

Oversight Agreement
Between the
Department of Public Expenditure and
Reform
And
Benefacts
2018

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1. Introduction

1.1 Purpose and Scope of the Agreement

The Department of Public Expenditure and Reform provides an annual grant of up to €950,000 to Benefacts under a Funding Agreement for the years 2018 to 2020. Other public bodies may provide further grants. The purpose of this oversight agreement is to set out the terms of the relationship between the Department of Public Expenditure and Reform and Benefacts and to demonstrate that the governance standards under which public funds are spent by Benefacts meet the requirements in the Code of Practice for Good Governance of Community, Voluntary and Charitable Organisations in Ireland (CVC Governance Code) which are aligned with the objectives for good governance set out in the Code of Practice for the Governance of State Bodies and achieve equivalent outcomes in governance.

In particular this oversight agreement will:

1. Provide clarity on the strategic and operational aspects of the organisations' relationship;
2. Establish structured arrangements for communications, reporting and liaison, accountability and governance;
3. Facilitate improved communication, engagement and co-operation between both organisations;

This agreement complements the Funding Agreement (as appended) between the two organisations.

Both organisations will ensure that all relevant staff are familiar with the Agreement and its implications and that all dealings between the two organisations are conducted in accordance with its principles and provisions. The Agreement will be approved by the Board of Benefacts and signed on its behalf by its Chairman and on behalf of the Department by the Assistant Secretary with responsibility for the Funding Agreement in the Department.

1.2 Duration of the Agreement

The duration of the Agreement is for the same period as the Funding Agreement, as appended. The oversight agreement is to be reviewed annually and updated as required.

1.3 Amendments to the Agreement

This Oversight Agreement may be modified to reflect changing circumstances. A necessity for amendments may be prompted by changes in, e.g., legislation, Government/Ministerial priorities, prevailing operating circumstances and/or broader political, economic, financial or related priorities. Where amendments become necessary, the Department will engage with Benefacts to agree the amended Oversight Agreement.

2. Roles and Functions of Benefacts and the Department in relation to this agreement

2.1 Legal Framework

Benefacts is a private, not for profit company limited by guarantee, constituted under the Companies Act 2014. The legal underpinnings of the relationship with the Department are provided by the Funding Agreement. The Funding Agreement (Clause 10) describes the rationale for grant funding and sets out the activities the company is to undertake and the things it is to deliver. The Funding Agreement is equivalent in its purpose and content to the Performance Delivery Agreements put in place for State bodies under the aegis of Government departments. It reflects what is to be delivered by Benefacts in return for the Department's grant.

Given the number of public sector bodies funding the non-profit sector and the high complexity and cost to them of collecting data on the sector, an evident market failure arose through the absence of a mechanism for those bodies to identify, and co-ordinate, their data needs and to specify how that data could be made more useable and available to them at low marginal costs. More useable and lower cost data could reduce oversight costs and support more effective decision-making by freeing staff resources to focus on analysis and other value adding activity. The grant funding supports the identification by public sector bodies of the potential benefits to them of data on the non-profit sector in tandem with development of the means to provide that data.

The Department will periodically review with public sector bodies the perceived value in data on the non-profit sector relative to the grant funding. Any review process will seek information from Benefacts on its activities and the Company will provide such information. Clause 25.1 of the Funding Agreement allows the Minister to terminate grant payments on giving the Company 3 months written notice should it be required to do so by financial constraints or for any other reason, including a material breach of the Funding Agreement. This is understood by both parties to this agreement to provide for where (a) the objectives of the Business and Strategy plan were not achieved (b) where public bodies are sufficiently clear of their data needs and of the market to satisfy those needs through open procurement processes or (c) Benefacts fails to observe its obligations to the Department under the Funding Agreement, including, failure to provide sufficient assurance to the Department that appropriate controls are in place and public funds are being used with probity and in accordance with this agreement.

Benefacts will be free to tender in any future open procurement process for the kind of activities it now engages in or may engage in in the future. Should a contract for services be awarded to Benefacts and the attached Funding Agreement be terminated, this Oversight Agreement will also terminate and the roles and responsibilities will be governed by the procurement contract.

2.2 Operating Environment

The non-profit sector makes up just over 11% of all organisations in Ireland and, in 2017, employed some 158,000 people. It turned over more than €12.1 billion that year, of which some €5.7 billion was government funding. That makes Government the largest single source of funding for non-profit organisations. Given the size and significance of the non-profit sector in Irish society and the importance of public trust in the sector, providing easily accessible data to the public, media and researchers is aimed at increasing transparency and accountability. In addition to public funds, Benefacts receives support from the Ireland Funds. Benefacts works with other non-profit organisations, as well as funders, to establish new ways in which data can be used to promote the

highest standards of governance and transparency in the sector. The operating environment is technical and involves innovation and risk in developing new data services.

2.3 Department of Public Expenditure and Reform

The rationale for the Department's grant funding is to provide for further innovation in promoting public trust and confidence in non-profit organisations, to promote greater transparency in public expenditure and to support greater policy coherence in public policy vis-à-vis the work of non-profit organisations. These policy goals are expressed for example in "Our Public Service – 2020", in the Public Service ICT Strategy and in Government's promotion of greater use of Open Data as part of the strategy for a national data infrastructure. The Department has an interest in enhancing economic and policy evaluation capacity across the Civil Service and in promoting data as an enabler for evidenced-based policy making. Better data assists Government in designing and delivering better services that support the goal of achieving the best possible outcomes for the public. Compliance overheads for non-profit bodies can be reduced by simplifying compliance and developing digital means to file the data in the first place ('Digital First'). The Department's investment in the project to date therefore reflects a long-term perspective that comes with some risks, as the potential benefits will involve systemic changes in how public sector bodies use data and how the sector responds to greater transparency.

The Department convenes a Project Advisory Committee. Its membership includes a representative from the Ireland Funds and senior representatives with responsibility *inter alia* for grant administration and ICT functions in government departments and agencies. Its purpose is to monitor the project, the implementation of the company's Strategy and Business Plan and compliance by Benefacts with the terms of the Funding Agreement. Members also share knowledge and experience of other parallel initiatives to guide the work of Benefacts in delivering on the Funding Agreement.

2.4 Benefacts

Benefacts was established in November 2014. It is a non-profit company, limited by guarantee without share capital, CRO 553387. Its Board of Directors are appointed by the members of the company, and drawn from the non-profit, philanthropic and professional services sectors. Benefacts is an independent, non-governmental organisation. It does not represent any sectoral interest, and has no regulatory powers or responsibilities.

Benefacts' purpose is to create and expand a database and to provide free access, through its website, to data on non-profit organisations derived from publicly-available sources and to explore the range of potential uses of that data. In this way it is intended to increase transparency and public trust and to assist government and the sector. The Benefacts database is made up of more than 20,000 civil society organisations in Ireland. Besides charities, this includes philanthropies, sports bodies, political, human rights and advocacy organisations, business and trade associations.

To date Benefacts has been co-funded by the Department of Public Expenditure and Reform, the Atlantic Philanthropies, and the Ireland Funds. The company also has as an object the promotion of the use of the data in order to establish a self-funding business model for the Company. There is no current prospect for the company to provide data on the non-profit sector without public funds.

2.5 Benefacts' Strategy and Business Plan

Benefacts' Strategy and Business Plan 2018-2020 forms an essential part of the Funding Agreement with the Department. The Company can use the grant from the Department only to contribute to for the delivery of its Strategy and Business Plan 2018-2020 and in line with the indicative budget contained in it. The budget provides for certain of Benefacts core costs to be met by sources other than the Department. The grant cannot be used for any other purpose without the prior written consent of the Minister. As noted earlier, the Project Advisory Committee monitors implementation of the Plan and compliance with the delivery of the project in accordance with the Funding Agreement.

2.6 Remuneration and Superannuation

Remuneration and superannuation are matters for the Board of the Company. The Board of the Company will be cognisant of the sources of its funding, including public money from the Department and other public bodies. The company will provide details of pay levels in the company, while respecting confidentiality and privacy, on request to the Department and will publish the profile of higher-paid employees in its annual report under the provisions of FRS102. Proposed changes to the remuneration and superannuation payments that depart from the indicative budget must be notified in advance to the Department. Proposed revisions to levels of remuneration and superannuation should be consistent with overall pay and budget considerations. In considering changes to remuneration and superannuation, a detailed business case setting out the rationale for the proposal will be provided to the Department. Such a business case will provide information on any changes to the role, skills required and the reasons for these. Pay relativities with other staff and within the non-profit sector will be examined. The Board will take account of the Department's views in considering proposals regarding remuneration and superannuation.

3. Corporate Governance

3.1 Code of Practice for Good Governance of Community, Voluntary and Charitable Organisations in Ireland (CVC Code)

Benefacts applies the best practice framework for good governance provided by the 'Code of Practice for Good Governance of Community, Voluntary and Charitable Organisations in Ireland' (CVC Code). This is a voluntary code provided free to all not-for-profit groups to encourage them to check themselves against best practice in the governance of their affairs. The CVC Code has been developed by a working group made up of representatives of eight national organisations and one private sector consultancy who have worked on a voluntary basis on the process. The members have a wide base of contact with the whole Community, Voluntary and Charities (CVC) sector.

The Governance Code is based on five principles:

- (i) leading the organisation,
- (ii) exercising control over the organisation,
- (iii) being transparent and accountable,
- (iv) working effectively,
- (v) behaving with integrity.

Each of these applies to every non-profit, although the Code offers three 'classes' or degrees of adoption depending on size: Benefacts is considered a "type C" organisation. The main

characteristics of these organisations is that the people who sit on the board focus solely on their governance/oversight role, delegating all management and operational duties to the staff. There is a clear division between the governance role of the board and the management role of staff.

The CVC Code is accompanied by a checklist to aid non-profit organisations in documenting their adoption of its provisions, which is done on a 'comply or explain' basis and reported on by the Company in its annual report. The checklist and a report on compliance with the code is reviewed annually by the Board of Benefacts and shared with the Department.

The Department is satisfied that, in tandem with additional requirements contained in this Oversight Agreement, the requirements of the CVC Code are sufficiently aligned with the principles of the Code of Practice for the Governance of State Bodies so as, if implemented fully, to achieve equivalent outcomes in terms of corporate governance in respect of:

1. The Role of the Board
2. Role of the Chairperson
3. Role of Board Members
4. Board Effectiveness
5. Risk management, Internal Control, Internal Audit and Audit and Risk Committees

3.2 FRS 102

The directors of Benefacts, as is the case for directors of all private companies, are required to conform with the reporting and disclosure standards of Financial Reporting Standard (FRS) 102, and specifically to provide for reserves in a prudent way and report this policy in their financial statements.

3.3 Board Appointments

The Code of Practice for Good Governance of Community, Voluntary and Charitable Organisations in Ireland provides detailed guidance on the recruitment of directors, and the Chairperson and Directors are accountable to the members of the company. In line with provisions of the code all vacancies on the Board of Benefacts are filled after applications have been publicly invited.

3.4 Additional Information

Benefacts accepts that the Accounting Officer of the Department must satisfy himself that the requirements of the CVC Code, the Funding Agreement and this Oversight Agreement are being properly implemented and observed. The Accounting Officer, or his Department, may from time to time request information/evidence that the Company is in compliance with the CVC Code. Benefacts is committed to complying with all reasonable requests from the Department to supply additional information on a timely basis.

The Company and the Department will consider and agree whether any reporting requirements, additional to the CVC code and consistent with the Company's status as a private company limited by guarantee, are necessary to ensure that the extent of financial disclosure by the Company is sufficient to ensure a similar level of transparency and accountability as intended by the "Code of Practice for the Governance of State Bodies". The Company has documented its governance policies and standards, including its Code of Conduct for Board Members, in equivalent detail to that required by the Code of Practice for the Governance of State Bodies, where relevant.

3.5 Governance Statement and Chairperson's Report

The Directors will prepare a Governance Statement for inclusion in the Company's Annual Report. This will:

- (a) meet all of the requirements of FRS102, which is the Financial Reporting Standard relevant to Benefacts under the Companies Act, 2014,
- (b) report on the company's compliance with the CVC Code, and explain the reasons why it does not comply with any aspects of the Code

Along with the Company's Annual Report, the Chairperson, on behalf of the Board of Directors, will, by letter addressed to the Minister, report on the company's compliance with the Code of Practice for the Governance of State Bodies, on a comply or explain basis although Benefacts is not a State body.

3.6 Statutory Obligations

Benefacts is committed to complying with all relevant Statutory Obligations that affect the corporate governance of the Company, including data protection. Any breach of data protection rules will be disclosed and explained immediately to the Data Protection Commissioner and to the Department (

3.7 Public Procurement

As provided for in the Funding Agreement, Benefacts is committed to procuring goods and services in full compliance with Public Procurement Rules. Any departure from those rules will be disclosed and explained immediately to the Department.

3.8 Legal Settlements

Where Benefacts concludes any legal settlement, details of that settlement may be disclosed to the Minister where required by law or where a public interest in such disclosure is identified.

3.9 Codes of Conduct and Ethics

Benefacts publishes its code of conduct for its directors and as a matter of compliance with the CVC Governance Code. The company will, with the Department, identify any areas where the code needs further action.

3.10 Accounting and Systems of Internal Financial Control

As provided for in the Funding Agreement, Benefacts will supply the Department with a copy of its Internal Financial Policies & Procedures and provide financial data reasonably requested to assist the Department in understanding the company's expenditure.

3.11 Freedom of Information

The Minister may, at his discretion, make an Order under S.7 of the Freedom of Information Act 2014, designating the Company as an FOI Body.

3.12 Roles and Responsibilities

The Company will provide the Department with a document setting out the roles and responsibilities of the Managing Director and the Chairperson.

4. Monitoring and Reporting Arrangements

The monitoring, reporting and liaison arrangements of the Agreement are set out below.

4.1 Regular Reports and Liaison

The Department's official with responsibility for liaison with the company, or any other person designated by the Department from time to time, will be the primary contact point for communications between the company and the Department.

4.2 Monitoring of Grant Payments and Expenditure

A checklist, as provided at Appendix 2, is used to provide assurance on adherence to Grant Circular 13/2014 at the start of each year and signed by an official in the Department and the Head of Finance in the Company. The grant drawdown process requires the provision of documents for each payment request as set out in Appendix 3. The Department's official with responsibility for liaison with the company will meet the company's Head of Finance quarterly to review the Grant Circular Checklist and Grant drawdown process.

4.3 Progress Reports

Progress Reports will be provided by Benefacts to the Department quarterly. These reports will cover:

- Progress in delivering the project, as set out in Clause 10 of the Funding agreement, as assessed by the Project Advisory Committee.
- Compliance with this oversight agreement, including details of compliance with the 'Type C' checklist under the CVC Governance Code.
- The Financial Plan of the company.
- Early warning of any potential changes to the above.

4.4 Senior Level Communication

In addition to regular meetings and ongoing dialogue between the management in the relevant areas of responsibility in the two organisations, and in addition to up to eight meetings annually of the Project Advisory Committee, four meetings will be held during the year to review the progress reports at 4.3. The meetings will be held quarterly and attended by the Company's Managing Director and the responsible Principal Officer in the Department. The end of year meeting will be attended by the Company's Chairperson and the responsible Assistant Secretary in the Department.

The meetings will assess:

- Progress in delivering the project as per the Company's Business Plan and Strategy
- Performance against the Company's Financial Plan
- Compliance with this oversight agreement
- Review of governance standards with respect to the 'Type C' checklist of the CVC Governance Code
- Progress in including additional reporting requirements as per 3.4

The meetings will agree any changes to the Company's Business Plan, Strategy, Financial Plan and this Oversight Agreement that have been approved by the Board and any remedial action required to implement those plans and this agreement.

The end year meeting will additionally include a review of broader policy in relation to the non-profit sector and how data on the sector can support that policy.

4.5 Exceptional Communication

Should an issue arise for the company that is not covered by the Funding Agreement and require consideration at a senior level, Benefacts will submit a report setting out an analysis of the issue, signed by the Chairperson. This will ensure that the issue is dealt with at the appropriate level and with appropriate urgency.

4.6 Accounts and Audit

Benefacts will:

- Ensure that proper accounts are maintained and are available for audit;
- Submit its draft unaudited accounts not later than two months after the end of the relevant financial year
- Provide the Department with a copy of its draft unaudited accounts not later than two months after the end of the relevant financial year
- Ensure the financial statements are audited by an independent auditor within the relevant timeframe.

As provided for in Comptroller and Auditor General (Amendment) Act 1993 8 (1)(C) the Office of the Comptroller and Auditor General may carry out an inspection of the books and accounts of the Company, so long as 50% or more of its funding is derived from State sources.

4.7 Annual Report

The company's annual report will be adopted by the members of the Company, presented to the Minister by 30 April each year and published on the company's website.

4.8 Statement of Internal Control and Comprehensive Report to the Minister

In providing the Minister with the Company's Annual Report, the Directors will provide a Statement on Internal Control. The Statement will tailor the format set out in Appendix D of "Code of Practice for the Governance of State Bodies: Business and Financial Reporting Requirements" to reflect the size and operations of the company and the fact that it is not, itself, a State Body. The Statement will provide a full understanding of the procedures, as put in place by the Board to provide effective internal control and highlight any weaknesses in the internal control system during the reporting period.

The Chairperson will submit annually, a comprehensive report to the Minister consistent with the reporting requirements set out in paragraph 1.9 of *Code of Practice for the Governance of State Bodies – Business and Financial Reporting Requirements*, tailored to reflect the size and operations of the company and the fact that it is not, itself, a State Body. The Chairperson's comprehensive report to the Minister is a confidential letter on behalf of the Board to the Minister. It includes information on items such as affirmation that Government policy is being complied with, significant post balance sheet events, a statement on the system of internal control and an outline of all commercially significant developments affecting the company in the preceding year.

4.9 Changes to the Indicative Budget

Based on a materiality threshold €10,000, the Company will notify the Department of changes in the indicative budget forming part of the Funding Agreement, including projected income, and as part of regular financial reviews with the Department.

It is noted that the provisions of paragraphs 4.6 and 4.7 are already substantially provided for in the Funding Agreement and are included here for completeness.

5. Agreement Approval



Dr. Lucy Fallon-Byrne, Assistant Secretary, Department of Public Expenditure and Reform



Mr. Tom Boland, Chairman, Benefacts Board.