

Charity Campaigning Guidance in the lead up to the UK Parliamentary General Election

Advice:

There are two areas of law to consider: charity law (Charity Commission, OSCR in Scotland and Charity Commission for Northern Ireland) and election law.

There is additional guidance on elections and referendum with a guidance and/or advice titled "[Lessons learned](#)" from the 2017 elections that was released by the Charity Commission on 29th May.

Important is to document what you are doing and why – focus on how it falls within your charitable objects.

The new guidance from the Charity Commission reiterates a statement that charities should be "tolerant and kind" but this is not reflected in underlying charity law. It may be appropriate for charities to be robust in criticism in their campaigning work where this helps to achieve their charitable objects and does not compromise their political independence.

This Note does not include advice on hustings or campaigning in a local constituency.

Election Law: Political Parties Elections and Referendums Act 2000 (PPERA)

If you engage in regulated election activity (see below) and incur relevant expenditure of over £10k (including staff time) then you will need to register with the Electoral Commission before the General Election.

In terms of what is regulated, the purpose test for the General Election (under PERA) regulates spending on most publicly accessible activities which can be "reasonably be regarded as intended to promote or procure electoral success at any election for:

- one or more particular registered parties (charities are never permitted to do this) ;
- political parties or candidates who support or do not support particular policies, or
- candidates who hold [or do not hold] particular opinions or who advocate [or do not advocate] particular policies or who otherwise fall within a particular category of candidates."
- The purpose test also includes prejudicing the electoral prospects of one party. It is immaterial if a campaign can be seen to reasonably achieve any other purpose as well.
- The Electoral Commission Statutory Code of Practice sets out the following list of non-exhaustive factors that are relevant. 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;
 - 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. It does not matter what your intention is, but how a third party would view it.

- An individual or organisation will usually only have to register with Electoral Commission as a non-party campaigner if they are spending £10,000+ (inc staff time) on public facing communications as part of the campaign
- Anything that is reported by a broadcaster regulated by OFCOM, or in a newspaper does not count as election campaigning and is not subject to election rules, unless it is through paid advertising.
- Closed communication to members or supporters also does not count towards regulated expenditure but communications that are public facing do count.
- These rules apply from a year before the election, but are unlikely to be applied retrospectively for a charity, in most circumstances.

Joint campaigning:

- Where a charity has a '*Common Plan*' with another organisation or charity to carry out regulated activities for a common purpose it is important to consider the spending being undertaken to ensure that the spending limits are not exceeded in aggregate even in one party spends nil or less than the registration threshold.
- There will be a '*Common Plan*' if all four tests below are satisfied:
 - (i) your organisation enters a plan or arrangement with one or more non-party campaigners;
 - (ii) all non-party campaigners involved intend to incur regulated spend in pursuance of that plan or arrangement;
 - (iii) one or more of the non-party campaigners involved actually incurs regulated spend in pursuance of the plan or arrangement and
 - (iv) that plan or arrangement can reasonably be regarded as intending to achieve a common purpose.
- If there is a joint campaign that satisfies the 4 elements above then each party should register if the combined amount is over £10k, even if one party doesn't spend that or any amount.
- The types of activities that **are** likely joint campaigning as part of a *common plan* are:
 - 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.
- The type of activities that are likely **not** joint campaigning as part of a *common plan* are:
 - 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.
 - Holding discussions about areas of common interest without coordinating campaign activity.

- Making a donation to another non-party campaigner is not joint campaigning but may need to be accounted for as a donation or as notional spending.
- A Google document that provides a Q&A on joint campaigning and declaration on organisations not having a joint campaign plan can be accessed [here](#).

Election law and the Charity Commission: requires charities to remain independent from political parties.

- If a campaign is on something that a charity has been doing for some time then generally, you should not ramp up this campaign in response to the election or act in response to the election.
- It is important to link the campaigning work to charitable objects and how the campaign pursues those.
- A charity should risk assess, but generally it can continue to pursue crowdfunding for litigation. However, it should avoid the use of derogatory comments about parties or individual politicians/candidates such as the Prime Minister.
- Stopping promotion of a crowdfunder or pursuit of the litigation is not necessarily neutral. It may be political if the motivation is the assumption that one party in particular will win.
- It is also helpful if there has been a longstanding policy and engagement in the litigation before the announcement of the election.
- A charity should always ensure that it does not do anything that a “reasonable person” might perceive as supporting or opposing any one party or political candidate. A charity must not give general support, endorsement or funding (or other resources) to a political party, candidate, or politician.
- A charity must ensure that any political involvement or contact they have with parties and their representatives over time is balanced (this includes extending invitations to events/ speaker requests to as wide a political spectrum as possible). Please note that there are particular rules on hustings.
- A charity should ensure that it is not used as the vehicle for the expression of the political views of any individual Trustee or staff member.
- Where a policy ask put forward by a charity is adopted by one political party a charity should continue to maintain its political independence. A charity should be especially mindful about how the external communication around the adoption of the policy ask may be perceived.
- There should be a policy from the Trustees on the charity’s approach to elections and political parties.

Risk mitigation for Strategic Litigation:

- Depending on the litigation, a risk mitigation policy should be developed that considers 3 options:

1. Pause all communications for 6 weeks until the end of the election
 2. **Continue with the work (ie communications) but have guidelines around activity**
 3. Register with Electoral Commission as a non-party campaigner – this option involves bureaucracy that requires documentation of staff expenditure and time sheets. Most organisations that register are not charities.
- For option 2 consideration should be given to the communications policy, the policy around use of social media (including personal accounts of staff), mitigation of risk for any staff or trustees standing for election etc.
 - Avoid derogatory comments of candidates, using hashtags that parties are using in their communications or colour schemes/logos (such as red roses), or explicitly comparing parties' policies and manifestos.
 - Put in place a trustee policy for delegation. The board could nominate a small group of trustees to take urgent decisions. This should be done in line with a charity's constitutional provisions.
 - Have a strategy for approach to take if a charity is criticised or a complaint made to the Charity Commission. Should have a rebuttal strategy to demonstrate reasonableness and risk mitigation has been considered.
 - Be mindful of political parties trying to exploit charity activities or endorse/attack that activity. Possible that best option may be to do nothing in this scenario.
 - Assess as the time goes by, keep an eye on developments and adapt risk management throughout. It is likely that immigration will be a key issue during the election and assessment of risk should be considered if this is the case.
 - Document communications/mitigation decisions already made, eg communications with journalists where a decision has been made to make comments in a non-partisan manner.
 - Keep coming back to your charitable objects.