The anti-advocacy clause: governing or gagging?

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From time to time, my research highlights an emerging development that may pose far-reaching and perhaps unintentionally adverse consequences. One such issue relates to recent measures to reform certain practices relating to lobbying and political patronage. Laudable as the stated aims of reform might be, there are concerns that, taken together, current measures are concentrating governmental influence over the charitable sector through greater regulation.

In part, the problem arises from the need of any government to be seen to be doing something about widely-publicised criticisms of some activities by some charities (see previous postings). The first reflex of government is to extend regulation and restriction where such problems arise, but over a period of time these contribute to a freezing of relations between government and the charitable sector. Just as often, measures that are aimed at outlawing undesirable practices have evolved in an ad-hoc, incremental basis that are frequently announced without any advance consultation or planning, but are rather dependant on a mixture of regulation, lobbying and scrutiny processes that offer little in terms of a consistent or principled approach. The result arguably weakens, rather than strengthens, the public interest.

Policing charitable activism:

A clause which is intended to curtail political 'lobbying' on the part of agencies in receipt of government funding comes into operation in May 2016. Organisations can use other privately-raised funds for the purposes of campaigning (or 'lobbying' as it is characterised here). The exact phrase that will be written into all new and renewed grant contracts will read:

'The following costs are not Eligible Expenditure: Payments that support activity intended 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'.

On the face of it, this measure is intended to ensure that 'taxpayer' (i.e. public) money is spent on frontline services and not on making a case in public about how that work might be improved by legal reform or better use of resources. While the measure appears to make common sense, the motives behind the measure are more complicated.

The origins of this clause can be traced back to research published in June 2012 by the right-wing think-tank, the Institute of Economic Affairs, which has close ties to the right of the Conservative party. Both the language used in the report, entitled 'Sock puppets; how the government lobbies itself and why', and the thinking behind its recommendations are telling. Its key arguments are that;

- State funding turns charities into 'sock puppets', making them less inclined to criticise government policy.
- State-funded NGOs lobbying for causes such as 'foreign aid' are not popular.

[1] This is a personal opinion piece

- NGO lobbying favours big government, higher taxes and greater regulation. In many cases, they call for increased funding for their work.
- The report collapses 'direct lobbying (of politicians)' with public debate, or what they call 'indirect lobbying of the public' into equally illegitimate activities.

The report's concluding recommendation is that:

'Urgent action should be taken, including banning government departments from using taxpayer's money to engage in advertising campaigns, the abolition of unrestricted grants to charities and the creation of a new category of non-profit organisation, for organisations which receive substantial funds from statutory sources'.

The report can be viewed here: http://www.iea.org.uk/publications/research/sock-puppets-how-the-government-lobbies-itself-and-why

Almost four years on, the same precepts and pejorative language have materialised in the press release issued by the Cabinet Office on February 6th, 2016, announcing the implementation of the new clause. The press release can be viewed here: https://www.gov.uk/government/news/government-announces-new-clause-to-be-inserted-into-grant-agreements

The government reasons that the measure creates a prima facie case for 'fairness' by framing it as a matter of the transparent use of public funds. Campaigning (or 'lobbying' as it is comprehensively defined here) is not a public good. There is no threat to public discourse as charities can say what they want on somebody else's funding (but not public funds). Nevertheless, several more nuanced problems remain, such as how the current proposal will lead to more robust and independent critical debate, or how vested interests with deep pockets or access to informal circles of influence will be deterred.

Those behind the clause insist that charities can do this work on their own time and money. Leaving aside the question as to how one can partition the public advocacy from the public service parts of charitable work, it is clear that this clause is meant to elicit self-censorship on the part of individuals and organisations. Conservative governments have past form in bringing in vindictive, if unworkable, clauses like this in the name of the 'public interest'. The now infamous Clause 28 of the Local Government Act 1988, which prohibited the 'promotion of homosexuality' in schools and local authority services, was targeted at what was disparaged by proponents as the 'Gay lobby'. As Stonewall points out, the ambiguity of the clause cast doubt as to whether it could lead to a legally robust prosecution. But, that would be to miss the point, which was that the measure succeeded in pre-emptively silencing schools and local authorities because of the lack of clarity of the measure.

http://lgbthistorymonth.org.uk/wp-content/uploads/2014/05/1384014531S28Background.pdf

The point is echoed in a letter by 130 voluntary sector leaders, who report their 'bitter disappointment' by the minimalist response from the Minister at the Cabinet Office, Matthew Hancock, who advises that individual charities should sort the problem out by talking with their grant managers.

https://www.acevo.org.uk/news/cabinet-office-fail-address-sector-concerns-anti-advocacy

Whose public interest?

Theoretically, as long as civil society bodies like voluntary groups, trade unions, educational and community groups belong to the public domain, they have a moral imperative to speak out. Charities are a critical line of defence for disenfranchised and marginalised groups. Legally, the privilege of charitable status is endowed on bodies whose work is of 'public benefit'. This double-talk about protecting the public and elected representatives from uncomfortable truths can be seen for what it really is.

The potential impact on research:

It is unclear how far the clause will also extend to all publicly funded 'research and development' activities by the research community, Universities and research funding councils. If the clause is activated, academics and other researchers won't be able to bring such issues as prison overcrowding or the impact of spending cuts on drugs, mental health or housing on reoffending to the attention of lawmakers. In the latest edition of the Times Higher Education supplement, Dr Ben Goldacre asks what determines where the line is drawn between presenting one's research to policy makers in the public interest and mere 'lobbying'.

https://www.timeshighereducation.com/comment/ban-academics-talking-to-ministers-we-should-train-them-to-do-it

There is no doubt that government's sense of its relationship with civil society is running in contrary directions. On the one hand politicians exhort charities, researchers and academics to contribute to a robust evidence base for the good of policy-making, and the larger public benefit. On the other hand, government seems to be increasingly selective about what it wants to hear and who it wants to hear from.

Outsource and be damned:

Another 'solution', of course, is to place the potential source of trouble at arm's length. Last month (March 2016) the Crown Commercial Services (under the auspice of the Cabinet Office) quietly announced proposals to tender for a single agency to provide all central government grants to the voluntary sector. The specification indicates a preference for a single contractor to undertake all elements of the process from the design, delivery, assessment, administration and quality control of grant services for voluntary, community and social enterprise.
http://www.civilsociety.co.uk/finance/news/content/21498/government_tenders_to_outsource_all_public_sector_grant_giving

Standardising the grant-giving system is widely seen as the Cabinet Office's response to recent, well-publicised charitable insolvencies, which were partly attributed to failures in grant giving procedures by the Public Administration and Constitutional Affairs select committee.
http://www.publications.parliament.uk/pa/cm201516/cmselect/cmpubadm/433/433.pdf

Presumably, concentrating the entire process of administering and regulating grant giving under to a single body will increase public accountability.