

Do as I say, not as I do:

UK policy and the global closing space for civil society: a 2017 update

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About Giving Thought

Giving Thought is the Charities Aid Foundation's think tank. We consider the key challenges and opportunities facing civil society organisations and those who support them, as well as examining wider policy issues through the lens of philanthropy. Our work provides insight and stimulates debate. We aim to engage with and influence researchers, practitioners and policymakers from the not-for-profit sector, government, academia and the public and private sectors.

About the Charities Aid Foundation (CAF)

Charities Aid Foundation (CAF) is a leading international civil society organisation (CSO). Our mission is to motivate society to give ever more effectively and help transform lives and communities around the world. We work to stimulate philanthropy, social investment and the effective use of charitable funds by offering a range of specialist financial services to CSOs and donors, and through advocating for a favourable public policy environment.

About this report

This report is an updated version of a report of the same title published by CAF in April 2016 to coincide with an official visit from Maina Kiai, UN Special Rapporteur on the rights to peaceful assembly and of association (a follow-up visit to his 2013 review), who spoke about the closing space for civil society at Parliamentary event hosted by CAF. That report sought to raise awareness of the impact that UK policy - given position of leadership and long history of cultivating civil society - could have on the closing space for civil society globally. This report reflects subsequent policy developments in this area. .

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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.¹ Indeed, the UK has long been established as a global leader for facilitating a vibrant civil society, and many nations across the world, particularly Commonwealth nations which follow Britain's common law tradition. This combination of a reputation for leadership on civil society law and regulation combined with historical ties means that policymakers in the UK need to be cognisant of their likely influence abroad. This influence gives Britain significant 'soft power' in opening up civil society, particularly in nations transitioning from developing to developed economic status.

These populous and rapidly developing economies – such as India, Pakistan, Bangladesh, Nigeria, South Africa and Kenya – could benefit from emulating the UK model and creating an enabling environment for civil society and the donors who support it. This would ensure that economic development is augmented by the creation of a social economy which binds communities, represents the marginalised and challenges corruption and waste. As such, it is essential that policy makers in the UK consider the global message that their domestic policies might send for the treatment of civil society abroad.

One of the core principles underpinning the UK's civil society is the freedom for civil organisations to advocate on behalf of their beneficiaries, freely speaking truth to power and calling for the kind of change that they determine necessary to achieve their charitable mission and make the world a better place. Civil society advocacy has helped drive a number of the social movements that, whilst controversial at the time, are now universally considered to have been vital, such as the abolition of slavery, extending the franchise to women, and the legalisation of same-sex marriage. Civil society advocacy at home has helped the UK enhance our global standing, and we should seek to showcase and export a model of civil society with the preservation of the advocacy role for civil society organisations (CSOs) at its core.

However, recent policies and the wider narrative around civil society advocacy in the UK has led to criticism from civil society organisations, who fear that their independence and ability to act as advocates for their beneficiaries is under attack. Many organisations believe that

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/

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.

At a time in which the UK is seeking to make use of its soft power to develop international ties and help shape the global political environment, a failure to respect the integrity of principles at home that we encourage others to adopt across the world would be counterproductive to Britain's interests.

This report briefly explores the nature of the UK's soft power and how it can be wielded, before looking at recent global policy developments restricting the ability of CSOs to advocate; a trend that has become known as the 'closing space for civil society.'

It goes on to examine the benefits that civil society advocacy brings to society, explores recent developments affecting civil society advocacy in the UK, and asks whether the legislative and rhetorical environment that has developed in the UK affects our international standing and our ability to wield soft power.

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. Some examples include:

- In 2013, the President of Uganda assented to the Public Order Management Act, which grants the police powers to prohibit public meetings and decide suitable venues for holding public meetings. Civil society freedom has been further restricted by the Non-Governmental Organisations Act 2016, which requires organisations to seek permission from local and regional authorities before carrying out any activities. The law also gives government broad powers to revoke these permits. These restrictions are compounded by the well-publicised legal crackdown on the LGBT community.
- In India, the 2010 Foreign Contributions Regulation Act sought to prevent foreign organisations (and the domestic CSOs they fund) from undertaking activities that could be considered as “anti-national” or “anti-development”. Since Prime Minister Modi came to power, these vague powers have been used more aggressively resulting in the high-profile cancelling of Greenpeace’s registration and the placing of the Ford Foundation on a financial watch list.
- In 2016, the Egyptian Parliament passed a repressive draft law on civic associations, which gives a new national body the power to close any CSO they deem not to be working “according to the state’s plan and its developmental needs.” Civil society organisations claimed that it “effectively eradicates civil society.”
- In his recently published agenda for 2017, Hungary’s Prime Minister Viktor Orban announced plans to force CSO leaders to declare their personal assets, continuing measures to further suppress a sector that has already been restricted under Mr Orban’s leadership after a blacklisting of certain domestic organisations in receipt of foreign funding.
- In 2012, Russia passed a law aimed at stopping the work of “organisations performing the function of foreign agents.” This would include any Russian organisation receiving foreign money and found to be carrying out anything deemed to constitute “political activity,” and would effectively mean such an organisation would be labelled a “foreign agent” effectively cease being able to carry out activities or access funds. A subsequent 2015 law on “undesirable organisations” gives the government extrajudicial powers to close down any foreign organisation operating in Russia.

- In the United States, President Donald Trump, in one of his first acts as president, signed an executive action reinstating the so-called ‘Global gag rule’, which bars international CSOs that perform or promote abortions from receiving US government funding. The restrictive policy is far-reaching and affects CSOs from receiving funds even if they use separate money for abortion services, counselling or referrals. As the US is one of the world’s largest donors to overseas development assistance, the restrictive policy puts women at risk, as international health CSOs will be forced to determine whether they should continue to provide abortion services, or whether continuing such activity would put their funding at risk.

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.”² 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.”³

It is essential 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, particularly the ability of CSOs to advocate on behalf of their beneficiaries. This has been exacerbated by the use of negative rhetoric, which aims to call the legitimacy of civil society organisations into question and may have helped to weaken levels of public trust in these organisations. We urge the Government to consider the impact of these policies, and to commit to working in collaboration with civil society organisations to protect the ability of organisations to advocate freely on behalf of their beneficiaries. We also urge policymakers 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.

² Fact Sheet: U.S. Support for Civil Society, published 23rd September 2014 (accessible at: www.whitehouse.gov/the-press-office/2014/09/23/fact-sheet-us-support-civil-society)

³ Remarks by President Obama at the Clinton Global Initiative, 23rd September 2014 (accessible at: www.whitehouse.gov.uk/the-press-office/2014/09/23/remarks-president-clinton-global-initiative)

3) *The UK, soft power and global civil society*

“Soft power is the ability to affect others to obtain the outcomes one wants through attraction rather than coercion or payment. A country’s soft power rests on its resources of culture, values, and policies.”⁴

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 in this area. 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 Australia, 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 for the facilitation of a vibrant civil society, 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 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:⁵

“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

⁴ Nye Jr. J. S. (2008) Public Diplomacy and Soft Power. *The Annals of the American Academy*. Vol 616, Issue 1

⁵ 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.*⁶

The Department for International Development's recent Bilateral Aid Review recognised the role in soft power in ensuring value for money in the UK's investments, which stated:

“Our aid increases the UK's influence and soft power around the world and we will use this influence to build mutually beneficial relationships with developing countries.”

The Secretary of State for International Development, Priti Patel, has recognised the role of civil society as part of the UK's soft power in the latest Civil Society Partnership Review, published in November 2016:

“A healthy, vibrant and effective civil society sector is a crucial part of Britain's soft power and leadership around the world. The Government will give them our strongest support”⁷

In addition, [the Select Committee on Soft Power and the UK's Influence](#) first report, published in 2014, specifically highlighted the important role that UK CSOs play by exerting a positive influence internationally through their advocacy work.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.”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 best can be made of our undoubtedly unique assets.”¹⁰

⁶ *Ibid.*, p. 6

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565368/Civil-Society-Partnership-Review-3Nov2016.pdf

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

⁹ *Ibid.* p. 76

¹⁰ *Ibid.* p. 6

Support for the UK's ability to wield soft power is also represented within the highest offices of government. In his 2016 speech to the Conservative Party Conference, Foreign Secretary Boris Johnson said:

"I believe that Global Britain is a soft power superpower and that we can be immensely proud of what we are achieving."¹¹

The value that the UK places on its ability to wield influence through the doctrine of soft power is likely to increase as a result of the vote to leave the European Union, and one way that it can be used is by inspiring the development of civil society overseas. Encouraging other countries to enact measures that develop their own civil society benefits the UK too, and there is no question that the global, liberal, pluralistic principles associated with a functioning civil society are supported by the UK; encouraging their adoption across the globe is undoubtedly in the UK's national interest.

Indeed, CAF has called for the Government to consider working with governments overseas to develop civil society infrastructure where the UK is transitioning out of aid funding.¹² This would help the UK strengthen relationships, develop the role of civil society across the globe, and ensure a lasting legacy for the UK's generous aid programmes. Developing the global role of civil society is very much in the national interest, and we encourage the Government to consider how we can better work with countries to put in place the structures necessary to develop civil society models that can play as an integral role in society as our does in the UK.

Soft power clearly offers a significant way for the UK to retain and wield influence, but it cannot be viewed through the prism of international engagement and diplomacy alone. The UK's standing in the world means that our domestic policies are often viewed positively by other regimes, many of whom borrow from aspects of UK law when devising their own. It is important to note that any regressive actions by policymakers which restrict civil society organisations in the UK will 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

¹¹ Full speech: <http://blogs.spectator.co.uk/2016/10/full-text-boris-johnsons-conference-speech/>

¹² *A Stronger Britain*, Charities Aid Foundation (2017)

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 and encouraging similar work abroad will only add credence to these concerns, and risk the UK's actions being perceived as hypocritical overseas. 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 if measures adopted here can be cited in support of restrictive policies.

4) *The benefits of civil society advocacy*

CSOs 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 occurred because of campaigns underpinned by civil society 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 CSOs 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 and the rest of it, may then be put into operation in order to convince a wider public that action is necessary.”¹³

The need for civil society advocacy has not been diminished by the passage of time. There are many reasons why civil society advocacy and the freedom of CSOs to speak up on behalf of their beneficiaries matters. Weakening the role of civil society advocacy, either through restrictive measures or by creating a regressive climate, risks weakening the development of public policy and runs contrary to principles of good governance. These potential negative repercussions should be considered by those seeking to restrict civil society advocacy,

Speaking up for disadvantaged people

CSOs across the UK engage with some of the most vulnerable people in society, working to provide them with the support that they need, often to survive. This engagement gives CSOs an excellent understanding of the hopes and fears of ordinary people many of whom feel disengaged from the political process and do not believe that their needs are taken into account.

¹³ Committee of Enquiry into the Law and Practice Relating to Charitable Trusts (Nathan Committee): Evidence and Final Report, Cm 8710, p. 55

CSOs play an essential role in giving them that voice. Without CSOs, people on the fringes of society such as homeless people are left without anyone with a comprehensive understanding of their experience able to speak up on their behalf. Rather than restricting the freedom of civil society organisations to give a voice to these people, we would urge the Government to work in collaboration with CSOs to better understand their issues, and how best to develop and deliver solutions that work for everyone.

Giving people a mechanism for change

Recent years have highlighted significant divides across society, a trend that has included disillusion in the establishment or the political class. This includes the implication that politicians are distanced from ordinary people, and are not always talking about the issues that people care about, or do not understand the strength of feeling around certain issues.

Making it more difficult for CSOs to engage with government and policymakers runs the risk of increasing this divide, as CSOs working on the ground across communities have first-hand knowledge of important issues. Indeed, people are increasingly turning to organisations such as CSOs or social movements to pursue the kind of change that they wish to see, building on the strong histories of CSOs being involvement in driving change. We urge the Government to respect the role that CSOs can play in the democratic process and protect their ability to give ordinary people a voice.

Whistleblowing and tackling corruption

CSOs play an important role in holding government, both central and local, to account. Organisations involved in the delivery of public services have the opportunity to help uncover examples of wrongdoing and speak out about malpractice. Whistleblowing is essential as a tool to tackle corruption and wrongdoing, and helps give members of the public confidence in the institutions that they rely upon.

Indeed, the UK Anti Corruption Action Plan recognises that “gathering data and making it open to scrutiny both within government and by civil society and the public is vital if we are to understand the full extent of the problem and put in place proportionate measures to stop it.”¹⁴ Furthermore, the governments Open Government National Action Plan 2016-18 has been developed with, and will continue to rely on, engagement with civil society;

¹⁴ HM Government (2014) UK Anti-Corruption Plan. [Online]. Available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf

“We commend the collaborative approach taken to develop this action plan, and particularly welcome the partnership with civil society, devolved governments and parliaments. This approach, although challenging at times, has resulted in a stronger set of commitments and will help to drive progress across the UK’s nations.”¹⁵

Creating uncertainty about the ability of CSOs to engage with and indeed influence government could, rightly or wrongly, be understood by those operating on the ground to extend to whistleblowing. It runs the risk of, undoubtedly unintentionally, creating the situation in which CSOs are exposed to examples of wrongdoing or corruption but feel that they are unable to raise their concerns and provide evidence to the relevant authorities.

Whilst this would doubtless be an unintended consequence of measures to restrict civil society advocacy, it is important to acknowledge that creating an environment in which organisations feel silenced is likely to lead to negative outcomes that, we fear, have not been anticipated.

Developing better policy

CSOs involved in delivering services often have an excellent understanding of what works in practice, and where policies can be improved. Engaging CSOs in discussions around policy development has allowed local and central government to learn more about where changes need to be made, which can both benefit service users and generate savings to the public purse.

Measures that cause CSOs engaging in policymaking and collaborating with government to question their legitimacy risk weakening the development of public policy and making it more difficult for government to deliver cost-effective services that work for ordinary people. We believe that successful policymaking relies on a plurality of voices working collaboratively together in pursuit of a shared goal; this clause runs contrary to that vision.

CSOs have a strong history of fighting to change the law and improve policy, often championing unpopular causes leading to their integration into the political mainstream. Restricting the ability of CSOs and donors to use their resources in support of social causes risks preventing issues viewed as being on the margins of debate from reaching the mainstream. It is worth considering the impact that restrictions on the ability of CSOs to advocate could have had in the past, and how this could have prevented some of the developments that we now take for granted,

¹⁵ Cabinet Office (2016) UK Open Government National Action Plan 2016-18. [Online]. Available from <https://www.gov.uk/government/publications/uk-open-government-national-action-plan-2016-18/uk-open-government-national-action-plan-2016-18#commitment-3-anti-corruption-strategy>

Making services more efficient

Concerns have been raised about the use of language that seeks to prevent CSOs from engaging in activity that could affect their likelihood to attain government funding in the future. This could mean that a CSO delivering an excellent service, surpassing expectations, is unable to communicate that success in case it influences the likelihood of them being awarded further funding in the future.

This would be an unintended consequence, but reiterates the potentially damaging effects that restrictions on the freedom of CSOs to advocate and engage openly with government could have on good governance, and the allocation of public money. There are significant concerns about what this could mean for impact measurement and for CSOs reporting on their success to government. It is also unclear whether restrictions of this type are compatible with the concept of open, transparent government.

5) *Advocacy in the UK*

Policies enacted in the UK in recent years have, explicitly or implicitly, had the effect of severely curtailing the ability of CSOs to speak up for beneficiaries and fulfil their advocacy function. In this section, we look at the individual policies which make up this trend but it is their cumulative effect that is most worrying. Taken collectively, these policies go some way to justify claims that the UK has become part of the global closing space for civil society.

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 2014.¹⁶ The Lobbying Act forces campaigners – including CSOs – 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 is 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 CSOs. 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.¹⁷ Given that over 160,000 CSOs operate in the UK, it is perhaps surprising that such a proportionately small number of complaints was deemed to necessitate restrictions and a change to the law.

Evidence collated after the election discovered that many CSOs 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-charitable organisations) took the decision to register with the Electoral Commission as non-party campaigners.

¹⁶ The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 received Royal Assent on 20th January 2014

¹⁷ 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/cmpublicadm/76/79we19.htm

Many of the concerns raised by CSOs arose because of the uncertainty introduced by the legislation, which combined and added to existing electoral law and Charity Commission guidance to inform CSOs what they can do around elections. The rhetoric around the introduction of the Lobbying Act blurred the distinction between political activity, which CSOs can legitimately engage in, and party political activity, which is prohibited. [CC9 – the Charity Commission guidance on campaigning and political activity](#) by CSOs – states that “campaigning and political activity can be legitimate and valuable activities for charities to undertake.”¹⁸ However, language and attitudes around the Act conflated political activity with party political activity, with the implication being that both are against the rules. This, unhelpfully, may have led to CSOs 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 CSOs and campaigns groups over the course of the 2015 general election.¹⁹ Evidence was provided to the Commission by CSOs 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 CSO 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.”

The report also voices concern about the guidance created by the Electoral Commission after the passage of the Lobbying Act, which many CSOs found to be ambiguous. The uncertainty created by the guidance led to CSOs 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*

¹⁸ 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-campaigning-and-political-activity-by-charities-cc9)

¹⁹ ‘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

*reduce joint campaign activities on topics demonstrate[s] the unintended consequences of the Act.*²⁰

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."²¹ 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 Group²²

"I think this Act has created an atmosphere of caution within parts of our sector."

WWF-UK²³

"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 Wales²⁴

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 campaigning worked at the 2015 general election. The review, led by Lord Hodgson of Astley Abbots, received submissions from stakeholders up to 31st July 2015, and [reported with a series of recommendations in March 2016](#).²⁵

The core recommendations include amending the purpose test in a way that focuses on whether a CSO 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 CSOs, and also received a warm response from the Government. CSOs are now waiting to see the Government's formal response to Lord

²⁰ *Ibid.* p.18

²¹ *Ibid.* p. 6

²² *Ibid.* p. 20

²³ *Ibid.* p. 20

²⁴ *Ibid.* p. 20

²⁵ 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 Abbots CBE, March 2016

Hodgson’s proposals. However, almost a year after Lord Hodgson made his recommendations, they have yet to be introduced.

The Anti-Advocacy Clause

In February 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](#).²⁶ The Government’s announcement strongly referenced a series of reports by the [Institute of Economic Affairs on what they term ‘sock puppets’](#) – organisations in receipt of government funding who also lobby government.²⁷ The clause sought 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 followed a [pilot of the clause by the Department for Communities and Local Government \(DCLG\)](#) in 2015/16, and appears to have been strongly influenced by the work of the Institute of Economic Affairs.²⁸

CSOs immediately voiced their opposition to the anti-advocacy clause for a number of reasons. Whilst there were a number of practical concerns about the practicability of the anti-advocacy clause, it was the message conveyed by it that CSOs found most troubling. CSOs perceived to act in a way that sought 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*” would have been put at risk of having money granted to them by government reclaimed.

Guidance provided by the Cabinet Office failed to alleviate the concerns held by CSOs, failing as it did to help ascertain which activities would have fallen foul of the broad remit of the clause quoted above.

The anti-advocacy clause was announced without prior consultation with CSOs. In response, [a number of leading CSOs 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 impact on public expenditure.²⁹

²⁶ 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

²⁷ ‘Sock Puppets: How the government lobbies itself and why,’ Institute of Economic Affairs (2012)

²⁸ 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

²⁹ A copy of this letter can be accessed at: <https://www.ncvo.org.uk/about-us/media-centre/press-releases/1249-charities-letter-to-the-prime-minister-on-anti-advocacy-clauses-in-grant-agreements>

As a result of the concerns raised by CSOs, the Government took the welcome decision to refrain from enacting the anti-advocacy clause, with Matthew Hancock announcing a ‘pause’ in the implementation of the policy in April 2016.³⁰ However, later in 2016 the Government announced that it would introduce a replacement for the anti-advocacy clause in the form of the new grants standards.

The New Grants Standards

In December 2016, the Government published a series of new standards relating to the management of government grants, which includes money that CSOs receive via grant funding programmes. These standards, viewed as the successor to the aforementioned anti-advocacy clause, were broadly welcomed by the civil society, with cross-sector CSOs including NCVO and ACEVO having worked with the Government on their content and scope. In this regard, the Government’s decision to take a more collaborative approach and work with CSOs on the new standards is to be praised.

The new grants standards are much more detailed and comprehensive than the anti-advocacy clause, and the relevant section with the greatest impact on CSOs is Standard 6, ‘robust grant agreements.’ Specifically, the eligible expenditure terms criteria “preclude(s) activity such as paid lobbying, unless a specific requirement of the grant, or expenses aimed at exerting undue influence – decisions will be taken locally with regards to the definition of undue influence.”

The guidance goes on to specify activities that can be undertaken without falling foul of the new standards, providing clarity and guidance to CSOs that was lacking during the process around the anti-advocacy clause. Explicitly permitted activities include:

- Giving evidence to Select Committees;
- Attending meetings with Ministers or officials to discuss the progress of a taxpayer funded grant scheme;
- Responding to public consultations, where the topic is relevant to the objectives of the grant scheme. This does not include spending government grant funds on lobbying other people to respond to the consultation (unless explicitly permitted in grant agreement);

³⁰ The Government’s announcement of the decision to pause the introduction of the anti-advocacy clause can be found at: <https://www.gov.uk/government/news/update-on-a-new-clause-to-be-inserted-into-grant-agreements>

- Providing independent, evidence based policy recommendations to local government, departments or Ministers, where that is the objective of a taxpayer funded grant scheme, for example ‘What Works Centres’; and
- Providing independent evidence based advice to local or national government as part of the general policy debate, where that is in line with the objectives of the grant scheme.

In addition, the guidance reiterates explicitly that “paid for lobbying – unless a requirement of the grant – and attempting to exert undue influence using taxpayer funding, will always be prevented under those terms.” This is deemed to include:

- Paid for lobbying, which means using grant funds to fund lobbying (via an external firm or in-house staff) in order to undertake activities intended to influence or attempt to influence Parliament, Government or political activity; or attempting to influence legislative or regulatory action;
- Using grant funds to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the grant;
- Using grant funding to petition for additional funding;
- Expenses such as entertaining, specifically aimed at exerting undue influence to change government policy;
- Input VAT reclaimable by the grant recipient from HMRC; and
- Payments for activities of a party political or exclusively religious nature.

Commenting on the new grants agreement, Sir Stuart Etherington, Chief Executive of NCVO, said:

“The original clause was counterproductive and would have meant grant-funded charities would be unable to provide crucial insights that improve legislation, regulation and public services. This fundamental flaw has been recognised by the Government and its new guidance is crystal clear in saying that activities such as raising issues with ministers and civil servants, responding to consultations and contribution to the general policy debate are not only permitted by actively welcomed.”³¹

However, reaction elsewhere has been more mixed. Neil Cleeveley, Chief Executive of NAVCA, said:

³¹ <https://www.ncvo.org.uk/about-us/media-centre/press-releases/1607-charities-welcome-new-grants-standards>

“The key question that needs asking is will the standards tackle and ease the ‘chilling effect’ of the anti-lobbying clause? I am worried that the standards are worded in a way that means it is still possible for charities to be attacked for legitimate work to help people and communities have a say about their services.”

It is accurate to say that the process around the introduction of the new grants standards has been more inclusive for CSOs; explicitly setting out in detail which activities are permitted and which are prohibited introduces an element of certainty that was not there before. The publication of such guidance means that CSOs are given an understanding of what compliance would entail before bidding for a grant.

However, concerns remain about the impact that the new grants standards will have. Even in their new form, concerns have been raised about whether CSOs in receipt of grant funding will be able to talk about their projects with non-ministerial politicians, or whether they are able to celebrate any achievements, lest it should be seen as an attempt to secure additional funding. There are also concerns about the term “undue influence,” which is subjective and could be used to cover almost any activity that the grantor objected to.

In addition, the broad remit afforded to grantors to prevent “activities intended to influence or attempt to influence Parliament, Government or political activity; or attempting to influence legislative or regulatory action” is extensive, and runs contrary to many of the principles of civil society advocacy cited earlier in this report.

CSOs will be pleased to hear positive noises about civil society advocacy from Minister for Civil Society Rob Wilson MP, who said that:

“The new grants standards announced today will not only increase the opportunity for charities to work with government through improved grant making practices, they will better protect the role of charities to speak out on behalf of their beneficiaries whilst ensuring taxpayers’ money is used as intended.”³²

The broader concern is that CSOs will err on the side of caution, if they remain unclear about entirely what may be permitted, or do not want to risk censure. CSOs rely on trust from their donors, supporters and the public, and are reluctant to undertake action that could negatively affect their public reputation. In order to ensure that they are not censured by government it is possible that CSOs 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 new grants standards.

³² <https://www.gov.uk/government/news/new-standards-announced-for-government-grants>

Concerns have also been raised about the compatibility of measures to restrict the ability of CSOs to spend fund with The Compact. [The Compact](#) is the framework that sets out the relationship between government and civil society organisations.³³ In 2010, the Prime Minister David Cameron signed a renewed version of 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.”³⁴

The introduction of the new grants standards, even with amendments from the original iteration of the anti-advocacy clause, fundamentally undermines The Compact by breaching the principle that CSOs 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 EU Referendum

In March 2016, the Charity Commission published guidance for CSOs ahead of the EU Referendum, which took place in June 2016.³⁵ Shortly after publishing the guidance, the Charity Commission was criticised by CSOs for appearing to share information about the guidance with journalists before it was shared with CSOs themselves.

The guidance itself came under attack, with [law firm Bates Wells Braithwaite producing a briefing on the guidance](#) arguing that it was incompatible with CC9 and did not reflect the law on campaigning.³⁶ Bates Wells Braithwaite argued 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

³³ The Compact: The Coalition Government and civil society organisations working effectively in partnership for the benefit of communities and citizens in England (2010)

³⁴ *Ibid.* p. 8

³⁵ The original guidance issued by the Charity Commission can be accessed at:

www.gov.uk/government/news/charity-regulator-issues-guidance-on-eu-referendum

³⁶ BWB Briefing on Charity Commission Guidance, Bates Wells Braithwaite, 18th March 2016, accessible at: www.bwbllp.com/file/bwb-briefing-on-eu-referendum-guidance-final-18-march-pdf

*Charity Commission guidance (such as CC9, which, unlike the new guidance, was subject to extensive sectoral consultation) and so is likely to confuse trustees.*³⁷

Bates Wells Braithwaite called for the new guidance to be “urgently amended or clarified.” It is a sign of just how polarising the debate about civil society advocacy has become that experts in charity law felt the need to raise such significant concerns about the Charity Commission’s own guidance. Like other recent policy developments detailed in this report, the real danger posed by the Commission’s initial guidance was that it would render CSOs uncertain about the validity of their advocacy techniques and standards, and as a result refrain from undertaking valid activities that the law permits.

The [Charity Commission did go onto clarify its guidance](#) to some degree, but the impact of the initial guidance cannot truly be determined, and concerns remain that CSOs may have been put off from undertaking advocacy activities by the initial guidance.³⁸

Advocacy in Scotland

There have been recent moves to raise the issue of advocacy by CSOs in Scotland as an issue, by both the media and politicians. In January 2017, the Scottish Daily mail published an investigation into Scottish CSOs, claiming that some are “squandering” public funding and calling for the tightening of rules to prevent CSOs from becoming a “front for a political party.”³⁹ Using the type of language that the Institute for Economic Affairs adopted when raising concerns over the relationship between CSOs and government, the Scottish Daily Mail argued that “so-called ‘sock-puppet’ CSOs are proposed for SNP policies,” and, citing the new grants agreements adopted by Westminster, asked, “why has no such prohibition been enforced here?”

An accompanying comment piece by Annie Wells MSP, Scottish Conservative Party’s Spokesperson for Equalities, called for stricter rules for CSOs lobbying, arguing that the SNP’s rejection of a similar move leaves Scotland open to allegations of corruption, and attacking the Scottish charity regulator, OSCR, as “toothless and secretive.”

Given the stance adopted by the SNP on issues pertaining to civil society advocacy in the Westminster Parliament, it seems unlikely that a government headed by the SNP in Scotland

³⁷ *Ibid.* p. 1

³⁸ The Charity Commission for England and Wales (2016) Commission statement on EU referendum guidance, originally published on 7 March [Online] available at <https://www.gov.uk/government/news/commission-provides-further-clarity-to-eu-referendum-guidance>

³⁹ A summary of the Scottish Daily Mail’s story, and the resulting reaction from charities and politicians can be found here: <https://www.civilsociety.co.uk/news/scottish-mail-and-tory-msp-call-for-new-lobbying-rules-for-publicly-funded-for-charities.html>

will introduce the measures advocated for by the Scottish Daily Mail. However, it is concerning that some of the language and rhetoric used to cast aspersions on the legitimacy of civil society advocacy is now being replicated by media and politicians in Scotland.

The Overall Picture

Combined, we believe that these measures call into question the legitimate and important role that civil society advocacy plays in a vibrant democracy. The worsening of the policy and rhetorical environment for CSOs has not gone unnoticed. In his initial comments following his second to the UK, the UN's Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maini Kiai, said:

"I am concerned about a series of separate measures by the Government – some implemented and others proposed – which, put together, suggested that the Government has a negative view of civil society. These moves have, in many instances, been subtle and gradual, but they are unmistakable and alarming."⁴⁰

Specifically talking about the UK Government's policies around civil society advocacy, he went on to state that:

"Beyond the UK's borders, these measures are likely to have serious ramifications if adopted by less democratic states whose intention is to repress civil society. As mentioned earlier, the UK is regarded as a model in democracy and human rights, and actively works at the UN Human Rights Council to support efforts for broader enabling environments for civil society. It is imperative that the same standards that the UK calls for internationally on civil society space are implemented domestically."⁴¹

The critical comments from the UN Special Rapporteur should not be taken lightly. He will be publishing a more detailed report on his visit to the UK later in the year, but it is important that the Government assesses the reasons for his criticism and seeks to work in partnership with CSOs to create a more positive climate for civil society advocacy.

⁴⁰ <http://freeassembly.net/reports/united-kingdom-follow-up/>

⁴¹ <http://freeassembly.net/news/statement-united-kingdom-follow-up/>

6) *The financing of civil society 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 aired so that they might influence society or be challenged 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 CSOs 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 CSOs and donors is reassuring. However, the exponential rise in compliance requirements and costs, the lack of charity specific guidance and continuing perception that CSOs are innately at risk of terrorist financing, as well as money laundering, is creating an environment in which legitimate and well-governed CSOs 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 CSOs 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.”⁴²

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

⁴² *Ibid.* p. 72

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 \(FATF\)](#).⁴³

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, CSOs 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.”*⁴⁴

Though there is no easy answer to balancing the risk of money laundering and terrorist financing against the risk of denying financial services to legitimate charitable organisations (and the impact this may have on preventing terrorism), positive examples do exist. In June 2016, following a dialogue with global civil society⁴⁵ which ultimately led to leadership by national government - not least from the UK through the Charity Commission - FATF announced that it had updated Recommendation 8 (R8), which applies to the regulation of “not-for-profit organisations” to reflect a risk based approach. Having previously stated that “Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused” the guidance now states that: ““Countries should review the adequacy of

⁴³ For more information, please visit: www.fatf-gafi.org

⁴⁴ Syria and aid convoys - regulatory alert (2014) Charity Commission. Available at <http://webarchive.nationalarchives.gov.uk/+http://www.charitycommission.gov.uk/our-regulatory-work/how-we-regulate-charities/alerts-and-warnings/syria-and-aid-convoys>

⁴⁵ Civil society engagement with FATF was coordinated through The Non Profit Platform on the FATF (<http://fatfplatform.org/>) in which CAF participated.

laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse [...]”⁴⁶

Alongside this amendment to R8, FATF has also issued an Interpretive Note⁴⁷ which acts as a guide not just for governments seeking to implement R8, but for FATF evaluators who will assess that implementation. It states that “given the diversity within individual national sectors, the differing degrees to which parts of each sector may be vulnerable to terrorist financing abuse, the need to ensure that legitimate charitable activity continues to flourish, and the limited resources and authorities available to combat terrorist financing in each country”. It also recognises the importance of “flexibility in developing a national response to terrorist financing abuse of NPOs.”

The text now implies that those countries which eliminate risk by making the work of CSOs untenable will be marked down as governments will now be expected to ensure that they, “to the extent reasonably possible, minimise negative impact on innocent and legitimate beneficiaries of charitable activity.” CSOs will be pushing for this interpretation to remove one of the many factors that contribute to the global closing space for civil society in which governments restrict the funding and activities of legitimate organisations in the name of financial security.

This example of recent changes made by FATF and the civil society advocacy which brought those changes about should be instructive to UK policy makers on two levels. Firstly, it proves that even the most remote and narrowly focused supranational bodies have recognised the need to protect the access of legitimate CSOs to financial services and have, despite the complexity of the issue, been able to make positive changes. Secondly, given the fact that the UK will be reviewed against this new risk based approach by FATF in 2018, our ability to balance the need to protect CSOs from exposure to the risk of terrorist financing against the need to protect access to financial services for legitimate organisations is going to be subject to international scrutiny and as such, action must be taken.

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*

⁴⁶ Financial Action task Force (FATF) (2012) International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (updated in 2016)

⁴⁷ Financial Action task Force (FATF) (2012) Interpretive Note to Recommendation 8 (updated in 2016)

*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.*⁴⁸ This would single out CSOs 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.⁴⁹ 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.⁵⁰

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.*”⁵¹

It is therefore worrying to see the UK Government proposing action that could restrict the legitimate funding of CSOs. [The Government’s Counter-Extremism Strategy](#) warns that “*some extremists have raised funds through charity collection,*” and states that “*addressing the abuse of charities for terrorist or extremist purposes is one of the Charity Commission’s*

⁴⁸ The 2015 charity fundraising controversy: lessons for trustees, the Charity Commission, and regulators, Third Report of Session 2015-16, House of Commons Public Administration and Constitutional Affairs Committee (2016) p. 17

⁴⁹ *Ibid.* p. 17

⁵⁰ 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

⁵¹ 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)

*strategic priorities.*⁵² 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.”⁵³

Whilst action by both the Government and the Charity Commission to clamp down on the abuse of civil society is welcome, it is important to ensure that the legitimate funding of CSOs 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 CSOs that the Counter-Extremism Strategy commits to, but it is essential that any such investigation includes strong representation from both CSOs 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 CSOs in good faith and for the pursuit of charitable purposes.

⁵² Counter-Extremism Strategy, Cm 9148, October 2015, p. 27

⁵³ *Ibid.* p. 28

7) *Rhetoric and the political climate for civil society organisations*

In addition to the policy environment, civil society organisations are also affected by the wider climate in which they operate. This is shaped by the words and actions of politicians and other influencers, and over recent years has included a number of developments that 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.”*⁵⁴

This is not an isolated remark, and combines with other similar comments given by senior figures to create a challenging climate for CSOs. 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.”*⁵⁵

[Rt Hon Chris Grayling MP, April 2014](#), now Secretary of State for Transport

*“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.”*⁵⁶

[Charlie Elphicke MP, July 2014](#)

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 2016 speech, the former Secretary of State for International Development Justine Greening MP](#) said:

⁵⁴ ‘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

⁵⁵ ‘Chris Grayling attacks ‘political bias’ of some charities and campaigners,’ *Third Sector*, 18th August 2014, accessible at: www.thirdsector.co.uk/chris-grayling-attacks-political-bias-charities-campaigners/policy-and-politics/article/1308192

⁵⁶ ‘Charlie Elphicke MP: Charity campaigning ‘too political,’ *PoliticsHome*, 15th July 2014, accessible at: www.politicshome.com/news/uk/home-affairs/opinion/70450/charlie-elphicke-mp-charity-campaigning-too-political

“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.”⁵⁷

CSOs welcomed Ms Greening’s positive words, and it is hoped that they more accurately reflect the role of civil society organisations in the UK, and the Government’s attitude towards them. 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.

⁵⁷ 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 16th February 2016, accessible at: www.gov.uk/government/speeches/uk-social-mobility-lessons-learnt-from-international-development

8) *Public attitudes towards advocacy*

It is perhaps surprising to note that all of the heightened debate around civil society advocacy in politics and the media takes place despite any real concerns emanating from the public. We contend that crackdowns on civil society advocacy are driven neither by the presence of a problem that needs addressing, nor demand from the public.

Research carried out by CAF finds strong support for civil society advocacy. When asked about who is best placed to speak up on behalf of disadvantaged people to government to influence government policies, 84 per cent of respondents said ‘charities specialising in these areas,’ the most popular response by some distance. By comparison, the second and third most popular responses were ‘councillors’ (31 per cent) and ‘MPs’ (27 per cent.)

When asked who they trust to speak up for disadvantaged people, support for civil society 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).

In addition, [research carried out by CAF in 2015](#) found 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 civil society advocacy among MPs.⁵⁸ There is consistency of support for this statement amongst both Conservative (60 per cent) and Labour (71 per cent) voters, and the discrepancy between politicians commenting on civil society advocacy and the public on this issue is noteworthy.⁵⁹

Further [research carried out by nfpSynergy](#) has found that 63 per cent of the public think it is acceptable for a CSO to challenge government policy, with 57 per cent thinking it is acceptable for CSOs to criticise government or local authorities that commissioned them to provide services. Whilst this data does not take into account the way in which a CSO is funded, it is clear that public support for the principle of civil society advocacy remains strong.⁶⁰

Given that so many people believe that CSOs are both best placed and most trusted to speak up for disadvantaged people, it is surprising and disappointing that the Government has taken action that is likely to curtail the ability of CSOs to provide a voice to their beneficiaries. It is, once again, worth reiterating that even where CSOs are free to advocate

⁵⁸ ‘Under the Microscope: Examining the future of charities in Britain,’ Charities Aid Foundation, September 2015, p. 10

⁵⁹ *Ibid.* p. 12 (Conservative) and p. 14 (Labour)

⁶⁰ ‘Public, media and MPs’ attitudes towards campaigning,’ nfpSynergy, March 2016

and speak up for their beneficiaries, the overall climate created by political and media figures may mean that they refrain from doing so. Indeed, this is why CAF has called for the ability of CSOs to advocate on behalf of their beneficiaries to be enshrined within legislation.⁶¹

⁶¹ *A Stronger Britain*, Charities Aid Foundation (2016)

9) 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 impinges upon the freedoms of 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 CSOs. That a chilling effect on civil society has taken place globally is in itself troublesome; that it is deemed to extend to the UK is of great concern, and this risk to its reputation should encourage the UK Government to rethink its approach.

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 CSOs. CAF urges the Government to reaffirm the principles established in The Compact; to reflect on the valuable contribution that CSOs 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.

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