

Legal Education Foundation  
Summary of Charity and Election Law  
for Campaigning Charities

Advocating effectively is one of the most important and positive things a charity can do. Charities must do all they can to get their message heard – and sometimes this means using charity resources to advocate for social or political change. It is vital that trustees understand and do not feel inhibited by the law, which actually permits a wide range of campaigning and political activity. So don't hold back, speak out!

This is a summary of applicable rules. If you stick to these, you will avoid difficulties and can concentrate on running an effective campaign. If you want a more detailed explanation of the rules, please see the accompanying, more detailed note: *Campaigning, Political Activity and Election Guide for Charities*.

### **Why campaign?**

It is important that charities justify all of their activities with reference to their charitable purposes (or "objects"). Campaigning is no different. Ask yourself, what do we need to do to achieve our objects? Very often the answer will have something to do with public understanding or public awareness of an issue. Sometimes the answer might involve seeking a change in the law, or trying to change how society does things. These aims (and others like them) might lead you to consider a campaign of some sort.

If you do decide to campaign then you should understand the type of campaign you are undertaking. The Charity Commission defines non-political campaigning as '*public awareness raising and changing public attitudes on a particular issue, as well as activities to change the policy or practice of a business or company*' and political activity '*as any activity which is aimed at securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other bodies*'.

Your campaign may include awareness raising, changing public attitudes, as well as political activity.

### **Decide your approach**

Charities should develop internal policies and procedures around campaigning which reflect how a charity campaigns in practice. Charity campaigns may be initiated by your trustees, the charity's constitutional members or arise from diverse movements of people working together to tackle social injustice.

A campaigning policy can be created that reflects the interaction between different parts of the organisation or movement, the campaigning methodology, along with an overall framework setting out the types of campaigns that have been considered and approved by the trustees.

.A few steps to consider when developing a campaign.

- Make sure the campaign objectives are in line with the charity's objects.
- Record the strategy for the campaign internally, highlighting the use of evidence in the campaign.

- Consider any risk (including reputational) that might be involved, identify, and manage any conflicts of interest and take a careful decision.
- Make sure that any policy on campaigning does not contain requirements that cannot be followed in practice.

The Charity Commission states in its CC9 guidance that a charity should consider the following in relation to a campaign:

- The **strategy** for delivering the campaign
- The **evidence base** for the campaign and justification for the use of resources
- The **duration** of the campaign (which may be ongoing)
- The **cost** of the campaign
- The **benefits** - for example, a change in government approach, greater public understanding, and/or a change in behaviour.
- The **risks** and how to mitigate them, including:
  - that the charity will be drawn into activities outside its purposes with the potential for a misuse of charity funds;
  - breaching of legal/best practice requirements on campaigning;
  - costs and benefits;
  - failure of the campaign to meet objectives;
  - financial and/or reputational risks,
  - whether the campaign risks the independence of the charity;
  - what might be the unintended consequences;
  - the risk that the campaign may not be effective;
  - and any other form of risk that can be identified.
- The ways in which the impact and success of the campaign will be monitored and evaluated.

Ultimately, it is the trustees who are responsible and must appropriately record the decision-making process and policies in line with their duties. Ensuring that the trustees do this, as the end part of the process, will demonstrate that the trustees have taken their legal duties seriously and provides a robust platform for whatever approach to campaigning is decided.

*If trustees take a reasonable decision, based on:*

- (a) *what they think is the best way to advance their objects; and*
- (b) *applicable guidance, as summarised in this note,*

*it is very unlikely that their campaign could be challenged.*

### **Summary of the rules**

Trustees must familiarise themselves with the basic charity and electoral rules around campaigning. There are two sorts of campaigning:

- **Non-political campaigning** involves raising public awareness and understanding about issues important to your charity. It might involve educating people about high levels of saturated fats in certain foods, or it might aim to change the practices of companies whose work harms the environment. It might also involve educating people about, or trying to uphold, the law. *This sort of activity is not restricted. If these activities are helpful to you and your charity, you should document the same and just get on with it!*
- **Political campaigning** aims to change the law, or public policy or influence policies of politicians. It might involve campaigning against a Parliamentary Bill, challenging the action of a NHS Trust, or campaigning for legislation on the cost of living, health or education. *This activity is partially restricted, but fine if you understand and apply the rules set out in this note!*

### **Restrictions on political campaigning – charity law**

Again, this is a summary of the rules. If you want a more detailed explanation, please see our accompanying, more detailed note *Campaigning, Political Activity and Election Guide for Charities*.

- 1) Charities can carry out campaigning and political activity provided that any political activity does not become the reason for the charity's existence or a purpose in itself. *However, as we have said above, trustees can avoid this risk by justifying all campaigns with reference to their objects. Write down this rationale and use it to develop your charity's policy on campaigning. Our more detailed note contains a template campaigning and political procedures policy which may be adapted for this purpose. If you do not already have a social media policy, you should also decide what your charity's stance is on social media and the activities of your trustees, staff and volunteers. You should also consider adopting an external speakers policy, a risk management policy and a data privacy policy.*
- 2) Charities cannot support or campaign for a political party or candidate and must not support or endorse a political party and cannot or give any other resources, for example, in-kind support to a political party, politician or candidate. *However, they can engage with parties or candidates, to explain the charity's policy. If they do this, they must do it in an even-handed way, open to all parties, and avoiding giving the impression that they support or are against any particular parties or candidates. In the run-up to an election, charities can generally (but see the more detailed section later on electoral law) continue to campaign, even where their positions may coincide with,*

*or be more or less similar, to particular political parties. For example, the campaign is one of a series of long-standing similar communications on the same issue.*

- 3) Any campaign must be proportionate and cost effective. It is only legitimate to use all of a charity's resources on campaigning for a limited period of time.
- 4) A charity can campaign using emotive or controversial material, if the evidence suggests that it will be effective and it is factually accurate. *Campaigns of this sort can be highly effective, but they can also carry a higher degree of risk, so weigh the pros and cons, identify risks and plan effectively.*
- 5) Charities can campaign in cooperation with others, but each charity will need a rationale based on their objects (identifying how all funds expended advance their purposes, not those of others); there are also election law restrictions on "joint campaigning" (see below).
- 6) The Charity Commission rightly states in CC9 that trustees should not be overly cautious or risk averse. *Provided they stick to the framework summarised in this note, they should feel free to boldly speak out!*

## **Electoral law**

As we have seen above, charity law permits charities to engage in a wide range of campaigns, even when they are emotive or controversial and in the run up to an election. However, electoral law contains some restrictions which trustees will also need to consider. Again, our accompanying note Campaigning, Political Activity and Election Guide for Charities explains the law and guidance in more detail. This note summarises the main points and, in particular, what charities can do to avoid the need to register with the Electoral Commission.

## **Regulated activities**

If a charity intends to spend more than £10,000 across the UK on public, *regulated campaign activities*, within a *regulated period*, it must notify and register with the Electoral Commission. There are also constituency limits of £9,750 for more localised activity. (Expenditure of £20,000 or more also triggers a more substantial registration and reporting requirement, but we are assuming that readers of this note will want to avoid any registration.)

Activities that can "reasonably be regarded" as intended to

- Promote or procure electoral success (or the opposite) for particular parties or candidates; or
- influence voters to behave one way or another

are likely to meet the test for regulated activity. The regulated period is one year before the election date (applied retrospectively where there is a short-notice election). In respect of the retrospective period, the Electoral Commission states that: '*Where a regulated period is*

*applied retrospectively, any pre-announcement activity will only be regulated if, at the time it was carried out, it could reasonably be regarded as intending to influence voters to vote in a particular way at a relevant election.*’ If there are no upcoming relevant elections, an ongoing campaign on a particular issue is unlikely to be reasonably regarded as intending to influence voters to vote in a particular way.

The Electoral Commission’s draft Code, makes clear that there are a number of factors which will affect its assessment of whether activity is regulated: These are: whether the material could be perceived as a “call to action” (by voters or other actors in the election); the “tone” of communications, their context and timing; and how a reasonable person would perceive the activity. No single factor on its own will determine whether or not a particular campaign activity meets the test.

The obvious difficulty is that the test is based on what can reasonably be regarded as having these effects (not what the organisation’s actual intention is). However, the Code explains the Electoral Commission’s approach and some common sense conclusions can be drawn from it. In general:

- A campaign that involves a call to action to voters to vote in a particular way at an upcoming election is likely to be regarded as promoting electoral success for a particular party or category of candidates.
- A campaign that makes a voter think of a particular political party or category of candidates is likely to be seen as intended to influence voters to vote in a particular way.
- A campaign that starts close to the date of an election, and also ticks the other boxes, is more likely to be reasonably regarded as intending to influence voters.

In practice, you might consider:

- The content of your organisation’s campaign (remember that it is not necessary to name a political candidate or political party for the test to be passed).
- The timing of your organisation’s campaign – will a public facing campaign be run in the regulated period?
- Does the material use disparaging treatment or language, not aimed at developing an audience’s understanding of an issue? Or does material cast a category of candidate or type of policy in a positive light?
- What would an outsider’s perspective be? Would a reasonable person view the campaign content as helping or hurting the chances for election of any particular political party, candidate or groups of candidates?
- The exact ask and content of the communication is as important as its timing.

It is important to remember that it is only expenditure of or above £10,000 that requires notification and/or registration. Expenditure on a wide range of materials is included:

- Production or publication of material made available to the public or a section of the public by any means (e.g. leaflets, reports, adverts, websites, social media etc).
- Canvassing, or market research seeking views or information from members of the public.
- Press conferences, or other media events, organised by or on behalf of the organisation.

- Transport (by any means) of persons to any places with a view to obtaining publicity;
- Public rallies or other public events.
- Associated expenses e.g. premises hire, provision of goods, services or facilities.

### **Joint campaigns**

If you, or someone on your behalf, works with others on a campaign, under a *common plan*, it is your combined expenditure that is relevant. A common plan is essentially where you collaborate with others, according to a plan, in which you carry out regulated activities to achieve a common purpose.

It's therefore necessary to agree and carefully monitor total campaign expenses when working with others. (You might even spend £0, but if your partners collectively exceeded the limit, you would still be caught). However, not all joint working will be caught.

Umbrella organisations won't be caught, unless they enter into a plan (as described above), although Electoral Commission guidance suggests that even minor or apparently unrelated payments to or from umbrella organisations may be caught if there is a common plan between the organisations. A new organisation set up to carry out campaign activity that represents other organisations is not joint working.

#### *Activities that **are** joint campaigning*

Non-party campaigners who engage in the following, non-exhaustive list of activities are **likely** to be joint campaigners:

- A joint advertising campaign, whether digital, electronic or via other means, involving joint leaflets or joint events.
- A co-ordinated campaign; for example where it is agreed which areas are to be covered, which issues raised or which voters targeted.
- Joint working where one party can veto or must approve another party's material.

#### *Activities that **are not** joint campaigning*

Non-party campaigners who engage in the following, non-exhaustive list of activities are **unlikely** to be joint campaigners:

- Endorsing another campaign by allowing your logo/brand to be used without any financial commitment or further involvement.
- Adding your signature to a letter alongside other non-party campaigners without any financial commitment.
- Speaking freely at an event organised by another non-party campaigner without any financial commitment.
- Holding discussions about areas of common interest without coordinating campaign activity.
- Making a donation to another non-party campaigner is not joint campaigning, but there are rules on permitted donations and notional spending.

A common difficulty is when some activity falls under a common plan and some does not. The Electoral Commission states that you should make an honest and reasonable assessment of what is and what's not. A practical solution might be for each member of the joint campaign to agree a high-level circular, guidelines or reach a shared understanding that no member is intending to incur regulated expenditure. Even if a

campaign document or manifesto is signed off by many organisations, the high-level principles could include a commitment to individually branded campaigns and not to incur regulated expenditure, including staff time.

See also the questions on “Opt-ins and Opt-outs” and “Due Diligence” below.

## **Frequently Asked Questions**

### *Can we publish a manifesto as part of our campaigning activities?*

Publication of a manifesto by an organisation has a low risk of being held to breach charity law, provided that the manifesto does not contain wording that could be seen as directly party political. It is important that a manifesto is clearly framed around the next government with a set of specific policy asks in order to bid up all political parties to try and influence the pressure the parties to commit to the policy asks. Provided that your charity does not explicitly compare its views with political parties or candidates and the manifesto doesn't contain calls to action to vote, or overtly promote or disparage a political party, you can be bold and outspoken!

However, a charity cannot appear in a political party manifesto. In 2010, the Charity Commission concluded that the charity *Tomorrow's People* adversely affected its independence and political neutrality by submitting comments to the Conservative Party which were then included in the Conservative party's manifesto. Publishing its regulatory case report into the perceived partiality of the educational charity the Charity Commission advised: "Appearing in the party's manifesto called the charity's independence into question because it can be seen to be an endorsement of the wider policies of the party and consequently the party itself."

### *Can we meet with MPs and PPCs as part of our campaigning activity?*

Meetings with MPs and prospective parliamentary candidates (PPCs) and targeting seats at this stage may be one of the activities that an organisation wishes to carry out. As explained above, Charity Commission guidance requires charities to engage with a cross section of parties. However, the Commission's guidance does also acknowledge that there will be situations where this is not possible or desirable and states that the general principle: "does not mean that all parties have to be represented every time a charity does any work which engages with political parties."

Subject to general risk assessment and overall non-partisanship and evidenced cross party engagement, a charity can hold private meetings with MPs and PPCs. Rationales might be that the PPC is influential within the party as to policy, the candidate is from a mainstream party least obviously aligned with your charity's policy platform, or for the purpose of getting the PPC to sign a pledge to be used after the election. Meetings with PPCs must not state or imply a charity's support for the candidate or party generally. The same principles apply to meetings with the press offices of national political parties, private meetings with key influencers.

Publicising the meeting (e.g. in a photo or a tweet) should be risk assessed, taking into consideration both charity and electoral law, as set out above and particularly in a regulated period. There must be a non-partisan rationale and an impartial approach to voters. It is also important that any engagement does not appear to be piggy-backed or run alongside candidates' campaigns.

### *What are Opt-in and Opt-Outs for members of a coalition or alliance?*

Expressly and carefully “opting out” of certain activities can be a way of managing risk and avoiding the need to register with the Electoral Commission or being caught by the joint campaigning rules. In all cases, charities need to consider whether membership of a campaigning coalition or alliance furthers the charity’s purposes. If it doesn’t, they should also consider withdrawing from the campaign or whether they can opt-out of a specific part of it. An affected charity might either withdraw temporarily from the campaign or ‘isolate’ itself from incompatible activities – for example, by documenting the decision and notifying others that it is not participating in identified activities/expenditure. It might specify that, during the period leading up to the General Election, there is to be no public use of the name and logo of the opted-out member by the joint campaign, on the website or in social media. Alternatively, the campaign can identify the members of the joint campaign who support (opt-into) a campaign once each has signed off on it.

This requires continuous risk assessment and decisions should be recorded carefully. Complete withdrawal from a collaboration may be necessary if reasons to opt-out become significant.

### *What about due diligence on non-charitable and political members of a joint campaign?*

Key questions about potential members of a campaign coalition or potential joint campaign are:

- Are any members intending to register with the Electoral Commission as a non-party campaigner in relation to the relevant issue or another campaign?
- Are any members engaging in targeted expenditure, so that the member is directly campaigning for a political party, even in relation to another campaign? If so, this is likely higher risk and needs to be carefully managed.
- Are any members intending or aiming to help or hinder parties or candidates that hold certain views, even in relation to another campaign? If so, this is likely higher risk and needs to be carefully managed.

Protections and risk management are key and need to be agreed, recorded and implemented, with training, if necessary. Confusion is common when the rules are complex and there is the risk of complaints from third parties.

### *What risk mitigations can an organisation put in place to avoid Controlled Expenditure during a Regulated Period?*

The following risk mitigations can help prevent an organisation from meeting the definition of controlled expenditure:

- Volunteer time is not caught (note that staff time is a controlled expense).
- Private meetings with key influencers (MPs et al) are not caught provided that they are not publicised afterwards (unless risk assessed, noting extra caution particularly close to an election).
- Commenting on legislation - focus on why a Bill should become law, rather than on whether particular parties or candidates support or do not support the Bill or policy.
- Timing activity to co-inside with Parliamentary debates on the Bill, rather than continuing to campaign after the Bill has passed into law.



- Asking members to lobby to support the Bill, and not imply support for a party or candidate.
- Press release directly to the media, not on organisation's website or tweeted.
- Engage with impartial platforms: BBC, ITV, Sky, local radio, anything licenced under the Broadcasting Act, where there is an obligation of impartiality.
- TV adverts, if cleared for broadcast on licenced channels (i.e. not video on demand) will not be caught, as there is a ban on political advertising.

#### *What are the risk areas?*

- Avoid naming or identifying politicians or ministers unless appropriate and linked to a particular event or activity: for example, a Parliamentary Bill, a policy proposal or strategic litigation.
- Comparing the charity's policies with those of a political party and/or scoring manifestos (the Electoral Commission states that this is very likely to be regulated activity, if it is in a regulated period).
- Publicising pledges signed by candidates (the Electoral Commission states that this is very likely to be regulated activity, if it is in a regulated period).
- Avoid hashtags identified with a party or candidate and be very careful when retweeting.
- Think carefully about language associated with particular parties or candidates.
- If political party or candidate adopts your campaign, the independence of your charity must be maintained.

#### **Other laws that may apply**

Consider whether you are using other peoples' data and whether you have legitimate reasons or consent to do that. Advertising law requires that material is socially responsible and does not mislead audiences. If you are critical of any person, consider whether what you are saying is defensible (true, not actually harmful etc) or you could face a claim of defamation. Check that you have the intellectual property rights (licences, ownership etc) of all of the material you are using.

#### **This note**

This note is a summary of the law, which is intended to be read alongside our longer note, Campaigning, Political Activity and Election Guide for Charities (which also explains the context in which it is given). In particular, it is advice written for the Legal Education Foundation. Others should be aware that it makes various assumptions about readers which should be checked carefully in individual cases. We are happy to discuss further.

**Stone King LLP**

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