of such work is, has been, or may in future be, funded by grants from the UK government, grants from the EU managed by the UK government, or by grants from local government, which in turn may be contributed to by the UK government. Hence, the introduction of an 'anti-advocacy clause' is of great concern to Sustain and our many members and associates. Many may be directly or indirectly affected by this clause, which would – in our opinion – limit their ability to pursue their charitable or other public-interest objectives and hence – most importantly – limit their ability to support their beneficiaries.

For your convenience, we enclose:

- A copy of Sustain's letter to Matthew Hancock MP, 1st March 2016;
- Previous charitable work that might have been prevented or limited by an 'anti-advocacy clause'.

1. Overall statement of concern

Informing development of public policy, and advocating for improvements in public policy, are legitimate activities for charities, third-sector groups, social enterprises and other public-interest organisations, to help achieve the best outcomes for their beneficiaries and for wider society. The 'anti-advocacy clause' proposed by government, to be included in all new government grant agreements, will undermine the work of charities, third-sector groups, social enterprises and other public-interest organisations, and potentially result in worse outcomes for their beneficiaries – usually young, old or vulnerable people living in challenging circumstances, and worse outcomes for the environment and natural resources on which we all depend.

2. No formal notification or communication of the decision or related developments

Sustain heard about the government's original decision to introduce the anti-advocacy clause only by chance. We are also aware that many of Sustain's member organisations and associates found out about the government's decision only when we sent around email notifications in late February and early March 2016. In the letter we sent to you on 1st March 2016 (enclosed), among other issues, we requested that Sustain should be put on a list to receive future notifications or developments relating to this decision. To our knowledge, this has not happened, despite further relevant announcements having been made by government, which we also found out about by other means. Sustain is also on the Charity Commission email news list and we do not appear to have received any notifications by that route, which would seem an obvious way to communicate with the charity sector. We can only conclude that the government has made little attempt to communicate this decision to the very large number of people and organisations that this decision may affect.

3. No consultation or impact assessment

We believe that implementation of the 'anti-advocacy clause' in grant agreements will have a deleterious effect on the ability of organisations that receive government grants to be advocates on behalf of their beneficiaries, also on behalf of better environmental outcomes and wise use of natural resources. In the attachments to this letter, we have provided five illustrative stories of previous government grant-funded activities with which Sustain has been closely involved. Each contained necessary advocacy and influencing elements to achieve beneficial public, environmental and social outcomes. Notably, these outcomes were welcomed at the time by the government representatives, departments or other public authorities with which the projects and grants were associated. Had an 'anti-advocacy clause' been applied to these government grant-funded activities, the projects would have achieved only temporary benefits, and not the long-lasting change that we believe it is our duty to seek when in receipt of public funds.

However, we and the organisations that we work with have had no chance to present these examples and benefits, there having been no consultation process, no impact assessment, and no proper scrutiny by our elected representatives in parliament.

4. No clear indication of what problem the clause seeks to solve

There has been little indication from government of what problem the 'anti-advocacy clause' seeks to solve. This makes it impossible for the types of organisations that we work with to plan their work appropriately. The only apparent evidence of need for the clause, provided in the public domain and referenced in the government's press release of 6th February 2016, appears to be an opinion piece by a journalist from the Institute of Economic Affairs, known colloquially as the 'sock-puppet report'. If there were a more clear indication of what the clause seeks to prevent, perhaps illustrated with some specific examples of where government grant-funded activities have caused problematic outcomes in the past, it might be possible to work with government to avoid a repeat of those specific problems without recourse to a blanket curtailment of advocacy activities for government grant recipients. In our letter to you on 1st March 2016 (enclosed), we asked for illustrative examples of problematic activities, but have received no response.

5. Uncertainties relating to infringement, evidence of compliance, enforcement and appeal

There remain significant uncertainties about who will decide if the terms of the 'anti-advocacy clause' have been infringed, what definitions they will apply, what evidence of compliance will be needed, how the clause will be enforced, and what process there will be for appeal should a grant be withdrawn or reclaimed by government for apparent infringement. These are all areas of significant risk for a voluntary sector organisation – particularly a smaller organisation with limited financial reserves and little capacity to hire expensive legal advice or pay for additional insurance in such uncertain circumstances – when accepting a government grant agreement containing the 'anti-advocacy clause'. Explanatory notes published by government in response to a request for further information by the National Council for Voluntary Organisations (NCVO) indicated that no appeals process is planned by government, and that if an organisation felt that they had been unfairly treated by removal of a grant, they could take that decision to Judicial Review.

However, recourse to such legal action is not a practical option for smaller and charitable organisations such as most of those that Sustain works with, and would result in very unequal treatment of different types of organisation. We are informally advised that the likely cost of a Judicial Review can be in the order of £100,000 if there is no cap on costs, possibly more in a contentious case. This presents a very serious and disproportionate risk to a small enterprise or charity, especially where many government grants are much less than £100,000, sometimes under £10,000; some grants to grassroots organisations and enterprises may be as little as a few hundred pounds. We would also suggest that a process with no clear rules for evidence, assessment of infringement or appeals process is open to abuse of power in a one-sided power relationship. We conclude that the more likely impact on smaller organisations accepting government grants containing this clause will be a chilling effect and self-censorship to avoid any possibility of a grant being withdrawn, and hence potential curtailment of their abilities to help the beneficiaries that they serve.

6. Far-reaching nature of the terms of the clause

The government's press release of 6th February 2016 describes the 'anti-advocacy clause' as preventing "lobbying" paid for by a government grant. An earlier "anti-lobbying" initiative by the government, launched by Eric Pickles MP, prevented public funds granted specifically to Local Enterprise Partnerships from being used to hire professional lobbying firms. However, the 6th February press release and the 'anti-advocacy

clause' go much further, apparently defining "lobbying" as any activity associated with "influencing or seeking to influence", and hence applying to a significantly wider range of activities than simply hiring a professional lobbying firm. The specification of "government, parliament and political parties" can be similarly interpreted as very broad-ranging, and may – as well as influencing government, parliament and political parties directly – also prevent influencing or seeking to influence non-departmental public bodies such as the Food Standards Agency, and also local authorities, councillors and other representatives where affiliated with a political party at a local level. Further, even the term "government grant" needs further clarification, given that, for example, government sometimes passes on grant monies from other sources, for example the European Commission or Common Agricultural Policy grant funds, and it is not clear if these funds would also be covered by the clause.

It has become clear recently that university grants from named research councils will not be included, but such information is coming out patchily, and usually raises further questions that remain unanswered. Our letter to you on 1st March 2016 (enclosed) sought definitions and clarifications of several elements of the clause, but to date we have received no response.

As a UK registered charity, we have a mandatory duty under UK charity law to undertake a risk assessment of any change in government policy or grants that may affect the charity or our beneficiaries. The failure of government to provide any answers to our letter means that we are left with numerous questions about what would – and what would not – be considered a breach of the terms of a grant agreement containing the 'anti-advocacy clause', and hence unable to undertake these necessary risk assessments. We included only a handful of questions in our letter to you on 1st March 2016, but now present a larger number – yet even so, still not exhaustive – to illustrate just how difficult it will be to assess the risk to any charity, social enterprise or other organisation accepting a grant agreement containing the 'anti-advocacy clause' without clear government guidance. For example, do the terms of the 'anti-advocacy clause':

- 1) Prevent evidence or expert advice, gained as part of a government-funded project, being submitted to a Select Committee or other parliamentary enquiry, unless explicitly invited by a government minister (with permission confirmed in writing in advance to provide the necessary evidence of compliance)?
- 2) Prevent a grant recipient from participating in a government or other public consultation, unless explicitly invited to do so by a government minister (with permission confirmed in writing in advance to provide the necessary evidence of compliance)?
- 3) Prevent a grant recipient from asking a minister, or from asking someone else in parliament, government or a political party, if they can gain permission to participate in a parliamentary enquiry, or submit evidence to a Select Committee or government consultation process?
- 4) Prevent communication activities – social media, website articles, blogs, TV interviews, press releases, public events, response to *ad hoc* media enquiries, response to enquiries from researchers, etc. – given that these might – whether deliberately or adventitiously – be seen by (and hence potentially influence) a Member of Parliament or their researchers, a member of the government or their civil servants, or a member of a political party or their associates?
- 5) Prevent provision of information to any third party, in case they in turn may provide that information to government, parliament or a political party and hence influence these?
- 6) Prevent discussions or participation in projects with any university, academic or student researcher? As universities appear now to be exempt from the 'anti-advocacy' clause, they will be free to participate in advocacy activities, so communicating with them risks non-university organisations being seen as influencing or attempting to influence policy by indirect means.
- 7) Require a representative of the grant recipient organisation to break off a media interview if there were a question asked that related to local or national policy, and refuse to answer that question, citing government's 'anti-advocacy clause' as the reason for doing so?
- 8) Prevent sharing of photos, videos, graphics and animations via social media, which may influence policy-makers who may be following a social media stream, with or without the knowledge of a government grant recipient? For example, pictures of community food gardens, where secured by promotion in local planning policy, could be used to suggest or promote the adoption of government guidance supporting similar changes in other geographical areas.
- 9) Prevent contribution to analysis or impact assessment of proposed government policies, even if the organisation has specialist expertise necessary to support outcomes that best serve the needs of their beneficiaries, or the best outcome for the environment and efficient use of natural resources?

- 10) Prevent a final project report from containing policy recommendations, even if this demonstrably serves the stated purpose of the project, adds value and contributes to project outcomes and longevity of public benefits?
- 11) Prevent a grant recipient from presenting to parliament, government or political parties any recommendations that: support *new* legislation; support improvement of *existing* legislation; encourage *relaxation* of existing legislation; support *new* non-legislative policy; support improvement of *existing* non-legislative policy; encourage *relaxation* of existing non-legislative policy; support *new* government guidance; support improvement of *existing* government guidance; encourage *relaxation* of existing government guidance; encourage policy that could result in an *increase* in public spending; encourage policy that could result in a *decrease* in public spending?
- 12) Prevent a grant recipient from communicating legislative, policy or government guidance recommendations (as above) in relation to England, Wales, Northern Ireland, Scotland, UK-wide or European Union or other international policy processes? We understand that the 'anti-advocacy clause' will not be applied in Scotland or Northern Ireland. But would a government grant-funded project working in England be prevented from commenting on Scottish policy? Or *vice versa*?
- 13) Require a grant recipient organisation to exclude government, parliamentary or political party representatives from public events paid for by government grant funds, to ensure that they are not influenced by presentations or discussion they might hear at the event? What if the individual did not declare such links or involvement and attended in their individual capacity, and were influenced by what they heard. Would this be an infringement of the terms of the 'anti-advocacy clause'?
- 14) Prevent sharing of data about possible environmental or financial efficiencies that could be achieved from designing a project differently in future, based on what has been learned?
- 15) Prevent volunteers that either receive expenses, or offer their time entirely voluntarily, from speaking to their MP about their involvement in a government grant funded project, or related concerns, which might have policy or legislative implications? And would the receipt of expenses be the trigger to prevent such communication, or simply involvement in a government grant funded project?
- 16) Prevent a charity from accepting as a trustee anyone who is also involved, in their own personal time, in parliament, the civil service, government, a political party or as a local councillor or other local authority representative affiliated to a political party? Further, by implication, would being an individual member of any political party automatically exclude a trustee from being involved in a charity receiving government grant funds?
- 17) Prevent a charity from employing as a staff member or volunteer anyone who is also involved, in their own personal time, in parliament, government, a political party or as a local councillor or other local authority representative affiliated to a political party?
- 18) Prevent staff, volunteers and trustees talking independently, in their own personal time, to their MP or other elected representative about what they have learned from undertaking a government grant-funded project, this knowledge having arisen from a government grant funded activity?
- 19) Prevent staff working on government grant funded activity talking to other staff in the same organisation, in case they might inform or influence parallel advocacy work that might in turn influence government, parliament or political parties?
- 20) Require a government grant recipient to include this clause in a subsidiary consultancy or grant agreement when using some of the government grant to commission research, for example from a university? We understand that government has now decided that the 'anti-advocacy clause' should not be applied to government grants issued via UK research councils, hence excluding universities from direct constraint by the 'anti-advocacy clause'. However, will charities and social enterprises be expected to constrain the advocacy work of universities indirectly in this way?
- 21) Require a local authority largely funded by central government grant (for example, the Greater London Authority) to impose an 'anti-advocacy clause' in its own grant agreements with local enterprises, charities, voluntary organisations and others?
- 22) Require a government grant recipient to include this clause in subsidiary grant agreements when passing on smaller grants (sometimes of a few thousand or even a few hundred pounds) to smaller and local charities and grassroots enterprises and other organisations, effectively binding them to a similar anti-advocacy constraints, whilst knowing that they are likely to have little access to legal expertise or advice to help them assess the implications of accepting such constraints?

- 23) Require an organisation working on a project funded from more than one source (for example a government grant matched with a grant from a charitable foundation) to apply the 'anti-advocacy' clause to the whole project? What if the charitable foundation wants to support advocacy activities as a legitimate opportunity to embed project outcomes in policy and practice? Would the 'anti-advocacy clause' in the government grant agreement trump the aims and objectives of the co-funder?
- 24) Require a grant recipient organisation to withdraw its membership from a membership group (e.g. a professional body or sector alliance organisation) if the membership fee is partly or wholly paid for by a government grant, if that membership group undertakes advocacy work deemed to be restricted by the 'anti-advocacy clause'?
- 25) Require an organisation working in a partnership project with others, where their participation and contribution to the shared effort is wholly or partly government grant funded, but other shared activities are not, to be responsible for assessing whether all of the partner organisations (over which they have no jurisdiction) and the shared activities are also compliant with the 'anti-advocacy clause'? Would advocacy activities of the wider partnership risk infringement of the 'anti-advocacy clause' by the grant holder?
- 26) Prevent grant funds being used to help industry representatives to share their views and best practice with policy-makers? For example, by hiring a meeting space for a food industry representative to meet with parliamentary researchers or government advisors, interested in how best to implement the new sugary drinks tax, or healthier vending machines in hospitals?
- 27) Prevent grant funds being used to allow beneficiaries to speak for themselves, to their elected representatives? For example, by paying travel or other access expenses for a person experiencing food poverty (for example an older person whose meals on wheels service has been cut) to be able to participate in a consultative event, speak at a public conference, or to describe their circumstances to parliament, government, an all-party parliamentary group, or a representative from a political party?
- 28) Prevent grant funds being used to advocate on behalf of beneficiaries less able to speak for themselves? In extreme cases, many are literally unable to speak for themselves, nor are they able to attend meetings with policy-makers. For example, Sustain advocates on behalf of the survival and well-being of marine fish stocks and marine wildlife.
- 29) Prevent provision of information to charity supporters on how to contact their elected representative? Or prevent this only where it is linked to an advocacy message? Or prevent this where this is linked to an advocacy message and an encouragement for people to contact their MP?
- 30) Prevent a secondment from a government department, the civil service or parliament into a voluntary sector organisation in receipt of a government grant? And *vice versa*? Such secondments have been encouraged by government over recent years to build bridges between government and the third sector, explicitly to influence each other's understanding. This may be automatically outlawed by the 'anti-advocacy clause' if any aspect of the interaction touches on government grant-funded activities.

With all of the illustrative questions set out above, if the answer to any were 'yes', Sustain would consider that acceptance of a grant agreement containing the 'anti-advocacy clause' to be a severe risk to the security of the grant, the ability of the grant recipient organisation to pursue public-interest objectives, freely and without fetter, and may also undermine or contravene the charitable objectives of a charitable organisation.

On behalf of Sustain, and the many charities, not-for-profit organisations, social enterprises, community groups and others that we work with, we request that you take our concerns into consideration during your pause for review of the 'anti-advocacy clause'.

Once again, we also request that Sustain be put on the list of organisations to receive updates on any policy or other developments in relation to the 'anti-advocacy clause', including any consultative process, impact assessment and the outcome of the government's current pause for review.

Yours sincerely,

Kath Dalmeny
Chief Executive of Sustain: The alliance for better food and farming