DO AS I SAY, NOT AS I DO:

UK policy and the global closing space for civil society

April 2016
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1) Introduction

An independent civil society is an essential part of any modern democracy. Civil society organisations play an integral role in every corner of the globe, not least in the UK where their contribution to civic life has had a profound impact on our nation’s history. Indeed, the UK is established as a global leader for facilitating a vibrant civil society, and many nations across the world including the USA, Canada and Australia base elements of their own civil society on the UK’s model. This is an example of ‘soft power’ in action.

However, a number of recent policies introduced in the UK have led to criticism from civil society organisations, which fear that their independence and ability to act as advocates for their beneficiaries is under attack. Many organisations believe that their role in the political process is being undermined, and that developments in the UK are inadvertently helping to legitimise regressive trends in the treatment of civil society organisations globally.

This report briefly explores the nature of the UK’s soft power and the different ways in which it can be wielded, before looking at recent policy developments affecting the advocacy function of civil society organisations in the UK. It seeks to explore whether individual policies are combining to form a wider trend; looking at how the UK’s policy environment for civil society organisations is impacting upon their treatment globally, and any subsequent effect on the UK’s soft power.

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1 The World Health Organization defines civil society as “a social sphere separate from both the state and the market. The increasingly accepted understanding of the term civil society organizations (CSOs) is that of non-state, not-for-profit, voluntary organizations formed by people in the social sphere.” Accessible at: www.who.int/trade/glossary/story006/en/
2) **The closing space for civil society**

A worrying global trend has seen governments introducing policies designed to silence critical voices in civil society. This has come to be known as “the closing space for civil society.” According to the International Center for Not-For-Profit Law, since 2012 more than 120 laws constraining the freedoms of association and assembly have been proposed or enacted in 60 countries. This trend has led to expressions of concern at the highest levels of international leadership.

As far back as in September 2014, US President Barack Obama launched the [Stand with Civil Society initiative](#), which committed his country to “opposing undue restrictions on civil society and fundamental freedoms” and to leading “by example to promote laws, policies, and practices that expand the space for civil society to operate in accordance with international law.” Speaking to delegates at the 2014 Clinton Global Initiative, [President Obama lamented](#) the fact that from “Hungary to Egypt, endless regulations and overt intimidation increasingly target civil society.” It is important for the opening up of democratic freedoms around the world and for the growth of a culture of charitable giving internationally that the UK – one of the leaders in this field – is not seen to be vindicating or enacting the sorts of regressive policies pursued elsewhere.

CAF believes that a number of policies enacted or proposed by the UK government and Parliament in recent years have had a cumulative negative effect on civil society. This has been exacerbated by the use of negative rhetoric which questions the legitimacy of civil society organisations and may have a harmful effect on levels of public trust in these organisations. We urge the Government to consider the impact of these policies; to commit to working in collaboration with civil society organisations to protect the ability of organisations to advocate freely on behalf of their beneficiaries; and to consider the reputational risks posed to the UK by our pursuit of the kinds of policies pursued by less free and fair regimes. Our concerns are focused on the different areas and themes explored in this paper.

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3) The UK, soft power and global civil society

The UK’s civil society has long been admired across the world, with many countries basing their own civil societies on our model and seeking to replicate the UK’s success. This is particularly true of countries that have followed the UK’s common law tradition but also relevant to those that have applied the UK’s approach towards civil society more broadly, with documents similar to the UK’s Compact having been adopted in countries such as Estonia, Iraq and a number of countries in the Balkans. Many international leaders and organisations still look to the UK as an example of best practice, with the prevailing policies and climate in the UK remaining influential in other countries. This is an example of the UK’s ‘soft power,’ which allows the UK to influence global behaviour by setting a positive example and highlighting the importance of a strong civil society. This influence is not merely a by-product of UK culture and civic traditions; it is something that the Government is actively trying to nurture through its international engagement and policies, including by supporting progressive resolutions on participation in public affairs and civic space at the UN Human Rights Council.

For example, the National Security and Strategy and Strategic Defence and Security Review 2015 makes it clear that the UK aid budget, aside from delivering traditional forms of relief, should be used to improve accountability and strengthen democracy, stating that:*

“We will use our outstanding Diplomatic Service to promote our interests and project our influence overseas. We will use our formidable development budget and our soft power to promote British values and to tackle the causes of the security threats we face, not just their consequences. This includes refocusing our aid budget to support fragile and broken states and regions to prevent conflict – and, crucially, to promote the golden thread of conditions that drive prosperity all across the world: the rule of law, good governance and the growth of

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*National Security Strategy and Strategic Defence and Security Review (2015); A secure and Prosperous United Kingdom, CM 9161"
democracy. These interventions are not just right morally – they are firmly in our national interest.\textsuperscript{5}

The Government’s recent Culture White Paper also seeks to use policy and diplomatic engagement to improve the UK’s global standing.\textsuperscript{6} The white paper commits to:

“[Explore] how we can further enhance the soft power of the UK through our culture, including promoting the arts and heritage abroad, adopting the influence of arts and culture through internal diplomacy and protecting world heritage.”\textsuperscript{7}

In addition the Select Committee on Soft Power and the UK’s Influence published its first report in 2014 specifically highlighting the important role that UK charities play by exerting a positive influence internationally through their advocacy work.\textsuperscript{8} It stated that:

“Extra-governmental bodies play a crucial role in connecting the UK to people in other countries. Civil society organisations (CSOs) and non-governmental organisations (NGOs) are a crucial source of soft power. […] According to the British Council, the UK has far more internationally focused NGOs than other European countries. These organisations add to the country’s reputation and bolster its links with other countries: The advocacy work of Amnesty International, the life-saving development work of Oxfam and Save the Children and the numerous other NGOs that strive to build a better world give the UK a massive boost in credibility and trust.”\textsuperscript{9}

The report also stated that:

“We urge those who shape and administer the UK’s foreign policy in all Departments of Government and beyond to acquire a much deeper understanding of how others see the UK, and how the very most can be made of our undoubtedly unique assets.”\textsuperscript{10}

\textsuperscript{5} Ibid. p. 6
\textsuperscript{6} The Culture White Paper (2016)
\textsuperscript{7} Ibid. p. 41
\textsuperscript{8} House of Lords Select Committee on Soft Power and the UK’s Influence, Report of Session 2013-14: Persuasion and Power in the Modern World, HL Paper 150
\textsuperscript{9} Ibid. p. 76
\textsuperscript{10} Ibid. p. 6

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Soft power clearly offers a significant route for the UK to retain and wield influence, but it cannot be viewed through the prism of international engagement alone. The UK’s standing in the world means that our domestic policies are often viewed as admirable by other regimes, and it is important to note that any regressive actions by policy makers which restrict civil society organisations will also influence the global civil society environment. The corollary to the UK’s ability to influence policy abroad through our world leading civil society is that we have a responsibility to lead by example at home.

Recent developments have seen the UK heading down a worrying path in terms of curtailing the independent voice of civil society, and there are legitimate concerns that some foreign governments may perceive recent public policy developments in the UK as a precedent for restricting civil society advocacy in their own countries, or even as a vindication of state appropriation of the civic space. Any sense that we are reluctant to tolerate advocacy work by civil society organisations here in the UK, whilst actively funding similar work abroad will only add credence to these concerns. Additionally, the continued pursuit of regressive domestic policies affecting civil society organisations could lead to international condemnation and the diminishment of the UK’s soft power.
4) Advocacy

Policies enacted in the UK in recent years have, explicitly or implicitly, had the effect of severely curtailing the ability of charities to speak up for beneficiaries and fulfil their advocacy function.

The Lobbying Act

The Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Act (henceforth Lobbying Act) was introduced by the Coalition Government in 2014.\(^1\) The Lobbying Act forces campaigners – including charities – to register with the Electoral Commission as non-party campaigners if their spending during an election period is over a certain threshold, and if activity passes two separate tests. These are: a) the ‘public test’, which is met if activity if seen by the general public and; b) the ‘purpose test,’ which is met if the activity could be seen as intended to influence people’s voting choice. The introduction of the new law was severely criticised by civil society organisations, and the 2015 general election was the first conducted under the new rules.

During the course of the general election campaign the Charity Commission received complaints about 17 charities. However, it stated that most of these issues were dealt with “promptly and without need for escalation within the Commission, indicating that these were not considered serious breaches of guidance.” It is worth noting that the Charity Commission received 16 complaints about charity campaigning at the 2010 general election.\(^2\) Given that over 160,000 charities operate in the UK, it is perhaps surprising that such a proportionately small number of complains was deemed to necessitate restrictions and a change to the law.

Evidence collated after the election discovered that many charities were reluctant to undertake any activity that would force them to register as non-party campaigners. Concerns raised included the fear that registering would give the impression that an organisation was doing something wrong. In total, fewer than 60 organisations (including individuals and non-

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\(^1\) The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 received Royal Assent on 20\(^{th}\) January 2014

\(^2\) Written evidence from Sam Younger CBE, then Chief Executive of the Charity Commission, to the Public Administration Committee, accessible at: www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/76/79we19.htm
charitable organisations) took the decision to register with the Electoral Commission as non-party campaigners.

Many of the concerns raised by charities arose because of the uncertainty introduced by the legislation, which combined and added to existing electoral law and Charity Commission guidance to inform charities what they can do around elections. The rhetoric around the introduction of the Lobbying Act blurred the distinction between political activity, which charities can legitimately engage in, and party political activity, which is prohibited. CC9 — the Charity Commission guidance on campaigning and political activity by charities — states that “campaigning and political activity can be legitimate and valuable activities for charities to undertake.” However, language and attitudes around the Act conflated permitted political activity with party political activity, with the implication being that both are against the rules. This, unhelpfully, may have led to charities being unaware of precisely which activities were covered by the new guidance, with the result that they erred on the side of caution and refrained from undertaking campaigning work in order to avoid the risk of falling foul of the new rules.

A report produced by the Commission on Civil Society and Democratic Engagement (chaired by Lord Harries of Pentregarth) assessed the impact of the Lobbying Act on charities and campaigns groups over the course of the 2015 general election. Evidence was provided to the Commission by charities and campaign groups, as well as non-governmental organisations including the Electoral Commission. After assessing the evidence provided, the Commission reported with a series of recommendations including calling for the Government to repeal Part 2 of the Lobbying Act for the duration of the 2016 devolved administration elections. The Commission also proposed a new definition of regulated activity which would shift the emphasis to ensure that a charity is only seen to be carrying out campaigning which should be regulated when “it is clear that the subjective intention is to influence the outcome of an election.”

13 Speaking out: guidance on campaigning and political activity by charities (CC9) was first published on 1st March 2008 (accessible at: www.gov.uk/government/publications/speaking-out-guidance-on-campaigining-and-political-activity-by-charities-cc9)

14 Non-Party Campaigning Ahead of Elections: Consultation and recommendations relating to Part 2 of the Transparency in Lobbying, Non-Party Campaigning and Trade Union Administration Bill, Commission on Civil Society and Democratic Engagement, Report 4: September 2015
The report also voices concern about the guidance created by the Electoral Commission after the passage of the Lobbying Act, which many charities found to be ambiguous. The uncertainty created by the guidance led to charities choosing not to undertake activity because they were unsure about whether it was permitted under the Act. For example, Bond, the network of international development organisations, told the Commission that: “Many [of Bond’s members] suggested a caution to undertake advocacy on issues like preventing child trafficking or the flow of remittances to Africa during the regulated period, despite broad cross party support for them. [That] organisations felt it necessary to modify their activities or reduce joint campaign activities on topics demonstrate[s] the unintended consequences of the Act.”

The Commission’s report states that “the Act has now been tested and the evidence shows that it has had a negative impact on charities and campaign groups speaking out on crucial and legitimate issues ahead of the election.” Submissions to the Commission on this issue included the following comments:

“Our members have told us that their grassroots campaigners and volunteers have been terrified into silence by the Act and just haven’t been campaigning because they’ve been worried about falling foul of the regulations.”
Public Relations Consultants Association (PRCA) Charity and Not-For-Profit Group

“I think this Act has created an atmosphere of caution within parts of our sector.”
WWF-UK

“We are deeply concerned at the ‘chilling’ effect of the Act and the consequent reduction in third sector campaigning in the run-up to the election.”
Cytûn: Churches Together in Wales

As per the terms of the Lobbying Act, the Government launched the Third Party Campaigning Review, an independent review looking at how well the regulatory system for third party

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15 Ibid. p.18
16 Ibid. p. 6
17 Ibid. p. 20
18 Ibid. p. 20
19 Ibid. p. 20
campaigning worked at the 2015 general election. The review, led by Lord Hodgson of Astley Abbotts, received submissions from stakeholders up to 31st July 2015, and reported with a series of recommendations in March 2016.\textsuperscript{20}

The core recommendations include amending the purpose test in a way that focuses on whether a charity intends to influence voting behaviour, and a reduction in the length of the regulated period before general elections to harmonise them with other elections. The proposals have been welcomed by charities, and also received a warm response from the Government. Charities are now waiting to see the Government’s formal response to Lord Hodgson’s proposals.

\textit{The Anti-Advocacy Clause}

In 2016, the Government announced that a new clause would be inserted into all new and renewed grant agreements, henceforth referred to as the anti-advocacy clause.\textsuperscript{21} The Government’s announcement strongly references a series of reports by the Institute of Economic Affairs on what they call ‘sock puppets’ – organisations in receipt of government funding who also lobby government.\textsuperscript{22} The clause seeks to “make sure that taxpayers’ funds are spent on improving people’s lives and good causes, rather than lobbying for new regulation or using taxpayers’ money to lobby for more government funding.” This follows a pilot of the clause by the Department for Communities and Local Government (DCLG) in 2015/16, and has been strongly influenced by a report by the Institute of Economic Affairs.\textsuperscript{23} The anti-advocacy clause was announced by Matthew Hancock MP, Minister for the Cabinet Office, and has not been the subject of any Parliamentary scrutiny. It is due to come into effect across all government departments from May 2016.

Charities have voiced their opposition to the anti-advocacy clause for a number of reasons. Whilst there are a number of practical concerns about the practicability of the anti-advocacy

\textsuperscript{20} Third Party Election Campaigning—Getting the Balance Right: Review of the operation of the third party campaigning rules at the 2015 General Election, The Lord Hodgson of Astley Abbotts CBE, March 2016
\textsuperscript{21} Full details of the policy and the Government’s announced can be accessed at: www.gov.uk/government/news/government-announces-new-clause-to-be-inserted-into-grant-agreements
\textsuperscript{22} “Sock Puppets: How the government lobbies itself and why,” Institute of Economic Affairs (2012)
\textsuperscript{23} Full details of DCLG’s policy can be accessed at: www.gov.uk/government/news/eric-pickles-cracks-down-wasteful-spending-of-government-lobbying-government
clause, it is the message that it conveys which is most troubling. Charities that are perceived to act in a way that seeks to “influence or attempt to influence Parliament, government or political parties, or attempting to influence the awarding or renewal of contracts and grants, or attempting to influence legislative or regulatory action” are at risk of having money granted to them by government reclaimed.

Guidance provided by the Cabinet Office has, thus far, failed to alleviate the concerns held by charities. The core problem that charities in receipt of government grant money will face is trying to work out what activities will fall foul of the broad remit of the clause as quoted above. Charities rely on trust from their donors, supporters and the public, and are reluctant to undertake action that could negatively impact their public reputation. In order to ensure that they are not censured by government it is therefore likely that charities will reduce their advocacy activity compared to previous years because they will not be willing to risk the repercussions and public rebuke associated with any breach of the anti-advocacy clause.

The anti-advocacy clause was announced without prior consultation with charities. In February 2016, a number of leading charities wrote to the Prime Minister to raise their concerns about the impact that it would have, including the negative implications for government and the development of public policy, and the associated implications for public expenditure.24 The letter also explored the compatibility of the anti-advocacy clause with The Compact, which we will examine later in this briefing.

The letter warned of the impact that the anti-advocacy clause will have on the ability of charities to campaign and speak up for their beneficiaries. Signatories to the letter included representatives from organisations such as Shelter, who had reportedly been impacted by the clause when in receipt of grant funding from DCLG. Backbench MPs and Members of the House of Lords have also been exploring the rationale for and likely impact of the policy using the tools available to them since the Minister’s announcement.

As with the Lobbying Act, the introduction of the anti-advocacy act appears to be driven neither by a significant problem that needs addressing or demands from the public. Research carried out by CAF in February 2016 found that there is little support for the principles behind

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the anti-advocacy clause.\textsuperscript{25} When asked about who is best placed to speak up on behalf of disadvantaged people to government to help influence government policies, ‘charities specialising in these areas’ was the most popular answer, given by 84 per cent of respondents. By comparison, the second and third most popular responses were ‘councillors’ (31 per cent) and ‘MPs’ (27 per cent).

When asked who is most trusted to best speak up for disadvantaged people, support for charity advocacy becomes even more prominent. 76 per cent of respondents said ‘charities specialising in these areas,’ compared to ‘religious leaders’ (5 per cent) and ‘councillors’ (4 per cent). Given that so many people believe that charities are both best placed and most trusted to speak up for disadvantaged people, it is surprising and disappointing that the government is taking action which is likely to curtail the ability of charities to provide a voice to their beneficiaries.

\textit{The EU Referendum}

In March 2016, the Charity Commission published guidance for charities ahead of the EU Referendum, scheduled to take place in June 2016.\textsuperscript{26} Shortly after publishing the guidance, the Charity Commission was criticised by charities for appearing to share information about the guidance with journalists before it was given to charities themselves.

The guidance itself has also come under attack, with law firm Bates Wells Braithwaite producing a briefing on the guidance which argues that it is incompatible with CC9 and does not reflect the law on campaigning.\textsuperscript{27} Bates Wells Braithwaite argues that the guidance:

“Misrepresents the law in a number of areas, is contradictory in itself, in relation to the Existing Guidance and the Commission’s overriding guidance on campaigning and political activity; and fails to resolve some of the ambiguities we previously identified. The New Guidance also employs terminology which is inconsistent with other relevant Charity

\textsuperscript{25} For more information, see: https://www.cafonline.org/docs/default-source/about-us-policy-and-campaigns/omvalue-of-charity-short.pdf
\textsuperscript{26} The original guidance issued by the Charity Commission can be accessed at: www.gov.uk/government/news/charity-regulator-issues-guidance-on-eu-referendum
\textsuperscript{27} BWB Briefing on Charity Commission Guidance, Bates Wells Braithwaite, 18\textsuperscript{th} March 2016, accessible at: www.bwbllp.com/file/hwb-briefing-on-eu-referendum-guidance-final-18-march.pdf

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Commission guidance (such as CC9, which, unlike the new guidance, was subject to extensive sectoral consultation) and so is likely to confuse trustees.\textsuperscript{28}

Bates Wells Braithwaite called for the new guidance to be “urgently amended or clarified.” It is extremely concerning that experts in charity law have raised such significant concerns about the Charity Commission’s guidance. As is the case with the other policies referenced above, there is a real danger that charities will be uncertain about the legitimacy of valid advocacy techniques and stances, and as a result refrain from undertaking the activities that the law permits as charity campaigning. The Charity Commission has since ‘clarified’ its guidance to some degree, but concerns remain that charities will have already been put off from undertaking advocacy positions by the initial document.\textsuperscript{29}

\textit{The impact on advocacy}

Charities have a long tradition of campaigning for social change in order to address the root causes of social problems, at the same time as delivering services that address the symptoms of those problems. Many developments that have fundamentally shaped the society we live in only came about as a result of campaigns underpinned by charitable activity; for instance the abolition of slavery, the extension of the vote to women, the abolition of child labour and the decriminalisation of homosexuality. And campaigning continues to be a vital part of the role of charities within the context of the welfare state. As the Nathan Committee noted with great foresight back in 1952:

“Some of the most valuable activities of voluntary societies consist... in the fact that they are able to stand aside from and criticise state action, or inaction, in the interests of the inarticulate man-in-the-street. This may take the form of helping individuals to know and obtain their rights. It also consists in a more general activity of collecting data about some point where the shoe seems to pinch or a need remains unmet. The general machinery of democratic agitation, deputations, letters to the Press, questions in the House, conferences

\textsuperscript{28} Ibid. p. 1
\textsuperscript{29} The ‘clarified’ guidance issued by the Charity Commission can be accessed at: www.gov.uk/government/news/commission-provides-further-clarity-to-eu-referendum-guidance
and the rest of it, may then be put into operation in order to convince a wider public that action is necessary."\(^{30}\)

Charities play a vital advocacy role in a fair and free democratic society. In the UK, charities have long been involved in policy development and campaigns, activity that is sometimes depicted pejoratively as ‘political.’ However, the reality is that many charities work with extremely vulnerable people in society, who often do not otherwise have a voice in the political or policy making process. Charities are able to use their knowledge – based on years of direct experience – to call for the changes that would help their beneficiaries, through both campaigning and engagement. Charity advocacy has a positive social impact, and can also lead to subsequent financial savings for the government. Silencing charities from being able to speak up for their beneficiaries and engage with policy makers is not conducive to good government, takes away the voice of vulnerable people, and constitutes an attack on a key function of civil society organisations in a modern democracy.

The Lobbying Act, anti-advocacy clause and Charity Commission guidance on the EU Referendum all have the effect of creating uncertainty for charities. The Lobbying Act makes it difficult for charities to determine whether or not their activities would force them to register with the Electoral Commission, and is viewed a piece of legislation that has major negative connotations and is likely to lead to charities refraining from undertaking legitimate activities. The anti-advocacy clause lacks clarity, and means that charities in receipt of grant funding are left unclear as to what activity is now permissible. In order to protect their public reputation from perceived risks and possible censure, charities may adjust their behaviour to the detriment of their beneficiaries. The EU Referendum guidance from the Charity Commission provides charities with new information to understand that (it is claimed by a respected law firm) misrepresents the law and is likely to confuse those with legal responsibility for charities. Collectively, it is clear that the environment for charities that engage in advocacy is challenging and plagued by uncertainty.

\(^{30}\) Committee of Enquiry into the Law and Practice Relating to Charitable Trusts (Nathan Committee): Evidence and Final Report, Cm 8710, p. 55
5) Relations between government and charities

The Compact is the framework that sets out the relationship between government and civil society organisations. In 2010, the Prime Minister David Cameron signed The Compact, stating that “it plays a crucial part in improving the partnership between the Government and civil society organisations.” Section 1.1 of The Compact commits the Government to: “Respect and uphold the independence of CSOs to deliver their mission, including their right to campaign, regardless of any relationship, financial or otherwise, which may exist.”

The introduction of the anti-advocacy clause referenced above fundamentally undermines The Compact by breaching the principle that charities should be able to free to campaign regardless of any financial relationship that they may have with government. This is a critical part of The Compact (hence its status as the first principle) and is it extremely disappointing that the compatibility of the anti-advocacy clause on The Compact does not appear to have been accounted for by the Government. The Compact also states that the Government should:

“Give early notice of forthcoming consultations, where possible, allowing enough time for CSOs to involve their service users, beneficiaries, members, volunteers and trustees in preparing responses. Where it is appropriate, and enables meaningful engagement, conduct 12-week formal written consultations, with clear explanations and rationale for shorter time-frames or a more informal approach.”

Using the anti-advocacy clause as an example again, the Government chose not to consult on the introduction of a policy that has a significant impact on the freedom of charities to fulfil their advocacy role. Consultations are an important way for charities to feed into policy development processes, and the failure to comply with the recommendations established in The Compact weakens both the creation of the policy, and buy-in from civil society organisations who consequently feel that their voice has been neglected.

32 Ibid, p. 8
33 Ibid, p.9
6) The financing of charities and the impact of anti-terrorism measures

Terrorism is an affront to many of the notions which underpin a vibrant and open civil society in which all views are represented so that we might influence society through peaceful means. As such, no genuine advocate of civil society should be complacent about the threat of terrorist financing. However, consideration must be given to the potential unintended consequences of a policy approach that leads to reduced access to financial services and legitimate donor sources.

Access to financial services

It is of course crucial that both charities and financial institutions remain vigilant in ensuring that charitable assets do not find their way into the possession of terrorists. To this end, the array of legislation and guidance which applies to charities and donors is reassuring. However, the exponential rise in compliance requirements and costs, the lack of charity specific guidance and the unfounded assumption that charities are innately at risk of terrorist financing, as well as money laundering, is creating an environment in which legitimate and well-governed charities are finding themselves unable to gain access to financial services. This is not merely a regrettable, if unintended, consequence of anti terrorist financing measures; it threatens to exacerbate the problem by undermining the vital efforts of charities to address both the effects and the causal conditions of terrorism at home and abroad. Indeed, David Anderson Q.C., the governments Independent Reviewer of Terrorism Legislation, has warned that:

“The abuse of charitable status for the funding of terrorism is a serious and important issue. But the wider the net of terrorism is cast, the greater the chance that financial impediments will be placed in the way of positive and worthwhile NGO activity....There is a risk that necessary anti-terrorism laws will be given a bad name if they result in avoidable restrictions on the ability of NGOs to conduct vital humanitarian and peacebuilding operations in parts of the world from which terrorism emanates.”

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\(^{34}\)Ibid. p. 72
Whereas banks have traditionally been required to report suspicious transactions or activity, the regulatory regime now places the onus on financial services providers to play a key role in identification, prevention and management of risk in multiple areas of concern. The evolution of the regulatory and legal framework has resulted in extensive Anti Money Laundering (AML) and Counter Terrorist Financing (CTF) obligations emanating from multiple sources, including national governments and regulators and supranational bodies such as the Financial Action Task Force (FATF).35

The risks of non-compliance with legal and regulatory duties for financial institutions are, of course, incredibly serious. Action taken can include fines and penalties, loss of licenses and reputational damage, as well as criminal and civil prosecution both here and in other jurisdictions. To cope with these risks, financial institutions rely on Treasury-approved guidance produced by the Joint Money Laundering Steering Group (JMLSG). This is general guidance, which applies across the board to all types of organisation. There is, currently, no charity-specific guidance covering AML or CTF. Unless this problem is addressed, charities will face increasing barriers to accessing financial services and may simply cease to engage in certain activities or areas, despite the level of need and the willingness of donors. This closing of regulated financial channels for charitable donations could lead to citizens, determined to help get aid to where it is needed, moving their money through unregulated channels. As such, the de-risking activities of banks could have the unintended consequence of increasing risk exposure elsewhere – a fact not lost on the Charity Commission which issued an alert stating:

“There is a risk that charitable aid convoys to Syria may be abused for non-charitable purposes and facilitating travel for British foreign fighters. This is of serious regulatory concern to the Commission and impacts on public trust and confidence in those charities responding to the Crisis and the charitable sector more generally.”36

Access to international funding sources

A recent report by the Public Administration and Constitutional Affairs Committee (PACAC) calls for the Charity Commission and the Government to “consider proposals about how

35 For more information, please visit: www.fatf-gafi.org

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donations from overseas could be made notifiable through the Charity Commission, so that the authorities become aware of charities in receipt of funds from potentially harmful sources.”37 This would single out charities from other sectors in the economy and would place all foreign donors under an implied suspicion that would be disproportionate, discriminatory and damaging to our civil society.

It is noteworthy that the PACAC itself acknowledges that it had not “explored in any detail” this issue, but did not let a lack of discussion or investigation (on an issue that is only loosely related to the content of the actual report) prevent it from making a policy proposal that would restrict civil society further.38 Had the appropriate evidence been taken into account, then Members would surely have understood that such a policy proposal would see the UK add its considerable weight to a trend for governments around the world to restrict the ability of civil society organisations to engage with foreign donors.

Such a recommendation, however benign in intention, looks very different when seen in the current international policy context: barriers to foreign funding are one of the principle components of the closing space for civil society, where they are frequently used to isolate the sector. According to the International Center for Not-for-Profit Law (INCL), since 2012 the greatest uptick in measures affecting civil society has been in restrictions on international funding, which now account for 35 per cent of all restrictive measures.39

This has led Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association to remind governments that “legislation limiting foreign funding to registered associations only […] violates international human rights norms and standards pertaining to freedom of association.”40

Is it therefore worrying to see the UK Government proposing action that could restrict the legitimate funding of charities. The Government’s Counter-Extremism Strategy warns that “some extremists have raised funds through charity collection,” and states that “addressing

38 Ibid. p. 17
39 Civil Society Under Assault, Douglas Rutzen, President and CEO of the International Center for Not-For-Profit Law as published in the Journal of Democracy, Volume 26, Number 4 October 2015
40 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, Human Rights Council, Twenty third session, Agenda item 3 (2013)
the abuse of charities for terrorist or extremist purposes is one of the Charity Commission’s strategic priorities.” It goes on to state that: “we will look specifically at how foreign funding is influencing groups and individuals in the UK, and its links to extremism.”

Whilst action by both the Government and the Charity Commission to clamp down on the abuse of charity is welcome, it is important to ensure that the legitimate funding of charities by overseas donors is not inadvertently caught by new rules and regulations. The Government has yet to undertake the investigation of the foreign funding of charities that the Counter-Extremism Strategy commits to, but it is essential that any such investigation includes strong representation from both charities and donors, and seeks to ensure that any crackdown on overseas donations linked to terrorist or extremist purposes does not impact upon legitimate donations given to charities in good faith and for the pursuit of charitable purposes.

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41 Counter-Extremism Strategy, Cm 9148, October 2015, p. 27
42 Ibid. p. 28
7) **Rhetoric and the political climate for charities**

In addition to the policy environment, civil society organisations are also aware of the wider climate in which they operate. This is impacted by the words and actions of politicians and other influencers, and over recent years has included a number of developments which have been troubling for civil society. Most notably, in 2014, Brooks Newmark (at the time the Minister for Civil Society) told Civil Society magazine that “the important thing charities should be doing is sticking to their knitting and doing the best they can to promote their agenda, which should be helping others.”

This is not an isolated remark, and combines with other similar comments given by senior figures to create a challenging climate for charities to operate it. Other notable interventions include:

“Britain’s professional campaigners are growing in number: sending emails around the country, flocking around Westminster, dominating BBC programmes and usually articulating a left-wing vision that is neither affordable nor deliverable – and wholly at odds with the long-term economic plan this government has worked so hard to put into place.”

Rt Hon Chris Grayling MP, April 2014

“Think charity and you think of a volunteer rattling a tin, front line work relieving poverty and vocation lined with compassion. You don’t think of political campaigning.”

Charlie Elphicke MP, July 2014

These comments come despite evidence showing that voters strongly value the advocacy role that charities play. Research carried out by the Charities Aid Foundation in 2015 found

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43 Brooks Newmark: charities should keep out of politics,' Civil Society, 3rd September 2014, accessible at: [www.civilsociety.co.uk/governance/news/content/18092/brooks_newmark_charities_should_stick_to_their_knitting_and_keep_out_of_politics](http://www.civilsociety.co.uk/governance/news/content/18092/brooks_newmark_charities_should_stick_to_their_knitting_and_keep_out_of_politics)


that 63 per cent of UK adults agree that “it is important for charities to highlight if they believe government policies will negatively affect people,” a figure matched (62 per cent) by support for charity advocacy among MPs.\textsuperscript{46} There is consistency of support for this statement amongst both Conservative (60 per cent) and Labour (71 per cent) voters, and the discrepancy between the aforementioned leading politicians commenting on charity advocacy and the public on this issue is noteworthy.\textsuperscript{47} In addition, research carried out by nfpSynergy has found that 63 per cent of the public think it is acceptable for a charity to challenge government policy, with 57 per cent thinking it is acceptable for charities to criticise government or local authorities that commissioned them to provide services.\textsuperscript{48}

For civil society organisations, it is somewhat reassuring to see that other ministers have spoken warmly of the important role of civil society organisations and this positivity has been welcomed by civil society organisations. In a recent speech, Secretary of State for International Development Justine Greening MP said:

\textit{“Another lesson I’d point to from FGM (female genital mutilation) and across the board, that I can’t emphasise enough, is the huge role civil society plays in success, and the momentum that civil society brings. [...] And civil society advocacy has helped take what was wrongly a niche issue like FGM to being much more mainstream. Looking at all that, I don’t think we will have the sort of step-change on social mobility we need here in the UK, without that kind of coordinated advocacy and campaigning from civil society. You’ve got to be out there, beating the drum, holding all our feet to the fire as well as doing the amazing projects you do.”}\textsuperscript{49}

Charities will welcome Ms Greening’s positive words, and believe that they more accurately reflect the role of civil society organisations in the UK. However, it is important for words to be backed up by deeds, and the sentiments expressed in Ms Greening’s speech cannot easily be aligned with the policy approaches taken by the Government in recent years.

\textsuperscript{46}“Under the Microscope: Examining the future of charities in Britain,” Charities Aid Foundation, September 2015, p. 10
\textsuperscript{47}Ibid. p. 12 (Conservative) and p. 14 (Labour)
\textsuperscript{48}Public, media and MPs’ attitudes towards campaigning,’ nfpSynergy, March 2016
\textsuperscript{49}UK Social Mobility: Lessons Learnt From International Development, delivered by Secretary of State for International Development Justine Greening to the Centre for Social Justice on 16\textsuperscript{th} February 2016, accessible at: www.gov.uk/government/speeches/uk-social-mobility-lessons-learnt-from-international-development
8) Conclusions

The UK’s position as a global leader for civil society is one that should be a source of great pride. Not only does a thriving civil society benefit the UK domestically, but our reputation and the way in which civil society organisations are treated has a global reach and impacts upon the UK’s international standing. This is an example of the soft power the UK wields, and can be used to develop positive relationships and encourage other countries to introduce policies that are aligned with British values.

However, soft power cuts both ways. Whilst the UK can use soft power to influence other countries, it is important not to underestimate the impact that domestic policies have on our international standing. The UK’s position as a global leader is viewed in alignment with the policies that the UK government enacts. If the Government is taking action that restricts civil society organisations and is viewed as restrictive, other regimes across the world will take note and use the UK’s actions to legitimise their own regressive policies.

In recent years the UK government has introduced a number of policies with negative repercussions for civil society organisations. Most worrying are the restrictions being placed on advocacy and campaigning, with a climate of uncertainty becoming intertwined with the threat of punitive action to create an atmosphere that prevents organisations from speaking up on behalf of their beneficiaries. This has a negative impact on the wider public, and is also to the detriment of government and policy making. This has been called the chilling effect, and sees the UK moving in accordance with the global trend of regressive policies towards civil society organisations.

It is important for the Government to reflect upon the wider picture. Policies should be viewed collectively as well as individually, and the cumulative effect of the policy changes and climate is of significant concern to civil society organisations. CAF urges the Government to reaffirm the principles established in The Compact; to reflect on the valuable contribution that civil society organisations make to the UK; to consider the impact that the treatment of civil society can have on the UK’s soft power and commitment to democratic principles; and to commit to working positively with civil society organisations in the UK to create a thriving civil society that the rest of the world should aspire to replicate.
9) About CAF and further information

The Charities Aid Foundation (CAF) is a registered charity that promotes charitable giving and provides financial services and social finance to not-for-profit organisations. Our mission is to motivate society to give ever more effectively, helping to transform lives and communities across the world. We help individual donors to give more effectively, we support charities to allow them to thrive, we advise businesses to allow them to achieve greater impact, and we work internationally with offices in nine countries, harnessing local knowledge and expertise to help civil society thrive across the world.

CAF works with government to improve the different ways that people are able to support charities, making it easier for people to give to the causes they care about. We advocate on behalf of charities, reflecting their needs and concerns to decision makers and opinion formers in order to create a positive climate for charities to operate in. We engage with politicians across different levels of government to ensure that there is a supportive network of legislators putting charitable issues on the political agenda, and we also run high-profile campaigns designed to generate positive change and secure the future of giving.

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