



Llywodraeth Cymru
Welsh Government

Ms Elen de Lacy
ASH Wales
2nd Floor
14-18 City Road
Cardiff
CF24 3DL

16th January 2014

Dear Ms de Lacy

Award of Funding in relation to ASH Wales

1. Award of Funding

- (a) We are pleased to inform you that your Application has been successful and funding of up to £407,550 (*Four hundred and seven thousand five hundred and fifty pounds*) (“the Funding”) is awarded to you for the Purposes (as defined in Condition 4(a)).
- (b) The Funding relates to the period 1st April 2014 to 31st March 2017 and must be claimed in full by 31st March 2017 otherwise any unclaimed part of the Funding will cease to be available to you.
- (c) If you have any queries in relation to this award of Funding or the Conditions please contact the Welsh Government Official who will be happy to assist you.

2. Statutory Authority and State Aid

- (a) This award of Funding is made on and subject to the Conditions and under the authority of the Minister for Health and Social Services one of the Welsh Ministers, acting pursuant to sections 60, 70 and 71(1) of the Government of Wales Act 2006 and sections 1, 2 and 3 of the National Health Service (Wales) Act 2006.
- (b) You must comply with the European Commission’s State Aid Rules.

3. Interpreting these Conditions

Any reference in these Conditions to:

'you', 'your' is to ASH Wales, 2nd Floor, 14-18 City Road, Cardiff, CF24 3DL. CRN 06030302 (registered charity number 1120834).

'we', 'us', 'our' is to the Welsh Ministers;

'Application' is to your proposal dated 17th September 2013.

'Welsh Government Official' is to

[name redacted]
Health Improvement Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Tel: [information redacted]
Email: [name redacted]@wales.gsi.gov.uk

or such other Welsh Government official as we may notify you.

'Project Manager' is to

Ms Elen de Lacy
ASH Wales
2nd Floor
14-18 City Road
Cardiff
CF24 3DL

Tel: 029 20641101
Email: elen@ashwales.org.uk

'Conditions' is to the terms and conditions set out in this letter;

'Schedule' is to the schedules attached to this letter;

'Costs Incurred' is to the cost of goods and services you have received regardless of whether you have paid for them by the date of your claim.

'Notification Event' is to any of the events listed in Schedule 3;

'State Aid Rules' is to the rules set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union (or in those Articles that may succeed Articles 107 to 109), secondary

legislation such as frameworks, guidelines and block exemptions produced by the European Commission derived from Articles 107 to 109, case law of the European Courts and decisions of the European Commission regarding the application of Articles 107 to 109; and

any legislation will include all amendments to and substitutions and re-enactments of that legislation in force from time to time;

4. What you must use the Funding for

- (a) You must use the Funding solely for the purposes set out in Schedule 1 (the “**Purposes**”).
- (b) You must achieve the targets and outcomes set out in Schedule 2 (the “**Targets**”).
- (c) Any change to the Purposes or Targets will require our written consent which must be obtained from us in advance of implementing any change. Please note that we are not obliged to give our consent but we will consider all reasonable written requests.
- (d) You must not use any part of the Funding for: (1) party political purposes; (2) the promotion of particular secular, religious or political views; (3) gambling; (4) pornography; (5) offering sexual services; (6) purchasing capital equipment (other than as specified in the Purposes); (7) your legal fees in relation to this letter; (8) Costs Incurred or costs incurred and defrayed by you in the delivery of the Purposes prior to the period referred to in Condition 1 (b); (9) any kind of illegal activities; or (10) any kind of activity which in our opinion could bring us into disrepute.

5. Funding Pre-Conditions

- (a) We will not pay any of the Funding to you until you have provided us with the following information and documentation:
 - (i) documentary evidence that the signatories who have signed this letter on your behalf are duly authorised to do so;
- (b) Where you are required to provide information and documentation to us as evidence that you have satisfied a particular pre-condition, Condition or in support of a claim, the information and documentation must be in all respects acceptable to us. We reserve the right to reject any information and documentation which is for any reason not acceptable to us.

6. How to claim the Funding

- a) The Funding will be paid to you quarterly in advance based on your estimated expenditure.
- b) You must claim the Funding promptly. We reserve the right to withdraw any part of the Funding that you do not claim promptly.
- c) You must submit your claims for payment of Funding to the Welsh Government Official.
- d) You must use our current claim pro-forma (which is available from the Welsh Government Official) and attach the following information and documentation to each claim:
 - i) details of your actual expenditure for the previous quarter; and
 - ii) details of your estimated expenditure for the next quarter; and
 - iii) details of all surplus funding held by you at the end of the previous quarter; and
 - iv) details of progress against the targets outlined in schedule 2; and
 - v) confirmation that you are operating in all respects in accordance with your constitution.
- (e) Any unspent Funding from the previous quarter will be offset against the next payment of Funding even if this results in you not receiving the total amount of Funding.
- (f) We will aim to pay all valid claims as soon as possible and typically within 28 days.

7. Your general obligations to us

You must:

- (a) safeguard the Funding against fraud generally and, in particular, fraud on the part of your management, employees and/or suppliers and notify us immediately if you have reason to suspect that any fraud has occurred or is occurring or is likely to occur. You must also participate in such fraud prevention initiatives as we may require from time to time.
- (b) comply with all applicable laws or regulations or official directives whether derived from domestic, EU or international law;

- (c) put in place and maintain adequate insurances to cover against the risks which may arise in connection with any property or any activity undertaken in delivery of the Purposes. We reserve the right to require you provide proof of your insurance;
- (d) co-operate fully with the Welsh Government Official and with any other employee of the Welsh Government or consultant appointed by us to monitor your use of the Funding and your compliance with these Conditions.

8. Declarations

You declare that:

- (a) you have the power to enter into and to perform the obligations set out in these Conditions and you have taken all necessary action to authorise the entry into and performance of the obligations under these Conditions;
- (b) no litigation or arbitration is current or pending or, so far as you are aware, threatened, which have or could have an adverse effect on your ability to perform and comply with any of these Conditions;
- (c) the information contained in your Application is complete, true and accurate;
- (d) you have disclosed to us all material facts or circumstances which need to be disclosed to enable us to obtain a true and correct view of your business and affairs (both current and prospective) or which ought to be provided to any person who is considering providing funding to you;
- (e) you have discussed and agreed the Targets with us and you are confident that they are realistic and achievable.

9. Notification Events and their consequences

- (a) You must notify us immediately if a Notification Event has occurred or is likely to occur but we also reserve the right to notify you where we believe a Notification Event has occurred or is likely to occur.
- (b) We will seek to discuss the Notification Event with you and to agree a course of action to be taken to address the Notification Event and in doing so we will consider both the seriousness of the Notification Event and whether or not it can be remedied.
- (c) We will be entitled to take any of the actions listed in Condition 9(d) if:

- (i) despite our reasonable efforts we have been unable to discuss the Notification Event with you, or
 - (ii) we notify you that the Notification Event is not capable of remedy, or
 - (iii) a course of action is agreed with you but you fail to follow it, or any conditions attached to it are not met (including without limitation the timescale for such course of action), or
 - (iv) the course of action fails to remedy the Notification Event to our satisfaction.
- (d) If any of the circumstances set out in Condition 9(c) occurs we may by notice to you:
- (i) withdraw the award of Funding; and/or
 - (ii) require you to repay all or part of the Funding immediately; and/or
 - (iii) suspend or cease all further payment of Funding; and/or
 - (iv) make all further payments of Funding subject to such conditions as we may specify; and/or
 - (v) deduct all amounts owed to us under these Conditions from any other funding that we have awarded or may award to you; and/or
 - (vi) exercise any other rights against you which we may have in respect of the Funding.
- (e) All repayments of Funding must be made to us within 28 days of the date of our demand. You must pay interest on any overdue repayments at a rate of 1.5% per annum above the Bank of England base rate from time to time or at such other rate as may be required by the State Aid Rules. Interest will accrue on a daily basis from the date the repayment is due until actual repayment of the Funding, whether before or after judgment. You must pay the interest together with the overdue repayment.

10. Monitoring Requirements

You must:

- (a) provide us with such documents, information and reports which we may reasonably require from time to time in order for us to monitor your compliance with the Conditions
- (b) meet with the Welsh Government Official and such other of our representatives as we may from time to time reasonably require.
- (c) ensure that the Project Manager (or such other person as we may agree) attends all meetings with the Welsh Government Official.

11. Audit Requirements

- (a) You must:
 - (i) maintain clear accounting records identifying all income and expenditure in relation to the Purposes;
 - (ii) without charge, permit any officer or officers of the Welsh Government, Wales Audit Office or European Commission at any reasonable time and on reasonable notice being given to you to visit your premises and/or to inspect any of your activities and/or to examine and take copies of your books of account and such other documents or records as in such officer's reasonable view may relate in any way to your use of the Funding. This undertaking is without prejudice and subject to any other statutory rights and powers exercisable by the Welsh Government, Wales Audit Office or the European Commission or any officer, servant or agent of any of the above;
 - (iii) retain this letter and all original documents relating to the Funding until we inform you in writing that it is safe to destroy them;

- (b) Under paragraph 17 of Schedule 8 to the Government of Wales Act 2006 the Auditor General for Wales has extensive rights of access to documents and information relating to monies provided by the Welsh Government. He and his officials have the power to require relevant persons who control or hold documents to give any assistance, information and explanation that they may require; and to require those persons to attend before them for such a purpose. The Auditor General and his staff may exercise this right at all reasonable times.

12. Third Party Obligations

- (a) Nothing in the Conditions imposes any liability on us in respect of any liability incurred by you to any third party (including, without limit, employees and contractors).

- (b) You must indemnify us against any liabilities, claims, proceedings, demands, losses, costs and expenses suffered or incurred by us directly or indirectly arising as a result of or in connection with any failure by you to perform fully or in part any obligation you may have to a third party.

13. Intellectual Property Rights & Publicity

- (a) Nothing in these Conditions transfers to us any rights in any intellectual property created by you as a result of the Purposes.
- (b) You must acknowledge our support on all publicity, press releases and marketing material produced in relation to the Purposes. Such acknowledgement must be in a form approved by us and must comply with the Welsh Government's branding guidelines.
- (c) You agree that from the date of this letter until 5 years from the date of the final payment of Funding we may include details about your organisation and business, the Funding and the Purposes in Welsh Government promotional materials and you further agree to cooperate with our reasonable requests to achieve the production of such materials.

14. Access to Information

- (a) You acknowledge that we are subject to the requirements of the Code of Practice on Access to Information published by the Welsh Government (the "Code"), the Freedom of Information Act 2000 (the "FOIA"), the Environmental Information Regulations 2004 (the "EIR") and the Data Protection Act 1998 (the "DPA").
- (b) You acknowledge that we are responsible for determining in our absolute discretion whether:
 - (i) to disclose any information which we have obtained under or in connection with the Funding to the extent that we are required to disclose such information to a person making a disclosure request under the FOIA or the EIR; and/or
 - (ii) any information is exempt from disclosure under the Code, the FOIA or the EIR.

15. Buying Goods and Services

You must buy all goods and services required for the Purposes in a competitive and sustainable way so as to demonstrate that you have achieved best value in the use of public funds.

16. Giving Notice

- (a) Where notice is required to be given under these Conditions it must be in writing (this does not include email but may include a letter attached to an email) and must prominently display the following heading:

“Notice in relation to the ASH Wales Funding”.

- (b) The address and contact details for the purposes of serving notice under these Conditions are as follows

You: the Project Manager at the address stated in Condition 3.

Us: the Welsh Government Official at the address stated in Condition 3.

- (c) A notice will be deemed to have been properly given as follows:-

Prepaid first class post: on the second working day after the date of posting.

By hand: upon delivery to the address or the next working day if after 4pm or on a weekend or public holiday.

By email attachment: upon transmission or the next working day if after 4pm or on a weekend or public holiday.

17. Equal Opportunities

You must apply a policy of equal opportunities as employers, as users of volunteers, and as providers of services, regardless of race, gender/gender identification, sexual orientation, religion and belief, age or any disability.

18. Welsh Language

Where the Purposes include or relate to the provision of services or written materials (including signage and information published online) in Wales, they must be provided in Welsh and English, unless it would be unreasonable or disproportionate to do so. Guidance about providing services and written materials in Welsh can be obtained from the Welsh Language Commissioner on 0845 6033 221 or by visiting www.comisiynyddygydraeg.org.

19. Sustainability

Your use of the Funding must (where reasonably practicable) meet the Welsh Government’s current agenda for sustainable development and the environment.

20. Welsh Ministers' Functions

You acknowledge that the Welsh Ministers have a range of functions which will continue to accrue and be amended and that decisions in relation to each such function are obliged to be taken in the light of all relevant and to the exclusion of all irrelevant considerations. You agree that nothing contained or implied in , or arising under or in connection with, these Conditions will in any way prejudice, fetter or affect the functions of the Welsh Ministers or any of them nor oblige the Welsh Ministers or any of them to exercise, or refrain from exercising, any of their functions in any particular way.

21. General

- (a) If at any time any of these Conditions is deemed to be or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.
- (b) No failure or delay on our part to exercise any power, right or remedy under these Conditions will operate as a waiver of any such power, right or remedy or preclude its further exercise or the exercise of any other power, right or remedy. The powers, rights or remedies hereby provided are cumulative and not exclusive of any powers, rights or remedies provided by law.
- (c) Any amendment or variation to these Conditions must be in writing and signed by us and you in the same manner as this letter.
- (d) You may not assign or otherwise dispose of in any way your rights, benefits, obligations or duties under these Conditions.
- (e) Conditions 7, 9, 11, 13, 14, and 21(e) and such other Conditions which by implication need to continue in force beyond the final payment of Funding will so continue in full force and effect.
- (f) The award of the Funding is to you alone and no one else is entitled to make any claim in respect of the Funding or seek to rely on or enforce any of these Conditions.
- (g) These Conditions are to be governed by and construed in accordance with the laws of Wales and England as applied in Wales and the parties hereto submit to the exclusive jurisdiction of the courts of Wales and England.

22. How to accept this offer of Funding

- (a) To accept this award of Funding you must sign and return a copy of this letter to the Welsh Government Official. None of the Funding will be paid to you until we have received your signed letter.
- (b) We must receive your signed letter within 28 days of the date of this letter, or this award of Funding will automatically be withdrawn.

Yours faithfully

Signed by [name redacted]

under authority of the Minister for Health and Social Services
one of the Welsh Ministers.

SCHEDULE 1 The Purposes

The Purpose of the Funding is to contribute towards the core running cost of ASH Wales in supporting the delivery of the Tobacco Control Action Plan, including providing third sector leadership, engagement with young people on tobacco prevention, contributing towards the reduction of smoking prevalence levels and contributing towards reducing the exposure to second-hand smoke.

Eligible Costs	Value (£)		
	2014-15	2015-16	2016-17
Staff Salaries	£109,105	£109,105	£109,105
Professional Development and Training	£900	£900	£900
Travel and Subsistence	£2,400	£2,400	£2,400
Premises costs	£11,450	£11,450	£11,450
Telephone, internet and IT	£3,500	£3,500	£3,500
Equipment Hire	£700	£700	£700
Accounting Fees, Bookkeeper	£1,000	£1,000	£1,000
Insurance	£490	£490	£490
Research and Monitoring	£305	£305	£305
Welsh Translations	£1,400	£1,400	£1,400
Membership and Subscriptions	£450	£450	£450
Printing, postage and stationary	£2,350	£2,350	£2,350
Venue hire, WTHN Refreshments	£1,800	£1,800	£1,800
Total	£135,850	£135,850	£135,850

SCHEDULE 2 The Targets

Description of the Target	Date by when it should be achieved?	Evidence required
To attend the Tobacco Control Delivery Board. Reporting progress against actions contained within the Tobacco Control Delivery Plan. Feedback views from the third sector to the tobacco delivery board and vice versa.	31 st March 2017	Minutes of meetings
Liaise with Public Health Wales, Trading Standards, HMRC and Police and Crime Commissioners to raise the profile of illicit tobacco trade.	31 st March 2015	Summary report of the meeting and agreed actions
Set up and manage an illicit tobacco working group to engage partners in tackling the issue of illicit tobacco in Wales	31 st March 2017	Terms of reference of the group, papers and actions from the group.
Support the Welsh Government in the development and implementation of the tobacco retail register – targets to be developed as the work evolves.	To be confirmed	To be confirmed
Ensure the 7 local Tobacco Action Groups across Wales consider priority policy areas, such as illicit tobacco sales, and are included in their action plans	Ensure illicit tobacco is written into the seven local plans – 31 st March 2016	Copies of the tobacco action plans
Hold three annual Wales Tobacco or Health Network.	<p>First meeting to cover smokefree homes – 31st March 2015</p> <p>Second meeting to cover niche and developing tobacco products – 31st March 2016</p> <p>Third Meeting to cover smokefree school and sports grounds – 31st</p>	Minutes of meetings, or agendas and actions from the meetings.

	March 2017	
ASH Wales to expand the Wales Tobacco or Health Network and Wales Tobacco Control Alliance.	Recruit 10 new members for the Wales Tobacco or Health Network and 2 new organisations for the Wales Tobacco Control Alliance	Details of the new members for the Wales Tobacco or Health Network and Wales Tobacco Control Alliance
To develop the ASH Wales website into a tobacco control information service.	Develop the research section to include consultation responses and best practice and guidance – March 31 st 2015 Expand the website to be a one stop shop for tobacco briefings, factsheets, consultations, sharing of best practice and research in Wales – March 31 st 2017.	Screenshots of the new website, and examples of materials published on the site.
Lead a research sub-committee which will focus on tobacco control and smoking research.	Meetings to be held quarterly for 2014-15, 2015-16 and 2016-17 with a total of 12 meetings to have been held by 31 st March 2017	Minutes and/or actions from the meetings
Work in partnership with Sustrans, BHF and MIND to support Healthy Hospital and Healthy University projects.	Work with hospitals universities and deliver training to support smokefree hospitals and universities – March 31 2016	Details of hospitals and universities engaged.
Work with local authorities across Wales to implement smokefree playgrounds	All local authorities to have implemented smokefree playgrounds – 31 st March 2015	Confirmation that local authorities have implemented smokefree playgrounds
Develop and implement a time	Develop and	Details of the

banking process for volunteers who donate their time supporting ASH Wales activities	implement process by 30 th September 2014.	process.
Welsh Government officials and ASH Wales will develop RBA indicators to support the performance management during the grant award	RBA indicators to be developed by June 30 th 2014	RBA indicators which will be reported on.

SCHEDULE 3

Notification Events

The Notification Events referred to in Condition 9 are listed below:

1. repayment of any part of the Funding is required under European Law (whether under State Aid Rules or otherwise);
2. you fail to comply with any of the Conditions;
3. you fail to achieve any or all of the Targets;
4. we have made an overpayment of Funding to you;
5. any declaration made in Condition 8 is incorrect in any respect or, if repeated at any time with reference to the facts and circumstances then existing, would be incorrect;
6. any petition is presented or resolution passed or other action taken for your bankruptcy or winding-up or a petition is presented for an administration order against you;
7. a receiver or an administrative receiver is appointed in respect of you or in respect of all or any part of your assets;
8. a moratorium in respect of all or any of your debts or a composition or an agreement with your creditors is agreed, applied for, ordered or declared;
9. you are unable, or admit in writing your inability, to pay your debts as they fall due;
10. any distress, execution, attachment or other process affects any of your assets;
11. a statutory demand is issued against you;
12. you cease, or threaten to cease, to carry on all or a substantial part of your business;
13. there is a change in your constitution, status, control or ownership and/or your external auditors resign;
14. there is a change in your shareholders, directors, trustees or partners;
15. any event occurs or circumstances arise which in our opinion gives reasonable grounds for believing that you may not, or may be unable,

to perform or comply with any of your obligations under these Conditions.

TWO SIGNATORIES ARE REQUIRED

We hereby accept the award of Funding **ASH Wales** and the Conditions relating to the Funding

_____ Signature
An authorised signatory of **ASH Wales**

_____ Name

_____ Job Title

_____ Date

_____ Signature
An authorised signatory of **ASH Wales**

_____ Name

_____ Job Title

_____ Date