



Q&A - Charity and election law for campaigning charities

Q&A November 2023

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Introduction

Charities must do all they can to get their message heard. Sometimes, this means using charity resources to advocate for social or political change – charity law clearly permits charities to speak out and campaign. 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. Charity campaigning is particularly important with regard to the cost-of-living crisis but also to environmental concerns, human rights controversies, global growth in inequalities, reduced spending on public services, growth of so-called culture wars, and the renewed politicisation of freedom of speech.

This Q&A has been created for charities registered in England and Wales, to outline the applicable rules in an accessible way. If you stick to these, you will avoid difficulties and can concentrate on running an effective campaign. It is important to note that this is designed to be a summary of the rules, so, if you want a more detailed explanation or advice on campaigning, please contact [Rosamund McCarthy Etherington \(RosamundMcCarthyEtherington@stoneking.co.uk\)](mailto:RosamundMcCarthyEtherington@stoneking.co.uk), [Tom Murdoch \(TomMurdoch@stoneking.co.uk\)](mailto:TomMurdoch@stoneking.co.uk), or Ruby Lake (RubyLake@stoneking.co.uk). This note is drafted on the basis that a charity does not seek to register with the Electoral Commission or be caught out by the joint campaigning rules. It has been prepared in the context of the next UK Parliamentary General Election and not for regional or other local elections. It does not cover the law on campaigns for or against a particular candidate in a constituency, the position after the dissolution of Parliament or, in particular, the rules on holding hustings.

Please note that Electoral Commission guidance and case studies will be supplemented or amended in order to complement Statutory Codes of Practice. At the time of writing, the **Statutory Code of Practice on Non-Party Campaigning** was laid in Parliament in September 2023 and is expected to come into force on 1 December 2023. We understand that the Electoral Commission updates guidance and adds case studies on an iterative basis. For the latest guidance, please consult the Electoral Commission's website.

Charity law on charity campaigning

1. What are the main regulatory and legislative provisions on charity campaigning?

The main guidance from the Charity Commission is **CC9** (including a **five-minute guide on political campaigning**), as well as **Supplementary Guidance on Elections and Referendums**. In relation to election law, the main legislation affecting non-party campaigners is the **Political Parties, Elections and Referendums Act 2000 (PPERA)** (as amended by the so-called Lobbying Act 2014 and the Elections Act 2022) that regulates general elections, devolved authorities and referendums. **The Representation of the People Act 1983 (RPA)**, covers local campaigns for or against one or more candidates but is unlikely, in most circumstances, to affect charities. Other laws such as advertising law, defamation, public order, protest, the **Companies Act** and the **Local Government Act 1986** may also apply to political activity, as well as restrictions laid down by funders.

2. How can a charity lawfully campaign?

A charity must advance charitable purposes – for example, human rights or prevention of poverty – and exist for the public benefit. A charity cannot have a political purpose and must ensure it is not acting outside its objects or its wider governing document (in very rare cases, this may not permit campaigning).

CC9 states that campaigning “*activities can be a highly effective means of pursuing a charitable purpose, even where the matters at issue are controversial. Charities have a vital role to play in society in promoting the interests of their beneficiaries and in contributing to public debate.*”

3. What type of campaign can a charity lawfully undertake?

There are two types of lawful charity campaigning: non-political campaigning and political campaigning. A charity must not give support or funding to a political party, a candidate, or a politician.

Non-political campaigning can be the sole and continuing activity if it is in the best interests of the charity. It includes raising public awareness and understanding or changing public attitudes

on issues important to your charity, as well as activities to change the policy or practice of a business or company. For example, it might aim to change the practices of companies whose work harms the environment. It might also involve educating people or activities to uphold the law. Non-political campaigning is not restricted, other than by usual charity considerations relating to any activity.

Political activity by a charity “*is aimed at securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad. It includes activity to preserve an existing piece of legislation, where a charity opposes it being replaced or amended.*” (Human Dignity Trust v Charity Commission CA/2013/0013). It might include campaigning against a Parliamentary Bill, challenging the action of an NHS Trust, or campaigning for legislation on the environment, cost of living, health or education.

The definition of a public body in the Charity Commission’s guidance is:

- The UN, other international bodies and their agencies;
- The EU and its associated bodies;
- NHS Trusts;
- The World Bank;
- Non-departmental public bodies (NDPBs) – not those that are registered charities;
- Similar bodies and agencies in other countries.

In summary, you can carry out certain types of political campaigning provided you understand and apply the legal requirements set out in **CC9** (and elections guidance (see below)).

4. What charity law restrictions are there on political campaigning?

While a charity can focus most or all of its resources on political activity for a period of time, **CC9** is clear that “*this activity should not become the reason for the charity’s existence*”. In order to avoid this risk, you should justify all campaigns with reference to your charitable objects, record your rationale and use it to develop your charity’s policy on campaigning. Annex 1 to the Q&A sets out a template Campaigning and Political Procedures Policy to assist your charity’s deliberations.

If you wish to engage in political activity, you should consider the following:

- You cannot support or campaign for a political party or candidate and must not support or endorse a political party or give any other resources – for example, in-kind support – to a political party, politician or candidate.
- Your campaign can use emotive or controversial material if the evidence suggests that it will be effective and factually accurate. Campaigns of this sort can be highly effective, but they involve a greater degree of risk, so you will need to weigh the pros and cons, identify risks, record decisions and set out what the campaign is intended to achieve and plan effectively.
- A charity may decide that they are willing to accept the risks of undertaking a campaign that poses significant risks, due to the potential benefits the campaign might bring, such as:
 - greater public understanding (and perhaps increased donations);
 - a change in behaviour;
 - a change in government attitudes towards the issue.
- In this instance, you should aim to demonstrate how the campaign is grounded in facts (and record the evidence for this) and that it is approved by the Trustees as part of your campaigning policy. **CC9** provides the following example of where an emotive or controversial campaign may be effective:

“A national animal welfare charity ran a long campaign to secure a ban on hunting with dogs. This was controversial, but the Commission accepted that both the campaign objective and the means adopted (which included emotive advertising) were legitimate for an animal welfare charity.”

- You can campaign in cooperation with others, but each charity will need a rationale based on their objects that identifies how all funds expended advance their purposes, not those of others. You will need to be clear that campaigning with others does, in fact, advance your own charitable objects; there are also election law restrictions on some “joint campaigning” (see Question 16).
- If you use social media, you should implement a social media policy, which sets out your charity’s approach to social media and the activities of your trustees, staff and volunteers, including clear provisions for who needs to sign off on certain social media activity. You should also consider adopting an external speakers policy, a risk management policy and a data privacy policy if these are not already in place.

5. What happens if a charity's non-political campaign crosses a boundary into political campaigning?

There is not always a clear demarcation between charities' campaigning and political activity. For example, a campaign for businesses to adopt environmental practices (non-political activity), that includes advocacy for a statutory requirement to enforce specified net zero standards (political activity), or a refugee charity that works to uphold the sound administration of asylum law (non-political activity) but also campaigns against the amendment or repeal of an existing law that protects refugees (political activity). If this is the case, this is not problematic, but it is helpful to be clear about the different elements of the campaign and follow the appropriate rules.

6. What do charities need to consider when developing a campaign strategy?

You should develop an internal campaigning policy and procedures (see Annex 1 to the Q&A) that reflect how you intend to campaign in practice. Campaigns could be initiated by your trustees or the charity's constitutional members. They could also arise from a wider group of people working together to tackle social injustice.

The charity's policy should provide an overall framework, which sets out the types of campaigns that have been considered and approved by the trustees. It should reflect the interaction between different parts of the organisation or movement and the campaigning methodology.

Campaigns come in all shapes and sizes and not all campaigns will require the same amount of consideration. The appropriate level will be dependent on the aims, duration, resourcing and wider context of the campaign. Here are a few steps to consider when developing a campaign:

- Ensure your campaign objectives are in line with your charity's objects.
- Record the strategy for the campaign internally, highlighting the evidence used as the basis for the campaign.
- Consider the risks, including risks to the charity's reputation that might be involved in the campaign and record them in line with your risk management policy. **CC9** states that while it is clearly important for risks to be identified and managed, it is also important that trustees are not overly cautious or risk-averse.
- Identify and manage any conflicts of interest in line with your conflicts of interest policy, make a careful decision and ensure that it is recorded fully.
- Make sure that any policy on campaigning does not include provisions that cannot be followed in practice.

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

- The *strategy* for delivering the campaign and the ways of approaching the campaign;
- The *evidence base* for the campaign and justification for the use of the charity's money;
- The *duration* of the campaign (which may be ongoing);
- The *costs* and *benefits* of engaging in a particular campaign;
- The *risks* and how these might be managed. When considering the risks involved, charities should take into account the following risks:
 - that the campaign may be ineffective;
 - that the charity will be drawn into activities outside its purposes with the potential for misuse of charity funds;
 - breaching of legislation or best practice requirements on campaigning;
 - costs and benefits;
 - failure of the campaign to meet objectives;
 - financial risk;
 - reputational risk;
 - public perceptions of the charity's independence, for example, if a charity is supporting or opposing a policy that is also advocated by a political party;
 - what might be the unintended consequences; and
 - any other form of risk specific to the charity and/or the campaign that can be identified.
- You should also consider how best to *evaluate* the campaign's success and impact. Campaign objectives should be monitored from the implementation phase of the campaign and throughout the life of the campaign. If a political campaign does not have a short-term realistic prospect of success and it is likely to be ongoing, then take care to justify, monitor and renew the campaign from time to time.

7. What actions do trustees need to take when signing off a campaign?

As well as making an informed decision, trustees need to be able to explain the reasoning behind it. They need to ensure that campaigning policies are effectively implemented and that the decision-making process is appropriately recorded in line with their duties.

If trustees make a reasonable decision, based on:

- a) What they think is the best way to advance their charity's objects; and
- b) applicable guidance, as summarised in this Q&A,

it is very unlikely that your campaign could be challenged.

8. Can a charity just engage with one political party?

You can engage with political parties or candidates to set out the charity's policy. If you do this, you must do it in an even-handed way and avoid giving the impression that you support or are against any particular parties or candidates.

The Commission's guidance acknowledges that there will be situations where it is not possible or desirable to issue invitations on a cross-party basis 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"*. However, it also states that if a charity *"were to accept invitations from or contact only one of the major political parties, and did so consistently over time, this could call into question whether the charity was in fact remaining politically neutral."*

It is likely that a charity will engage more intensely with the party in Government or, if a local charity, the local MP or local councillor. In this case, it would be helpful for the charity to record that they are inviting the individual because of the office they hold, rather than their party political affiliation. This might be particularly relevant for a local charity if the elected Council has councillors wholly or predominantly representing one political party. Meetings with MPs or prospective parliamentary candidates (PPCs) must not state or imply a charity's support for the candidate or party generally.

CC9 states that, in the run-up to an election, you can generally (but subject to the more detailed section below on electoral law) continue to campaign, even where your position 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 from the charity on the same issue. The key point here is to maintain your independence – the **CC9** states that *"a charity must always guard its independence, and ensure it remains independent. In supporting a policy that a political party or government also advocates, a charity should stress and make clear its independence, both to its supporters and to those people whose views it is seeking to influence"*.

9. Charity Commission's '*Charities, Elections and Referendums*' supplementary guidance: can a charity continue to campaign in the run-up to an election?

Charities can continue to campaign in the run-up to an election subject to the Charity Commission's '*Charities, Elections and Referendums*' supplementary guidance, election law, specific requirements in a charity's constitution or restrictions laid down by funders.

Campaigning in the run-up to an election is more complicated because there are additional legal requirements, including **PPRA** and the **RPA**. The Charity Commission's guidance applies during the period between the announcement of an election and the election date. It is important to note that **CC9** guidance still applies, but there are extra protections during this period.

The Charity Commission is clear that even after an election is called, a charity can continue campaigning even where its position may coincide with, or be more or less similar to, a political party, as long as it maintains its independence. It can give support to a specific policy advocated by a political party, but cannot give general support to a political party.

The requirements set out in the '*Charities, Elections and Referendums*' supplementary guidance include:

- A charity must not explicitly compare its views with political parties or candidates. The Charity Commission's guidance states that where a charity's policy position coincides with or is similar to a political party, it can continue campaigning on this issue, as long as it maintains its independence. The Charity Commission gives this example: "*If a housing charity supports the building of 100,000 new homes, it can outline the housing policies of each party, including how many new homes each party is committed to building, but it must not explicitly call on people to vote for one party or another.*"

Please note, depending on how the above exercise is undertaken, it may count as regulated activity for election law.

- A charity may publish the views of candidates in local and national elections where these views relate to the charity's purposes and publishing them will raise public interest and debate about the underlying issues, but it must not encourage support for a particular party or political candidate. As long as the charity is trying to raise public interest in the debate it may be able to combine this with some form of pledge campaign which is often popular.

Please note, depending on how the above exercise is undertaken, it may count as regulated activity for the purposes of election law.

- A charity cannot appear in a political party's manifesto. A charity can publish its own manifesto to persuade political parties to adopt its policies.
- A charity can ask a candidate for their views on the charity's policies, e.g. to seek a pledge regarding a particular issue, such as foreign aid, building new houses or climate change.

Please note, if the pledge is publicised prior to the election, depending on how this is done, this may count as regulated activity under election law.

- You can invite candidates to an event or hustings, but election law also applies. For example, the Charity Commission guidance says you may be able to exclude a candidate if their policies contravene the charity's objects. However, the charity may be caught by election law and must take care regarding any exclusions, so as not to inadvertently give support to or display prejudice against a candidate.
- A charity may have the opportunity to attend and speak at policy debates organised by political parties, e.g. fringe meetings at party conferences. This can enable a charity to try to influence the policies of political parties, but it must take care not to assist a political party to get elected.
- You should risk assess if a charity employee is a candidate and also make sure that charity channels are not used to promote personal political views or to support or retweet party political content.

Electoral law and charity campaigning

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 that trustees will also need to consider. This section summarises the main points and, in particular, what charities can do to avoid the need to register with the Electoral Commission.

10. What are non-party campaigners?

As organisations that campaign in elections but are not standing as political parties or candidates, charities fall under the definition of non-party campaigners. The Electoral Commission describes non-party campaigners as being "*vital to a healthy democracy and, as a society, we must encourage their active participation, including during elections*". In many cases, spending by non-party campaigners on campaigns and activities will not be regulated. However, where there

is significant spending on campaigning, there are rules that campaigners must follow to ensure that they provide transparency for voters on their campaign finances. The Electoral Commission regulates compliance with those rules. Non-party campaigners have to follow certain rules in the run-up to elections.

The Electoral Commission has produced a **Statutory Code of Practice in relation to non-party campaigners** and there is a **Statutory Code on digital imprints**. The **Statutory Code of Practice in relation to non-party campaigners** was laid in Parliament in September 2023.

11. What are regulated activities carried out by non-party campaigners that may trigger a requirement for registration?

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 £17,533.25 (this figure applies from 1 January 2024 and has been uplifted from the previous limit 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.)

12. How long is the regulated period before an election?

The regulated period is one year before the election date and is applied retrospectively. Regarding the retrospective period, the Electoral Commission states in the Code of Practice that: *“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”*. If there is a snap or unexpected election this will trigger the full retrospective period but make it less likely that the purpose test will bite for prior campaigns. It is important to note that the regulated period will definitely be in place from January 2024, as the election has to be held by January 2025.

13. What will the Electoral Commission take into account when considering whether an activity is a regulated activity?

The Electoral Commission’s Code makes clear that there are a number of factors that will affect its assessment of whether activity is regulated. Expenditure is caught under **PPERA** in relation to the purpose, public and activity tests.

The purpose test (s.85(2) **PPERA**) includes spending on activities that can “*reasonably be regarded*” as intended to promote or procure electoral success at any relevant election for:

One or more particular registered parties (a charity is not permitted to do this);

One or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties;

Candidates who hold [or do not hold] particular opinions of those 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 the campaign can be seen to reasonably achieve any other purpose as well.

- Accordingly, activities by charities 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 purpose test. The Electoral Commission Statutory Code states that in order to consider whether the purpose test is passed there are also a number of relevant factors. 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 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 for 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, if it is reasonable to regard the campaign as having this intention.
- 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 charity'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 charity's campaign – will a public-facing campaign be run during the regulated period?
- Does the material use disparaging treatment or language that is 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 group 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.

14. The public test

- Even if the purpose test is met, activities will only be regulated campaigning activity if they also meet the public test – that is, that the activity is aimed at, seen or heard by, or involves the public or a section of the public. For example, supporters of a charity are not the public, provided they are a 'closed group' of members or people who have chosen to receive certain campaign material. The Code of Practice states: *"Campaign material that is only made available by the non-party campaigner to a closed group of members or people who have chosen to receive the information, will not be regulated"*.

- If a charity makes material available to the public or a section of the public, for example, via the internet or in a newsletter that is tweeted, then this will be viewed as being directed at the public.
- The Code states as follows:

“Campaign material that is made available for the public or a section of the public to hear or see will be public and will be regulated campaign activity if it also meets the purpose test and takes place during a regulated period. This applies regardless of the means by which the material is distributed.

Where access to campaign material is limited in such a way that the public would not be able to access that material, this is not regulated campaign activity. This applies regardless of the means by which the material is distributed, for example by print or digitally.

Where access to campaign material is restricted by the non-party campaigner to a group of people who have signed up to receive that material, those activities will not be regulated. For example, where access is restricted to members, or supporters, this will not be regulated.”

15. What type of spending is caught by the rules?

- Expenditure on a wide range of materials is included. For example:
 - 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 place with a view to obtaining publicity;
 - public rallies or other public events;
 - associated expenses, e.g. premises hire, provision of goods, services or facilities.
- You will need to include staff costs, as well as other overheads, where they are associated with your regulated activities. Staff costs that are associated with your organisation’s

general, non-campaign-related activities do not count as regulated campaign spending. If you have a member of staff working on regulated campaign activity as well as your organisation's other work, you will need to include a proportion of the staff salary that reflects the time spent working on regulated campaign activities. In each case, you should make an honest and reasonable assessment of the amount you have spent, based on the facts. You should be able to explain what the assessment is based on.

16. Can charities campaign together with other organisations?

Organisations can campaign together in a variety of different ways. 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. 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.

It's important to agree and carefully monitor total campaign expenses when working with other campaigners. (You might not spend any money, but if your partners collectively exceed 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 the Electoral Commission's 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 campaigning.

CC9 states that a charity wishing to participate in an alliance should consider a number of factors and carefully minute the risk mitigation. Risk factors include whether the alliance campaign does not fit with the charity's own purpose and the potential for 'leakage' of charitable funds. 'Leakage' occurs when the money that has been contributed to a coalition campaign is spent on purposes other than those of the charity.

17. What types of activity will be seen as 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.

18. What types of activity would not be considered 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 that will apply.

19. How can organisations decide whether their activity creates a common plan?

A typical 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 does and what doesn't. A practical solution might be for each member of the joint campaign to agree on a high-level circular, some guidelines or reach a shared understanding that no member intends 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.

20. How can you manage the risks of joint campaigning?

A way of managing risk and avoiding the requirement to register with the Electoral Commission or being caught out by the joint campaigning rules is to expressly and carefully 'opt out' of certain activities. In all cases, charities need to consider whether membership of a campaigning coalition

further the charity's purposes. If it doesn't, they should consider withdrawing from the campaign or opting out of a specific part of it.

If a campaign with a coalition or alliance comprises activities that are incompatible with your charity's objects, the charity might either withdraw temporarily from the campaign or 'isolate' itself from those 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, the opted-out member requires no public use of its name and logo by the joint campaign, on the website or in social media. Alternatively, the campaign can identify the members of the joint campaign who support a campaign once each has signed off on it, i.e. they have opted in.

This requires continuous risk assessment, with a constant focus on whether it is promoting the charity's objects, and decisions need to be recorded carefully. Complete withdrawal from a collaboration may be necessary if reasons to opt out become significant.

21. 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 as follows:

- Are any members intending to register with the Electoral Commission as non-party campaigners 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 higher risk and needs to be carefully managed.

Protections and risk management are key and need to be agreed, recorded and implemented, in some cases with training. Confusion is common when the rules are complex and there is the risk of complaints from third parties. The Charity Commission has produced guidance for charities on working with non-charities, which can be found here: <https://www.gov.uk/guidance/guidance-for-charities-with-a-connection-to-a-non-charity>. This is general guidance rather than being aimed at charities in relation to campaigning or elections, but provides a useful framework of considerations that need to be taken into account by charities.

22. Can a charity 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 in an effort to influence the pressure the parties 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.*"

Charities should be in the latter stages of drawing up manifestos, mapping out strategy, building an evidence base for the use of resources, and assessing the benefits and risks of different ways of engaging in the election campaign. They should be asking questions such as: Should they build alliances with other charities and pressure groups? Which of their charitable purposes could be most effectively campaigned for? How can they engage in proper listening with service users, wider stakeholders, donors and members? Much of the activity will not be public and will consist of research, communications and lobbying MPs and prospective parliamentary candidates (PPCs) in private meetings, rather than public action.

Manifestos may have UK-wide asks or be more regionally focused given the potential focus on devolution and levelling up. At this stage of the electoral cycle, as long as a charity's manifesto does not directly or indirectly promote a political party and its purpose is to influence the policy commitments of all political parties, their pledge cards and even coalition negotiations, this is fine under charity law. Once the political parties have produced their manifestos, it is even more important for charities to avoid indirectly promoting or disparaging a party or candidate.

23. Can charities meet with MPs and prospective parliamentary candidates (PPCs) as part of campaigning activity?

Meetings with MPs and 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 also acknowledges 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.*"

A topical question is whether charities can target seats or marginal constituencies. There must be a rationale for doing this. For example, there is a mixture of marginals and types of seats, maintaining a non-partisan approach as to how voters wish to vote. It is also important that any engagement does not appear to be piggy-backed on or run alongside candidates or campaigns.

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 and private meetings with key influencers.

24. 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 a Bill or policy.
- Timing activity to co-inside with Parliamentary debates on a Bill, rather than continuing to campaign after a Bill has passed into law.

- Asking members to lobby to support a Bill, and not imply support for a party or candidate.
- Press release directly to the media, not on the organisation's website or through social media.
- 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.

The risk areas are:

- 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 re-sharing posts on social media.
- Think carefully about language associated with particular parties or candidates.
- If a political party or candidate adopts your campaign, the independence of your charity must be maintained.

25. What other laws might apply when charities are campaigning?

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 (i.e. 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 the material you are using. If your charity has cross-border registration with OSCR in Scotland and/or Charity Commission Northern Ireland, the requirements for these jurisdictions will need to be considered.

26. So much for the legal requirements, how are charities meant to plan for the fact that this will be a tough election?

There will be times when leaders and trustees find themselves caught in the middle – defending the communities they are part of while ensuring they stay within restrictions, preventing them from supporting a particular party. Careful planning and some political foresight will help them keep to the right side of the law.

It is already clear that variations on the “war on woke” will provide a key plank of campaigning during the general election. Charities such as the National Trust have found themselves in the crosshairs, and faith groups are among those that have seen their motivations questioned. Archbishop of Canterbury Justin Welby was firmly rebutted when he criticised the government’s plan to send refugees to Rwanda, for example.

Much of this “culture war” is played out on social media – where charities will want to push back at inaccurate characterisations of the people and activities at the centre of their charitable purposes. Reviewing social media strategies will be a really important aspect of election preparation – making sure that everyone is clear about their roles, sign-off requirements, what restrictions are in place with regard to representatives of the charity posting on their own social media accounts, etc.

Charities of all sizes need to focus, plan and properly assess the playing field in advance of an election being called. It is important that the public hears from charities, with their expert knowledge and lived experience. The preparation needs to start now.

This note

This Q&A is a summary of the law and is not a substitute for taking detailed legal advice. If you require further advice on any aspect of campaigning and planning for the General Election, the development of a Campaigning and Political Procedures Policy or Social Media Policy, please contact [Rosamund McCarthy Etherington \(RosamundMcCarthyEtherington@stoneking.co.uk\)](mailto:RosamundMcCarthyEtherington@stoneking.co.uk), [Tom Murdoch \(TomMurdoch@stoneking.co.uk\)](mailto:TomMurdoch@stoneking.co.uk) or Ruby Lake (email: RubyLake@stoneking.co.uk).

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Links to guidance:

CC9: Campaigning and political activity guidance for charities

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

Charities, Elections and Referendums

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

Political activity and campaigning by charities (5 minute mini-guide)

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

Charities and political donations

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/591358/Charities_and_Political_Donations_new.pdf

Electoral Commission – Non-party campaigners: UK Parliamentary general elections

<https://www.electoralcommission.org.uk/non-party-campaigners-uk-parliamentary-general-elections>

Electoral Commission – Non-party campaigners Code of Practice

<https://www.electoralcommission.org.uk/non-party-campaigner-code-practice>

Electoral Commission – Digital imprints guidance laid before Parliament

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-consultations/consultation-draft-statutory-guidance-digital-imprints/draft-statutory-guidance-digital-imprints>

Information Commissioner's Office – Guidance for the use of personal data in political campaigning

<https://ico.org.uk/for-organisations/direct-marketing/guidance-for-the-use-of-personal-data-in-political-campaigning-1/>

Annex 1

Campaigning and Political Procedures Policy

The purpose of this policy is to reference the key campaigning policies and practices of the Charity in one overarching policy so that the Charity's policies work in practical terms and to ensure that appropriate disclosures can be made in the Charity's next Annual Return to the Charity Commission: please see below for the policies that are listed.

The Charity's Objects

[Insert Name] Charity has the following charitable objects:

[insert here].

This policy should be tailored to the proposed activities and should be implemented alongside other policies, including:

- Social media policy
- Serious incident policy
- Risk management policy
- Engaging external speakers at charity events policy
- Data Privacy Policy

Definitions

In this policy the following terms have the following meanings:

Campaigning – means awareness raising and efforts to educate or involve the public by mobilising their support on a particular issue or to influence or change public attitudes.

[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.”]

Lobbying – all forms of communication to any government official with the intention to influence a decision or a process.

Political Activity – means 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. *[This is the Charity Commission definition.]*

This Policy has been approved by the trustees on [INSERT DATE] and is subject to review on [INSERT DATE].

Roles and Responsibilities, Policies and Procedures

Roles and responsibilities		Policy Documents	Protections
1.	Trustees	Register of trustees' interests. How the charity's campaign policies are adopted.	Regularly review and sign-off on campaigns. [Add additional protections]
2.	All staff	Employee and staff handbook.	All staff that are involved in Campaigning, Political Activity and Lobbying undergo training and are responsible for ensuring that their activities are lawful and compliant with the Charity's policies and procedures.
3.	Communications Team / Public Affairs team	[Insert details of relevant Policies]	The Public Affairs Team responsibilities are as follows:[Insert responsibilities and protections].
4.	Volunteers	Which policies apply to volunteers?	List protections for volunteers: for example, training.
5.	Delegated Sub-Committee	Delegated sub-committee to approve campaigning underneath an approved trustee framework.	Details of Terms of Reference.
6.	Escalation of Operational Issues to Senior Staff and then to Trustees	Escalation Policy	Set Out Procedure

<p>If a member of staff, trustee or other prominent volunteer of the Charity is a candidate for elected office or holds elected office at national, regional or local level, in relation to social media, the Charity Commission disallows “charities from allowing themselves to be used as a vehicle for the expression of the political views of any individual trustee or staff member.”</p> <p>.</p>	<p>The relevant CC guidance is: <i>“If an employee is directly engaged in a charity’s campaigning activity and also has personal involvement with one particular political party, for example they are standing as a candidate, they should declare this to their employer (the charity). The trustees should then consider this potential conflict of interest and assess the risks for the charity in terms of both reputation and legal liability of the person taking on both roles simultaneously.”</i></p>	<p>[Set out protections]</p> <p>[Set out protections in the social media policy.]</p>
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Campaigns – Strategic Plan for Campaigning

Taken from CC9; repeat for each 1) Longstanding and 2) New Campaign

	Question	Response
1.	What is/are the objective(s) of this campaign?	[Set out the objectives].
2.	How would this campaign or political activity further or support the purposes of the charity?	The campaign supports the purposes of the charity as follows: [complete by reference to the charity's objects].
3.	Are any of the objectives of this campaign outside the purposes of the charity?	Explain why all the objectives are within the purposes and link to the charity's objects.
4.	Are any of the activities party political?	Explain why the activities are not party political and include reference to a risk assessment. [If a political party seeks to exploit the relationship with the charity – e.g. uses its logo, advertises that the charity supports it or tries to leverage the charity's charitable status, the following steps will be taken: list steps].
5.	How likely is it that the campaign would achieve its objective(s)?	Include an assessment of the prospects of the Campaign: for example, previous campaigns, successes, stakeholder surveys, political support to date.
6.	Is all campaign material factually accurate? Emotive and Controversial material that may rouse strong emotions in some.	Set out evidence base and links to sources of information. The campaigns are grounded in facts and evidence as follows: [please insert]. If the material may be seen as emotive or controversial, explain why it is being used. For example: <i>The Trustees are willing to accept the risks of undertaking a campaign which poses some risks because of the potential benefits the campaign</i>

		<p><i>might bring, and which might include:</i></p> <ul style="list-style-type: none"> • <i>greater public understanding (and perhaps increased donations)</i> • <i>a change in behaviour</i> <p><i>a change in government attitudes towards the issue.</i></p>
7.	What evidence is there to support the answers to questions 2-5 (beneficiary consultation, a credible evidence base)?	Explain the statistics and the evidence.
8(a).	What other activities could the charity undertake that would achieve the same objectives?	Information or analysis as to why the campaign is in the best interests of the charity and preferable to or complementary to other activities.
8(b).	In what ways would these other activities be more or less effective than campaigning?	Set out the long term potential benefits of the campaign.
9(a).	What would be the duration and financial cost of the campaign?	<p>Explain the cost, length and any contingencies.</p> <p>[The Charity keeps a list of contracts and grants that restrict political activity or limit it to a particular geographical area. List contracts or grants that contain restrictions.]</p> <p>[Funding from Local Authorities that are subject to the Local Government Act 1986 in the period after Parliament is dissolved. List LGA funding.]</p>
9(b).	Would campaigning become the charity's only activity, and if so, for how long?	Set out other activities to be carried out by the charity and budget relating to the activities.
10(a).	Would the campaign be undertaken in partnership with other organisations?	See Section 15.
10(b).	If so, how would financial and partnership arrangements be managed?	See Section 15.

11(a).	<p>What risks would the charity be exposed to in undertaking this campaign?</p> <ul style="list-style-type: none"> • Risk of acting outside charity's purposes/misuse of charity funds? • Breach of legal/good practice requirements on campaigning? • Costs and benefits? • Risk of failure to meet objectives? • Financial risk? • Reputational risk? • Risk to independence? • Unintended consequences? • Other? 	<p>Set out the risks that have been identified:</p> <p>YES/NO, for example.</p> <p>IT DEPENDS, for example.</p>
11(b).	How could these risks be mitigated?	Cross refer to roles and responsibilities, policies and procedures.
12.	How will the charity monitor and evaluate the effectiveness of the campaign?	Set out monitoring and evaluating arrangements. [For example, through a delegated sub-committee to analyse campaign metrics, speed and results.]
15.	<u>Working in Coalitions</u>	List all the advocacy coalitions, alliances or partnerships that the Charity belongs to.
16.	<p>Charity Commission Guidance CC9 states:</p> <p><i>"a charity wishing to participate in such an alliance should consider whether:</i></p> <ul style="list-style-type: none"> • <i>"There is a reasonable expectation that the arrangement will help to further or support the charity's purposes.</i> 	Explain how the charity's purposes are furthered.

17.	<ul style="list-style-type: none"> • <i>“Any expenditure can be justified as being an effective use of resources.”</i> 	Set out budget and justification for expenditure.
18.	<ul style="list-style-type: none"> • <i>“If some of the political activity that an alliance may engage in does not fit with a charity’s own charitable purposes, the charity will need to consider how best to manage any risks to its reputation, and its work - the charity may also need to consider whether to withdraw, at least temporarily, from the alliance unless there is some way of isolating the charity from those activities.”</i> 	<p>The risks of participating are outweighed by the benefits: [Set out the benefits].</p> <p>Information about management procedures, for example:</p> <ul style="list-style-type: none"> • Opt-out procedures. • Ringfencing risk and activity.
19.	<p><i>“Leakage of funds: a charity working with other organisations must guard against the possible ‘leakage’ of its charitable funds - meaning that the money it has contributed to a coalition or alliance must not be spent for purposes other than those of the charity.”</i></p>	List protections to ensure a charity’s monies are only spent on its charitable purposes and not wider or different charitable purposes.



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