

The General Election – caution over campaigning and media activities

While charity law provides that charities can undertake political activity albeit in a non-partisan way, electoral law means further rules apply in the run up to elections to all organisations that campaign but are not actually political parties or candidates.

The recent announcement that the Electoral Commission has fined Greenpeace and Friends of the Earth for breaking campaigning rules in relation to the 2015 General Election demonstrates that regulators will monitor and enforce the law.

It is especially important to get this right given the current environment charities find themselves in driven by the general public's recent concerns about charities and their activities, ensuing media interest and the subsequent reaction by politicians and regulators.

The position under charity law

The position under charity law is that:-

- a charity *can* carry out campaigning and political activity with a view to furthering or supporting its charitable purposes; **but**
- they must steer clear of any perception of political bias towards any political candidate or party.

The Charity Commission's guidance on campaigning and political activity (CC9 – available [here](#)) defines 'political activity' as aiming to secure or oppose a change in the law or in the policy or decisions of government or other public bodies.

Many charities engage with politicians (i.e. they carry out 'political activity') for a wide range of reasons, even political ones, entirely legitimately, and with a national election to be held in the next few weeks many charities will be speaking out given the opportunity to influence policy offered by the campaign period.

However, charities must be careful to avoid becoming embroiled in the party political debate.

We all see politicians using charity or 'think tank' reports to support or justify their policies and views. This can often create the impression that they have the support of particular people or organisations.

Where charities are asked for a comment or opinion on the day's story an ill-considered comment or response to a journalist can quickly become front page news and lead to the impression of support for, or opposition to, the politician rather than the policy. This may not only be a breach of the law but have a damaging effect on a charity's reputation.

In the current environment where the public and the media have a much more confrontational approach to charities generally and their role in society, we suggest charities need to be even more considered in how they approach campaigning in this period.

Charities should not be deterred from campaigning in an election period, and indeed it may be the most effective time to do it, but they need to be careful of what they say and how they say it. The difficult balance is to ensure any views or comments are focussed on debating the issue or policy and cannot be regarded as support for a party or candidate. Often this is a fine distinction.

The position under electoral law

The Charity Commission has additional guidance ([‘Charities, Elections and Referendums’](#)).

It deals specifically with the period between the announcement of an election and the date on which it is held. It seeks to incorporate [guidance from the Electoral Commission](#) and to cover off electoral law namely the Political Parties, Elections and Referendum Act 2000 and the Transparency of Lobbying, Non Party Campaigning and Trade Union Administration Act 2014 (the Lobbying Act). Its intent is to ensure charities remain independent of party politics and do not break electoral law.

Specifically:

- charities can still promote their chosen policy even if it is similar to a policy adopted by a political party. The charity must be clear it is independent of, and does not support, the particular party
- charities can compare views of candidates provided the intention is to debate the underlying issue. Charities should avoid comparing their view with those of politicians or parties. They are permitted to influence public opinion but not to encourage the electorate to compare the parties’ policies – electors must be left to make their own decisions
- charities can issue a ‘manifesto’ provided it is designed to encourage parties to support particular policies for the benefit of the charity’s beneficiaries rather than to influence voter behaviour
- charities must not support, or oppose, a particular candidate or political party, or assist them financially or otherwise in their campaigns. They must avoid being associated with a particular candidate or political party
- charities can approach candidates, ask for their opinions and invite them to events but only to promote debate rather than to support the candidate or party

Charities must also avoid producing any campaigning materials that, because of their closeness to a candidate or party’s position, might be regarded as part of the politician’s campaign. This would not only breach electoral law but any support for a party political view would breach the Charity Commission’s guidance and probably cause the Commission to take regulatory action to protect trust and confidence in charities as a whole. The Commission issued a case report into 17 complaints in the aftermath of the 2015 Election. In those instances most of the complaints involved inadvertent rather than deliberate use of the charity to support a political message.

Position under the Lobbying Act

The Lobbying Act also requires that organisations (or individuals) that campaign but are not actually political parties or candidates may be required to register with the Electoral Commission where those organisations spend more than £20,000 in England or £10,000 in Scotland, Wales or Northern Ireland on ‘regulated campaign activity’ in a ‘regulated period’.

Briefly, regulated campaign activity is a campaign that:

- can reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates including those who support or don't support particular policies or issues (whether or not it names a political party); and
- is aimed at, seen or heard by, or involves the public or a section of the public (excluding members or "committed supporters" of the organisation)

For a UK parliamentary election the regulated period is usually a year ending on the day of the election so for the 2017 Election the period commenced on the day the election was called (ie Parliament agreeing to waive the fixed term parliament).

Summary

We think the Charity Commission and Electoral Commission are likely to take a firmer line during the current election in part because of their stronger emphasis on trustee responsibility and the media scrutiny of them and the wider sector.

The guidance still leaves areas of uncertainty which is not surprising as there is no clear line between political and party political activities, what is intended to influence someone to vote and who committed supporters are.

Charities and other non-party campaigners should not be put off by this uncertainty but should review all campaigning material or press comment to ensure that it is entirely objective in its analysis of any particular policy, directly justifiable by reference to its own charitable purposes and avoids the perception of supporting a particular political party or candidate.

For further information, please contact:

Andrew Studd
Partner
+44 (0)20 8394 6414
Andrew.Studd@russell-cooke.co.uk

Chris Rowse
Senior associate
+44 (0)20 8394 6438
Chris.Rowse@russell-cooke.co.uk

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