

BRIEFING NOTE: June 2024

Charities and the 2024 General Election

In the run up to the 4 July general election many charities will want to make their voices heard to highlight their causes. However, charity trustees must ensure that their charities do so lawfully – complying with both charity law and electoral law.

This note summarises the key considerations and signposts trustees to relevant guidance.

Charity law

General principles

The general legal position relating to charities engaging in political activity (and campaigning) 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>

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 (see below for more on this);
- 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 apply, for example, electoral law (see below for more on this) and the laws on advertising and defamation.

Engaging with political parties and parliamentary candidates

Charities must not support or oppose a political party or parliamentary candidate.

Supplemental election guidance

In its supplemental guidance entitled *Charities, Elections and Referendums* (updated 7 November 2022) the Charity Commission stresses that in the run up to an election charities must take extra care to maintain and stress their political independence.

If a charity always engages with only one political party or parliamentary candidate this could call into question whether the charity is politically neutral. A charity must, therefore, be able to demonstrate that any such engagement is part of a well thought through strategy and that such engagement does not inadvertently result in any form of partisan support.

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

Lessons learned election guidance

The Charity Commission has also published “lessons learned” election guidance (29 May 2024). This provides some helpful tips and examples, based on insights into the Commission’s casework during previous general elections, to help charities avoid unintentionally becoming involved in party politics.

<https://www.gov.uk/guidance/campaigning-and-political-activity-general-election-lessons-learned>

Guidance for parliamentary candidates

There is additional Charity Commission guidance specifically for parliamentary candidates (3 June 2024) to help them understand the rules on how they may engage with charities in the run up to the election.

<https://www.gov.uk/guidance/charities-and-the-general-election-information-for-parliamentary-candidates>

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 Prime Minister and two other government ministers “liars” in respect of the 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”. 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>

Mr Fraser has reinforced the Commission’s stance on this topic in his general election publication on 20 May 2024. Here, amongst other things, he reminds charities to promote respect, tolerance and consideration for others and to avoid character attacks.

<https://www.gov.uk/guidance/charity-campaigning-in-a-general-election-year>

Electoral law

Non-party campaigners

Under electoral law charities will need to register with the Electoral Commission as “non-party campaigners” if they spend over £10,000 on “regulated campaign activity”.

Regulated campaign activity is an activity that can be reasonably regarded as intended to influence people’s voting choice.

Charities may also be legally required to include an imprint on digital material that falls with the definition of regulated campaign activity.

Squaring electoral law with charity law

Rather confusingly, therefore, political activity that is lawful under charity law, on the basis that it is not supporting a specified party or candidate, may be regulated under electoral law. However, the Electoral Commission has

recognised in its guidance that if charities follow charity law and Charity Commission guidance *“they are generally unlikely to be carrying out regulated activity under electoral law. This means that most charities, so long as you are following Charity Commission guidance on political activity, don’t need to register with the Electoral Commission.”*

<https://www.electoralcommission.org.uk/blog/new-electoral-commission-guidance-charities-lobbying-act-shouldnt-stop-you-campaigning>

Joint Charity Commission and Electoral Commission blog

The respective Chairs of the Charity Commission and the Electoral Commission published a helpful blog (1 December 2023) giving an overview of both charity law and electoral law. The blog includes links to the various guidance referred to above and also to the new Non-Party Campaigner Code that was published last December.

<https://charitycommission.blog.gov.uk/2023/12/01/charity-commission-and-electoral-commission-chairs-share-advice-for-charities-engaging-in-public-debate/>

NCVO/ACEVO Voluntary Sector Manifesto

At the time of writing this note, the various political parties have published, or are about to publish, their election manifestos. The NCVO (National Council for Voluntary Organisations) and ACEVO (Association of Chief Executives of Voluntary Organisations) have also been busy: we now have Voluntary Sector Manifesto.

The Voluntary Sector Manifesto *“presents a range of ways that the next government can work with charities to make a positive difference.”* The document sets the framework for parties, candidates and policy makers to engage with voluntary organisations and charities. It also sets out seven

particular “Asks” of the next government to understand and tackle issues affecting the sector.

While the Voluntary Sector Manifesto is a very insightful and practical document CHARITIES MUST REMEMBER to use it in such a way that is consistent with their charity’s declared objects and complies generally with charity law and electoral law.

GOOD LUCK! HERE’S TO A THRIVING AND POSITIVE PARTNERSHIP BETWEEN CHARITIES AND GOVERNMENT – WHICHEVER PARTY WINS THE GENERAL ELECTION.

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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.