

BRIEFING NOTE: 12 July 2024

The new Labour Government: implications for the charity and voluntary sector

After 14 years of a Conservative government what might Labour's landslide win in the General Election on 4 July mean for the charity and voluntary sector? This note provides a brief initial "headline" summary. We will be releasing more in depth updates following the King's Speech at the State Opening of Parliament on 17 July (at which the King will set out the new Government's legislative timetable) and as and when the new Government tackles its no doubt vast "in-tray".

- **Resetting government's relationship with the sector**

Charities and other voluntary sector bodies have, of course, long been utilised by central and local government as vehicles (with government funding) for delivering services. In addition, they have been increasingly

relied upon for filling in gaps in societal need where government has failed to provide sufficient funding and/or services.

In the run up to the General Election Labour confirmed that there would not be significant additional funding for the sector but it did make a commitment to partner with the sector. Various sector umbrella bodies have over the past week or so urged the new Government to honour this commitment.

For example, the National Council for Voluntary Organisations (NCVO) has said that charities must “have a seat at the table” with the new Labour Government. It is now hoped that the Government will give greater recognition to sector bodies by giving them the opportunity to make their voices heard in a meaningful way when planning new policies and initiatives.

Although it is early days, it appears from Sir Keir’s initial round of Cabinet appointments (see below), that he is taking this commitment seriously.

Remember: charities must comply with the law relating to political activity (and campaigning) when engaging with government

While the hoped for resetting of the sector’s relationship with government is to be welcomed, charities must engage in such a way that is compatible with charity law.

Charity law allows charities to participate in political activity and campaigning with a view to changing or influencing the law, policies or decisions of government provided that certain conditions are met. These are summarised in the appendix to this note.

NCVO/ACEVO Voluntary Sector Manifesto

In the run up to the General Election the NCVO and ACEVO (Association of Chief Executives of Voluntary Organisations) published the Voluntary Sector Manifesto.

It is intended that following the General Election the Manifesto will be used as a practical tool to assist the new Government and the sector to work together *“to make a positive difference.”* The Manifesto also sets out seven particular “Asks” of the new Government to understand and tackle issues affecting the sector.

- **New Cabinet: breadth of sector experience**

Lisa Nandy appointed as Secretary of State for Culture, Media and Sport (DCMS)

At the time of writing, it has not yet been formally announced where the civil society brief (ie that relating to charities and the voluntary sector) will sit. Most recently it has fallen within the remit of the DCMS and this is expected still to be the case given Ms Nandy’s sector experience.

Ms Nandy formerly held positions as Labour’s shadow international development minister and shadow civil society minister. She also has first-hand experience in working in the charity sector: before becoming an MP she worked as a researcher at Centrepoin and as a policy adviser at The Children’s Society.

Minister for Civil Society yet to be appointed

To date, the Prime Minister has not yet appointed all junior ministers and it is not yet clear who will be appointed as minister for Civil Society.

(The former shadow minister for Civil Society, Lilian Greenwood, has been moved to the Department for Transport).

Other Cabinet members with sector experience

Other members of Sir Keir's cabinet have experience of either working in the sector or have held or shadowed the civil society/third sector brief.

These include some familiar faces such as Ed Miliband and new faces such as James Timpson (CEO of the Timpson Group and formerly Chair of the Prison Reform Trust. (James Timpson is not an MP: he has been elevated to the House of Lords to take up his position as Minister for Prisons, Parole and Probation).

• Independent schools to lose VAT exemption on school fees

There was no mention in Labour's 2024 Manifesto that independent schools would lose their charitable status. No doubt Sir Keir does not wish to re-open this thorny topic which was last broached by Tony Blair's Labour government.

The previous Labour government changed charity law by removing the presumption of public benefit (a key criterion of charitable status). This change was made on the premise that it would become more difficult for independent schools to demonstrate that they met the required criteria as set out in new Charity Commission public benefit guidance. The Independent Schools' Council successfully challenged the Commission's public benefit guidance and thus independent schools have managed to retain their charitable status.

However, independent schools are not being left alone completely. In its 2024 Manifesto Labour confirmed its intention to remove the VAT

exemption on independent school fees. This means that the standard rate of 20% VAT will be charged on school fees.

(It is also thought that independent schools may lose the business rates exemption but this is unclear at this stage).

Timing

The change to the VAT regime will require a change in the law. In the run up to the General Election the then Shadow Chancellor, Rachel Reeves, confirmed that the change would be passed into law following a policy announcement in Labour's Autumn 2024 budget. It is expected that the new regime will come into effect in either April 2025 or September 2025.

How might this change affect the level of school fees charged?

Separating out certain components of the educational package

As yet it remains unclear as to whether it would be possible to separate certain components of the overall educational package provided by independent schools (eg accommodation, after school care, school trips, catering, transport) so that VAT would only be charged on certain elements.

Offsetting VAT paid on supplies

Schools may be able to offset the VAT that they pay in respect of supplies purchased (eg utility bills, repairs and maintenance costs and professional fees) against the VAT that it charges in relation to the school fees.

If this is the case, some schools may be in a position to absorb some of the 20% VAT chargeable on fees. For example they might reduce the

VAT exclusive fee before adding the 20% VAT: thus reducing the overall increase in fees to below 20%.

Much will, of course, depend on the financial position of a school and whether it has sufficient reserves to cover fluctuations in costs of VATable supplies purchased by the school.

Use of endowment funds

Some schools may also be able to utilise their endowment funds to provide additional bursaries and scholarships in respect of those pupils whose parents/guardians would not be able to afford the increase in fees.

It will be important, however, to ensure that (a) the terms of any such endowment funds are sufficiently wide to allow them to be used for such purposes and (b) the application of such funds is made in a fair and consistent manner.

Fees in advance schemes

It may be possible to pay school fees in advance of the VAT change but this is a complex area and expert VAT advice should be sought.

School closures?

Many independent schools (particularly smaller schools) will not, however, have sufficient reserves or endowment funds to enable them to absorb the VAT increase in some way. They will have no choice but to pass this on in full. Sadly, this is likely to result in some already stretched parents/guardians having to pull children out of school. This may, in turn, mean that a school has to close as it is no longer financially viable.

Review terms and conditions/parental contract

It will be necessary to check the school's terms and conditions/parental contract before making any changes to the fees payable flowing from the VAT change as this may require the prior consent of the fee payer.

What steps might independent schools take in advance of the change?

1. Undertake a detailed financial analysis. This might include:-
 - a. preparing a breakdown of the various components of the educational package to ascertain on what VAT must be charged;*
 - b. assessing what VATable supplies purchased by the school (input VAT) might be offset against the VAT chargeable on school fees (output VAT);*
 - c. reviewing levels of reserves; and
 - d. reviewing available endowment funds.

**You are likely to require expert VAT advice in this regard.*
2. Review terms and conditions/parental contracts to see if amendments are required. (You may require expert legal advice in this regard).
3. Defer any large capital projects as it may be possible to offset some

VAT paid on supplies. (Again, it is likely that expert VAT advice will be required).

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Please note that this note provides a general summary only and it does not constitute legal advice. It is recommended that specific advice is sought in relation to the particular facts of a given situation.

APPENDIX

Charities and political activity

Charity Commission guidance

The general legal position is set out in the Charity Commission's detailed guidance CC9 entitled *Campaigning and political activity guidance for charities* (last updated 7 November 2022) and in its "5 minute" guide on this subject (12 October 2022):

<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9/speaking-out-guidance-on-campaigning-and-political-activity-by-charities>

<https://www.gov.uk/guidance/political-activity-and-campaigning-by-charities>

General principles

In summary, charities may participate in political activity and campaigning with a view to changing or influencing the law, policies or decisions of government provided that such activity:

- is in furtherance of the charity's objects;
- is not party political;
- does not jeopardise the charity's independence;
- does not become an end in itself (or in other words, the primary reason for the existence of the charity);
- is in the best interest of the charity;

- can justify the resources needed;
- can justify the use of controversial material and they have considered the associated risks and legal requirements (see below for more on this); and
- can comply with any other laws that might apply (for example, the laws on advertising, defamation and confidentiality).

Duty to participate in political activity in a responsible and measured fashion

Orlando Fraser KC (Charity Commission Chair) has robustly defended the right for charities to participate in lawful political activity, even where such activity covers sensitive or politically divisive ground. However, Mr Fraser has also urged charities to do so in a “*responsible and measured fashion*”.

Charity Commission holds charities to account

In the last 12 months or so, the Charity Commission has engaged with various charities in relation to their political activity. One such charity is the RSPB which on 30 August 2023 posted a tweet in which it called the former Prime Minister, Rishi Sunak, and two other then government ministers “liars” in respect of the Conservative government’s plans to build more houses at the alleged expense of weakening water pollution restrictions. The Charity Commission engaged with the RSPB and the charity issued a corrective apology in this regard.

Charity Commission social media guidance: Engaging on emotive topics

Hot on the heels of its engagement with the RSPB regarding its social media post, on 18 September 2023 the Charity Commission published its first guidance on “Charities and social media” (link below). This covers, amongst other things, a section on “Engaging on emotive topics”.

<https://www.gov.uk/government/publications/charities-and-social-media/charities-and-social-media>

The Charity Commission Chair also reinforced the Commission's stance on this topic in his General Election publication on 20 May 2024. Here, amongst other things, Mr Fraser reminded charities to promote respect, tolerance and consideration for others and to avoid character attacks. The position remains the same post the General Election.