

**LEGAL EDUCATION FOUNDATION**

**CAMPAIGNING, POLITICAL ACTIVITY  
AND  
ELECTION GUIDE FOR CHARITIES**

## **Context and Parameters of this Guidance Note for Charities (July 2023)**

This note is provided on the basis that a charity does not seek to register with the Electoral Commission or be caught by the joint campaigning rules. In addition, charities should consider their specific constraints such as charitable purposes and funding and take legal advice where appropriate.

The advice is tailored for the next UK Parliamentary General Election and not for regional or other local elections. It does not cover the law on campaigns for against a particular candidate in a constituency, the position after dissolution of Parliament and in particular the rules on holding hustings.

The advice relates to English and Welsh law, albeit the Political Parties Elections and Referendum Act 2000 ('PPER') sets out the framework for regulation of non-party campaigners in UK and region-wide elections. Although there is a national framework, the regime can apply differently between the devolved administrations of the UK and the rules may be supplemented or altered in those jurisdictions by local electoral administration rules. Detailed implementation of PPERA and other charity and election law in Scotland and Northern Ireland (for example OSCR and CCNI guidance) will require local advice.

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 is expected to be laid in Parliament in September 2023 and this version is not yet available.

Rosamund McCarthy Etherington and Tom Murdoch

A handwritten signature in black ink that reads "Stone King LLP". The signature is written in a cursive, flowing style.

**Stone King LLP**

**July 2023**

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# CAMPAIGNING, POLITICAL ACTIVITY AND ELECTION GUIDE FOR CHARITIES

## 1. Introduction

*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.’*

Charity Commission guidance: Campaigning and political activity guidance for charities (CC9)

- 1.1 Charity law clearly permits charities to speak out and campaign and this mini guide is intended to help charities do just that.
- 1.2 Charity campaigning is particularly important during the cost of living crisis as well as in many other areas, including environmental degradation, human rights infringements, structural and intersectional inequalities and reduced spending on public services.
- 1.3 There is no requirement for a charity’s constitution to include a specific power to campaign. However, in rare cases, a charity’s constitution may prohibit campaigning, so do check your charity’s constitution before proceeding to campaign.
- 1.4 The key Charity Commission guidance or regulation (in England and Wales) is:

Charity Commission guidance	<p><i>CC9: Campaigning and political activity guidance for charities.</i></p> <p>This Guidance can be found using the following <a href="#">link</a>.</p>
Supplementary Charity Commission Guidance Charity Elections	<p><i>Charities, Elections and Referendums</i> that applies after an election has been called. The latter guidance does not cover election law (as opposed to the charity law requirements) and depending on the content, tone and timing, some of the permitted activities may have regulated electoral consequences.</p>

	This Guidance can be found using the following <a href="#">link</a> .
Charity Commission issued a '5-minute guide' (October 2022)	<i>Political activity and campaigning by charities</i> Mini Guidance: the Charity Commission issued a '5-minute guide' on political activity and campaigning by charities in October 2022  This Guidance can be found using the following <a href="#">link</a> .
Annual Return	The Charity Commission Annual Return 2023 has a standard question as to whether a charity has a <i>Policy on 'Campaigns and Political Activity and Procedures'</i> .  A copy of the 2023 Annual Return can be found by using the following <a href="#">link</a> .
Charity Commission MP FactSheet	<i>Charities, Politics and Campaigning</i> . The FactSheet can be found by using the following <a href="#">link</a> .
Charities and Political Donations	<i>Guidance Update from the Charity Commission for political parties</i> .  The Guidance Update can be found using the following <a href="#">link</a> .

- 1.5 There has been some concern that recent developments, for example, the Charity Commission *5-Minute Guide* has limited the ability of charities to campaign.
- 1.6 The legal position underpinning charities' ability to campaign under charity law has not changed. The *5-Minute Guide* was criticised for omitting some of CC9's positive and permissive references to campaigning. For example, the *5-Minute Guide* omits the references in CC9 to using '*emotive or controversial material*' and instead includes a statement that charities can mitigate the potential for criticism by conducting activities with '*respect and tolerance*'. In response to the criticism, the Charity Commission has confirmed as follows:

*'The 5 minute guide does not imply any new duty on trustees, and is instead intended as an additional tool to help charities navigate what can be a tricky*

*area. Our longer guidance still stands, and we do not consider the shorter guidance is inconsistent with it.'*

Charity Commission (13/10/2022)

- 1.7 More information on the *5-Minute Guide* is contained in Section 3.2.

#### *Cross border and other Laws*

- 1.8 Where charities have cross border registration with OSCR in Scotland and/or Charity Commission Northern Ireland, the requirements for these jurisdictions will need to be considered.
- 1.9 Other laws such as advertising law, defamation, public order, protest, the Companies Act and the Local Government Act 1986 may also apply to political and electoral activity.
- 1.10 Election law is covered in Section 8 and onwards in this guidance.

## **2. What types of campaigning can a charity carry out?**

*Campaigning and political activity can be legitimate and valuable activities for charities to undertake.'*

Charity Commission guidance: Campaigning and political activity guidance for charities (CC9)

#### *In brief*

- 2.1 Charities can carry out campaigning and political activity provided that any political activity does not become the reason for the charity's existence or a purpose in itself. Charities cannot support or campaign for a political party or candidate.

#### *In more detail*

- 2.2 Campaigning is about creating change. In the context of tackling social injustice and structural and systemic inequalities, definitions of campaigning and political activity are not static.
- 2.3 NCVO's definition of campaigning, for example, is: '*The mobilisation of forces by organisations or individuals to influence others, in order to effect an identified and desired social, economic, environmental or political change.*'

2.4 For the purposes of charity regulation, the Charity Commission’s guidance CC9 divides charities’ campaigning activities into two types:

- Campaigning (more easily understood as ‘*non-political campaigning*’) which includes public awareness raising and changing public attitudes on a particular issue, as well as campaigning activity to ensure that existing laws are observed. This type of campaigning also includes activities to change the policy or practice of a business or company. Examples of such campaigning include:
  - A health charity campaigning to reduce the sugar in food products.
  - A refugee charity calling on the Government to observe the law relating to child migrants.
  - A campaign for a business to adopt environmental standards.
  - An LGBTQ+ charity running Pride to both celebrate and raise awareness of LGBTQ + issues.
  - A charity to support blind people, promoting a consumer boycott of a business that fails to admit entry to guide dogs.

2.5 Non-political campaigning can cross the boundary into political activity. For example:

- A campaign for businesses to adopt environmental practices, that includes advocacy for a statutory requirement to enforce specified net zero standards.
- A refugee charity that works to uphold the sound administration of asylum law (non-political campaigning), but also campaigns against the amendment or repeal of an existing law that protects refugees (political activity).
- Political Activity is defined by the Charity Commission as ‘*activity aimed at securing or opposing a change in the law or in the policy or decisions of government and other public bodies in this country or abroad*.’ The definition of a public body in the Charity Commission’s guidance (CC9) is:

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

2.6 Examples of permissible political activity that have been undertaken by charities with a wide range of charitable purposes include campaigns:

- Advocating for statutory support for schools to provide mental health support.
- Against a Parliamentary Bill, for example, the EU retained law bill by the RSPB, the National Trust and the Wildlife Trust.
- Advocating for school meals to be provided to all families affected by *No Recourse to Public Funds*
- For the introduction of lawful assisted suicide.

#### *Party Political Activity*

2.7 A charity must not support or endorse a political party and cannot give any other resources, for example, in-kind support to a political party, politician or candidate.

2.8 The prohibition on support for a political party, politician or candidate includes a trading subsidiary of a charity.

2.9 Section 17 explains how charities can explore their policy ideas and campaigns with politicians and parties in a way that preserves a charity's independence.

#### *Deciding to engage in Campaigning or Political Activity*

2.10 There are certain steps that a charity must carry out in relation to all of its activities, for example, entering into a contract to co-design public services or collaborating with another charity via a joint venture. Engaging in campaigning or political activity is no different.

2.11 Essentially, a charity should determine whether the activity is an effective way of furthering the charity's purposes and is in its best interests. Trustees should understand their overall duties as set out in Charity Commission Guidance CC3: '*The Essential Trustee*' and CC27: '*It's Your Decision*'. This means that trustees should:

- Act within their powers
- Act in good faith
- Make sure they are sufficiently informed
- Take account of all relevant factors and ignore irrelevant factors
- Make sure their decisions are within the range of decisions that a reasonable Trustee body could make.
- Deal appropriately with any conflicts of interest

2.12 A charity may determine that one kind of activity or a range of activities is the best way to support the charity's purposes. For example:



- A disability charity may decide that in addition to providing a modest amount of public services subsidised by donations, a high profile campaign to change policy to secure the provision of better resources from the public sector, will have greater long term impact.
- A refugee charity that works on community sponsorship or family reunion schemes, may resolve that the charity's purposes will also be achieved by campaigning against the introduction of anti-migrant laws.

2.13 Before carrying out political activity, a charity should decide whether it is a reasonable and proportionate way of carrying out its activities. Not all political activity will be successful, but the charity needs to be able to demonstrate that it has taken appropriate factors into account and has assessed the likelihood of success over a particular period of time. In particular:

- Is there a sound evidence base for the campaign?
- If campaign materials are emotive, controversial or upsetting (to some), are they grounded in facts and evidence?
- Are the risks, including any reputational risks associated with the campaign, justified?

2.14 The Charity Commission understands that not all political activity will be successful, but does ask charities to set objectives and monitor success as follows:

*'A political activity might be highly successful in achieving the objective of raising public awareness, or of encouraging the public to support the work of the charity, even if it does not lead to an immediate change of law or government policy. Not all political activity will be successful. It is therefore important for trustees to be able to explain their charity's decision to engage in campaigning or political activity, and to set objectives for the campaign which have a reasonable likelihood of success, as well as making sure that they have monitored progress towards them during the implementation phase of the campaign.'*

Charity Commission guidance: Campaigning and political activity guidance for charities (CC9)

#### *How Much Can a Charity Spend on Political Campaigning?*

2.15 A charity should also satisfy itself that the use of resources and the time period of the campaign is justified. This has two aspects to it. Firstly, whether the expenditure can be justified as an appropriate use of resources and also whether it is lawful to devote all of a charity's resources on campaigning and political activity. Charity Commission guidance states that:

- In relation to non-political campaigning set out in 2.4 above, provided that the activity, for example, awareness raising, supports the delivery of charitable purposes, a charity can choose to devote all of its resources to this campaign, whether as a stand-alone activity or as a significant strand of activity.
- Political activity can be the sole and continuing activity of a charity for a period of time, albeit the boundaries on this are not clear cut. Accordingly, charities should risk assess carefully and make sure that the political activity does not become the charity's purpose or the reason for the charity's existence:

*A charity may choose to focus most, or all, of its resources on political activity for a period. The key issue for charity trustees is the need to ensure that this activity is not, and does not become, the reason for the charity's existence.*

Charity Commission guidance: Campaigning and political activity guidance for charities (CC9)

- 2.16 If a political campaign does not have a short term realistic prospect of success and is likely to be on-going, then take care to justify, monitor and renew the campaign from time to time. For example, a campaign regarding modern slavery may be ongoing and the human rights abuses so egregious, that provided the spend and activities are considered from time to time, it should be a comfortable process to renew the campaign.
- 2.17 Other campaigns, for example, the campaign for equal marriage or the campaign to ban smoking in public spaces, were not won overnight and required sustained and long term campaigning. The key is to ensure appropriate consideration from time to time.

### **3. Can we use emotive and controversial material?**

*In brief*

- 3.1 A charity can campaign using emotive or controversial material, where there is a legitimate evidence base, it is factually accurate and it furthers the charity's work.

*In more detail*

- 3.2 This is the key area where there is some discrepancies between CC9 and the *5-Minute Guide*.

3.3 CC9 states as follows:

Emotive campaigns: charities working in areas which rouse strong emotions in the public may decide that they are willing to accept the risks of undertaking a campaign which poses significant risks because of the potential benefits the campaign might bring, and which might include:

- greater public understanding (and perhaps increased donations)
- a change in behaviour
- a change in government attitudes towards the issue

3.4 The 5-minute guide refers to mitigating criticism if a charity's political activity '*might attract significant public interest or criticism*' by ensuring that the charity '*conducts its activity with respect and tolerance.*'

3.5 In a speech to the Association of Chairs on 6<sup>th</sup> June 2023, the Chair of the Charity Commission, Orlando Fraser KC, said that he wants charities to get away from the '*anger and aggression*' of party politics. If a charity is '*angry*', this might be a reputational risk if not managed properly and could be a breach of duty.

3.6 Nonetheless, the Charity Commission has stated that CC9 '*still stands*' and that it is not '*inconsistent*' with the mini guidance.

3.7 In addition the *Charity Commission, MP Factsheet* states that: '*Charities are free to use emotive and controversial material to highlight a particular issue or campaign, so long as the material is backed with evidence, is factually accurate, and furthers or facilitates their charitable work.*'

3.8 If a charity publishes emotive or controversial material that rouses strong emotions, you should be reassured that this is lawful, but in order to proceed safely, it would be helpful in the Campaigning Policy, attached as Annex 1 to demonstrate how the campaign is grounded in facts and is also approved by the Trustees. The paper trail should also set out what the campaign is intended to achieve, for example, a change in Government policy, an increase in public understanding or an increase in donations.

3.9 If some of the public have the perception that your campaign is not '*kind*' or '*respectful*', then a charity should be able to justify the campaign on the basis of the above steps.

3.10 Charities should also consider advertising and defamation law.

#### 4. Engagement with Political Parties, Politicians and Electoral Candidates

*In brief*

- 4.1 There are a number of ways in which a charity can lawfully work with political parties and candidates, as long as a charity maintains its independence.

*In more detail*

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

*A charity can advocate support for a particular policy advocated by a political party or candidate, provided that it supports the charity's policies. A charity can also advocate support for a policy which coincides with government policy so long as it is clear about its reasons for doing so.*

Charity Commission guidance: Campaigning and political activity guidance for charities (CC9)

- 4.4 A charity should not just liaise with one political party or invite one political party to its events. 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.*
- 4.5 It is likely that a charity will engage more intensely with the party in Government or if a local charity, your local MP or local councillor. In this case it is helpful to record that you 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 PPCs must not state or imply a charity's support for the candidate or party generally.
- 4.6 You should also endeavour in some way to demonstrate cross party engagement. CC9 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.'*
- 4.7 The *5 minute Guide* states that a charity should ask *'political figures you engage with not to promote party political messages at your events or premises'*. This is the ideal position, but the lines may sometimes blur. For example, if a charity invites a Government Minister to an event, there may be some grey areas

between the Minister outlining the Government's work and promoting their political party. All of this is manageable through a mini risk assessment and documenting how the meeting has been set up. In addition, a politician should understand a clear instruction not to be party political. If the politician ignores this, then the charity should not be penalised.

4.8 The *Charity Commission MP FactSheet* states that '*MPs and politicians can speak on behalf of charities and can advocate a charity's perspective on policy and legislation*', but that charities should seek cross representation wherever possible. A charity should be alert to the risk of exploitation by a political party.

4.9 In your enthusiasm as a charity representative to engage with all political parties and candidates, don't get too friendly or send inappropriate WhatsApp, Signal or other messages on social media. Remember that if a charity is investigated by the Charity Commission or another regulator, all these messages may have to be disclosed.

## **5. Can we campaign as part of a coalition?**

### *In brief*

5.1 Yes, provided there is a reasonable expectation that campaigning as part of a coalition will help further or support the charity's purposes. It is important to consider a number of factors and risk mitigations.

5.2 In an election period you should also be aware of the rules on '*joint campaigning*': please see section 2.

### *In more detail*

5.3 Charity Commission Guidance CC9 states that a charity wishing to participate in an alliance should consider a number of factors. It is also important to carefully minute the risk mitigations. CC9 states that trustees need to be satisfied that:

- *the risks of participating are outweighed by the benefits; in particular, if some of the 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'*
- *'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.'*

- 5.4 If a charity is not able to support a coalition on every issue, it may be that it can *Opt-Out* of a particular campaign, but still remain a member of the coalition. For example, a charity may sign up to an overall Values Statement, the sharing of information, capacity building, but not a particular campaign. In this case, it will be helpful if the Coalition agrees standard *Opt-Outs*, so that members can join the capacity building work, with the comfort that they are sealed off from a particular campaign.
- 5.5 *Opt-Outs* may also assist with structuring an alliance or campaign to avoid *joint campaigning* under election law.
- 6. What policies and procedures do we need to put in place if we wish to engage in political activity?**

*In brief*

- 6.1 When charities are considering engaging in political activity, it is important that the Trustees consider an overarching strategy, as well as relevant policies and procedures.
- 6.2 The new Charity Commission Annual Return 2023 has a standard question asking whether a charity has a policy on '*Campaigns and Political Activity and Procedures*'. It is not mandatory but if the charity carries out campaigning and political activity, it is a good idea to adopt a policy of this kind. There is an outline policy attached to this note at Annex 1.

*In more detail*

- 6.3 Charities wishing to engage in campaigning and political activity should put in place a proper paper trail.
- 6.4 The Charity Commission emphasises in CC9 that it is possible to manage risks as follows:

*It is important that the risks are identified and managed; it is also important that trustees are not overly cautious or risk averse.*

Charity Commission guidance: Campaigning and political activity guidance for charities (CC9)

- 6.5 Charities may record the relevant information in different places: for example in a business plans, risk register or minutes of meetings. Where it is recorded is not so important as making sure that it has been recorded, with an appropriate sign-off.

- 6.6 Charities come in all shapes and sizes, as do their campaigns. It is important that smaller charities are not deterred from campaigning because they are worried about the regulatory compliance. Not all campaigns require the same level of consideration or paper trail, depending on their aims, duration, resourcing and the wider context.
- 6.7 It is possible to draft policies and procedures with the grain of how a charity actually campaigns in practice. Charity Commission guidance, taken as read, appears to regulate on the basis of a top-down scenario whereby for each campaign the trustees consider the strategy, evidence base, duration, cost, benefits and risks. However, in practice, some charity campaigns are initiated by trustees, others are sanctioned by a charity's members as part of a constitutional democratic process and others arise from diverse movements of people working together to tackle social injustice.

*What should a Campaigns and Political Activity Policy and Procedures policy cover?*

- 6.8 A campaigning policy can be created that reflects the genesis of a campaign, the interaction between different parts of the organisation or movement, the campaigning methodology, accompanied by an overall framework setting out the types of campaigns that have been considered and blessed by the trustees with the 'i's dotted and the 't's crossed.
- 6.9 There is sometimes a tension between a charity distributing power and ensuring that all voices are heard equally with the legal liability and responsibility that rests with Trustees. However, this tension can be navigated creatively so that the final policy facilitates bold campaigning while at the same time protecting the charity.
- 6.10 To make it fun, why not workshop the policy with everyone who contributes to the charity's campaigns. It is important to spend time to develop the policy so that it is appropriately tailored to your organisation and your proposed campaigning/political activities This will ensure that it works and does not contain requirements that cannot be followed in practice.
- 6.11 Also remember that many of *Theories of Change* can be complementary to the Charity Commission requirements. For example:

Theory of Change	Charity Commission requirements: CC9
Analyse the issue	The evidence base for the campaign and the use of the resources

Develop strategy for change.	The benefits of the campaign and how it further the purposes of the charity. Set out campaign methods
Plan the campaign	Political Procedures Policy Risk Assessments Sign Off
Deliver the campaign	Campaign materials Campaign messages Escalation procedures
Evaluate - build on success, manage failures.	Ensuring that a charity monitors and evaluate the effectiveness of the campaign.

The Charity Commission states that the policy should cover the following:

- The **strategy** for delivering the campaign
- The **evidence base** for the campaign and justification for the use of resources
- The **duration** of the campaign (which may be ongoing)
- The **cost** of the campaign
- The **benefits** - for example, a change in government approach, greater public understanding, and/or a change in behaviour.
- The **risks** and how to mitigate them, including:
  - that the charity will be drawn into activities outside its purposes with the potential for a misuse of charity funds;
  - breaching of legal/best practice requirements on campaigning;
  - costs and benefits;
  - failure of the campaign to meet objectives;
  - financial and/or reputational risks,
  - whether the campaign risks the independence of the charity;



- what might be the unintended consequences;
- the risk that the campaign may not be effective;
- and any other form of risk that can be identified.
- The ways in which the impact and success of the campaign will be monitored and evaluated.

6.12 This is set out in more detail in Annex 1.

## **7. Using social media as part of our campaign – what do we need to know?**

### *In brief*

7.1 It is best practice for most charities to have a social media policy so that trustees, staff and volunteers have clear guidance on what is and is not acceptable and the levels of authorisation required for different activities.

### *In more detail*

7.2 The Charity Commission issued draft guidance on charities use of social media at the start of 2023. At the time of writing, it is still in draft form and will be updated following the outcome of the Charity Commission consultation which ended on 14<sup>th</sup> March 2023. There are some parts of the guidance which are helpful and constructive, however, there was concern when the draft guidance was published that it could make charities more risk averse and that the guidance seeks to explicitly regulate the personal accounts of personal accounts and volunteers, for example, in relation to ‘harmful’ or ‘problematic’ content: both of these being unclear and undefined terms.

7.3 Social media has a key role in the sector. It gives charities the ability to champion the voices of those they work with, which is a fundamental part of charities’ work. It is also a platform that allows all charities, regardless of what their cause is or their organisation’s size, to effectively campaign and get their message out to a wider audience.

What should a social media policy cover? (subject to the Charity Commission’s final guidance)

- What does the policy apply to and why do we need one? – training and induction, so that everyone understands what to do and when.
- Who is responsible for the policy and point of contact for social media.
- Compliance with related policies (e.g. risk management policy, IT policy, data protection) and agreements
- Which social media channels the charity uses

- Guidelines on appropriate conduct when using the charity’s social media channels
- Use of personal social media accounts – appropriate conduct
- Monitoring
- Consequences of breach (these must be consistently applied)
- What to do if something goes wrong/communications crisis (actions to take, contacts, serious incident reporting).

7.4 Charities should make sure that the social media policy is communicated to trustees, staff and volunteers (or whoever the policy covers). This may involve providing training and/or covering it at an induction. There may need to be more in-depth training for the team working on social media and those who sign off on proposed social media posts.

7.5 Charities should consider testing out the process for when something goes wrong or for when there is a comms crisis before a major incident happens – that way everyone will be familiar with the process and anything that needs correcting/improving in the policy can be updated.

7.6 Charities will need to familiarise themselves with the final version of the Charity Commission’s guidance on ‘*Charities and social media*’ and ensure compliance or that they seek further advice where necessary.

## **8. Elections: Can Charities Continue to Campaign in the Run Up to an Election?**

### *In brief*

8.1 Charities can continue to campaign 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.

### *In more detail*

8.2 Campaigning in the run-up to an election is more complicated because there are additional legal requirements.

8.3 In relation to election law, the main legislation affecting charities and other 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.

8.4 The Representation of the People Act 1983 (RPA), covers individual constituency candidate level campaigns for or against one or more candidates. A charity cannot promote or prejudice the prospects of an individual

constituency candidate, but should take care in relation to the holding of hustings.

- 8.5 The Charity Commission's supplementary guidance does not cover election law (as opposed to the charity law requirements) and depending on the content, tone and timing, some of the permitted activities may have regulated electoral consequences – these are considered in section 14.
- 8.6 The advice in this guide is provided on the basis that a charity does not wish to register with the Electoral Commission.

## 9. Charity Commission Supplementary Advice on Elections

### *In brief*

- 9.1 The Charity Commission's '*Charities, Elections and Referendums*' supplementary 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.

### *In more detail*

- 9.2 The Charity Commission is clear that 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.
- 9.3 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.*'

It should be noted that the above may be regulated activity for election law as follows:

- Electoral Commission Overview of Non-Party Campaigning

*In relation to electoral law, it is likely that comparing policy positions of parties against policies which are expressly approved by your charity could be*

*reasonably be intended (at least in part) to promote the electoral success of parties advocating the charity's approved policies.*

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.

It should be noted that the above may be regulated activity for the purposes of election law as follows:

○ Electoral Commission Overview of Non-Party Campaigning

*In almost all cases, an activity will meet the purpose test if it:*

- *identifies political parties or candidates who support or do not support your campaign's aims*
- *sets out or compares the position of political parties or candidates on a policy you are promoting in a way that can reasonably be regarded as intended to influence voters to vote for or against particular parties or candidates*
- *promotes or opposes policies which are so closely and publicly associated with a party or parties or with categories of candidate that it is reasonable to regard your campaign activity as intended to influence voters to vote for or against political parties or candidates*

- A charity cannot appear in a political party's manifesto. A charity can publish its own manifesto to persuade political parties to adopt their 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, climate change.

*If the pledge is publicised prior to the election, this is likely to be regulated activity under election law: see above.*

- You can invite candidates to an event or hustings: 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 prejudice 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.
- Risk assess if a charity employee is a candidate and also to make sure that charity channels are not used to promote personal political views or to support or retweet party political content.

## **10. What are the legal requirements that apply to campaigning and elections?**

*In brief*

10.1 Charities that wish to campaign in the lead up to an election must comply with election law.

*In more detail*

10.2 Many individuals and organisations campaign around different types of election but are not candidates or political parties. They are called ‘non-party campaigners’. This can include charity and non-charitable organisations. The Electoral Commission has produced a draft statutory Code of Practice in relation to non-party campaigners and there is a Statutory Code on digital imprints. It is understood that the Statutory Code of Practice in relation to non-party campaigners is to be laid in Parliament in September 2023.

10.3 In many instances, spending on campaigns and activities will not be regulated. Generally, charity campaigns which were running before an election is announced will not be caught. It is unlikely to be reasonably regarded as intending to influence people to vote in an election when organisations do not know or expect that the election is happening. There are some exceptions to this, for example, if you have been engaging in a recent election.

## **11. How does a charity avoid having to register with the Electoral Commission as a non-party campaigner?**

*In brief*

11.1 If an organisation does not wish to notify or register with the Electoral Commission as a non-party campaigner before an election, it must ensure that it does not inadvertently meet the conditions required. This requires careful management where some campaigning activity is taking place.

*In more detail*

11.2 There are various risk mitigations a charity can put in place to avoid notifying the Electoral Commission and/or avoid Controlled *Expenditure* under PPERA.

11.3 If a charity does not seek to register with the Electoral Commission it must ensure that:

- The charity does not have an intention to spend more than £10,000 on *controlled expenditure* and thus does not need to make a notification to the Electoral Commission.
- Expenditure that does pass the *purpose test* does not fall within one of the categories of “qualifying expenses” contained in PPERA (see below).
- If a notification has been made to the Electoral Commission, expenditure does not exceed £20,000 in England (£10,000 once the lower tier comes into force) or £10,000 in any of Scotland, Wales or Northern Ireland, so that a full Registration does not need to be submitted to the Electoral Commission.

11.4 The requirements are set out below in further detail.

## **12. What are the implications for a charity not wishing to register as a non-party campaigner?**

*In brief*

12.1 If a charity does not want to register with the Electoral Commission, as a non-party campaigner, or as part of a ‘*common plan*’ or arrangement with other campaigners, it will need to actively take certain monitoring measures.

*In more detail*

12.2 Some charities do not wish to register because there is a heavy burden of compliance including keeping invoices, monitoring and reporting spending as well as controls on donations. Technical non-compliance: for example, not keeping an invoice, not paying an invoice on time, not using a printed and/or digital imprint in exactly the right format, may lead the Electoral Commission, in some circumstances, to sanction or levy a fine.

12.3 Importantly, the current Electoral Commission guidance states that while charities can and do carry out regulated activities and that a handful registered with the Electoral Commission in 2015 and 2017/2019: ‘*if you are a charity and abide by charity law and guidance from the relevant regulator in most circumstances your campaign activity is unlikely to meet the purpose test*’.

12.4 However, you still need to be aware of the non-party campaigner rules in case your activities pass the purpose test. The Electoral Commission guidance provides case studies from recent elections giving examples of issues-based campaigning that may be helpful when applying the purpose test to your campaign. These case studies are likely to be updated in 2023/2024, so do keep an eye on the Electoral Commission website. If trustees are unclear as to whether the purpose test is met, they should seek legal advice.

12.5 A fine or other sanction by the Electoral Commission in relation to a charity will also constitute a ‘serious incident’ in the eyes of the Charity Commission – this may lead to Charity Commission regulatory intervention and further investigation.

**13. What are the thresholds that apply to a campaign under PPERA, so that a charity not seeking to notify or register must fall below these thresholds?**

*In brief*

13.1 Charities should work on the basis of a threshold of £10,000.

*In more detail*

- 13.2 If a charity intends to spend more than £10,000 on regulated campaign activity it must notify the Electoral Commission, following which it will appear on the Register of Notifications. A charity must engage in a full registration with the Electoral Commission as non-party campaigner if regulated activity is undertaken with a value over £20,000 in England and/or £10,000 in any of Scotland/Wales/Northern Ireland. The word 'value' is important as it is not strictly what you spend but the value of the activity that will count towards the limit e.g. staff time on preparing a social media post.
- 13.3 It is important to note that the Elections Act, when key provisions come into force in November 2023, introduces a new category of Lower-Tier Campaigners.. If there is expenditure over £10,000 across the UK on regulated activity, a non-party campaigner must register as a 'lower-tier' campaigner. Lower Tier campaigners do not have to report spending or donations during or after a campaign, but do need to check on the permissibility of donations and are subject to imprint rules (see later in this guidance note for further details).
- 13.4 There are targeted spending rules if a non-party campaigner intends to influence voters to vote for one political party. This is, of course, not permissible for any charity. Once registered, a non-party campaigner can also undertake activity with a value up to £319,800 (England), £55,400 (Scotland), £44,000 (Wales) and £30,800 (Northern Ireland). The total spending in the UK due to attribution rules is generally £390,000. The organisation should ensure that when spending these sums, that they comply with the organisation's internal financial controls, obtain the correct authorisations and keep a careful record of the value of what has been spent.
- 13.5 There are also constituency limits of £9,750 that apply if the non-party spending is wholly or substantially confined to a particular constituency or constituencies and has no significant effect in other constituencies. The calculation includes focused constituency spending in a particular constituency and/or a proportion of any other regulated campaign spend that has to be attributed to that constituency. Spending on a UK-wide campaign will be apportioned equally to each of the UK's 650 parliamentary constituencies and spending in only one part of the UK (England, Scotland, Wales or Northern Ireland) attributed equally to each constituency in that part. When an organisation is registered with the Electoral Commission, they must also ensure that donations given towards the 'regulated activity' with a value of £500 or more are from a 'permissible donor'

e.g. an individual registered on the UK electoral register or a UK registered company.

#### **14. How is expenditure caught under PPERA?**

*In brief*

14.1 Expenditure is caught under PPERA by satisfying the Purpose, Public and Activity tests. All three of these tests need to be met for expenditure to be caught.

*In more detail*

##### **The Purpose Test**

14.2 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 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.*

14.3 The Electoral Commission draft Statutory Code states that in order to consider whether the Purpose Test is passed there are a number of relevant factors.

14.4 *While these are not set out in PPERA, these factors can help to determine whether campaign activity can be reasonably regarded as intended to influence voters to vote in a particular way at an upcoming election. These are:*

- *Call to action*
- *Tone*
- *Context and timing*
- *How a reasonable person would see the activity*



*No single factor on its own will determine whether or not a particular campaign activity meets the purpose test. Rather all of the relevant factors taken together will determine whether a campaign activity meets the purpose test*

**Call to action**

14.5 *A campaign that involves a call to action to voters to vote in a particular way at an upcoming election is likely to be reasonably regarded as promoting electoral success for a particular party or category of candidates and so meets the purpose test. The call to action may be explicit or implicit.*

14.6 *A campaign that explicitly promotes particular parties or candidates, or implicitly promotes certain political parties or candidates over others, is likely to meet the purpose test. It is unlikely that a public campaign without an explicit or implicit call to action to voters will meet the purpose test.*

**Tone**

14.7 *A campaign that is positive or negative towards a political party or parties, a category of candidates or a policy closely and publicly associated with a party or category of candidate is likely to be reasonably regarded as intending to influence voters to vote in a particular way and so meet the purpose test. A campaign that makes a voter think of a particular political party or category of candidates is likely to be regarded as intended to influence voters to vote in a particular way and so meets the purpose test.*

**Context and timing**

14.8 *A campaign on an issue or policy that is a prominent issue at the time the campaign activity takes place, that also meets the other factors, is likely to be reasonably regarded as promoting the electoral success of a particular party or category of candidates and so meet the purpose test.*

14.9 *A campaign that starts close to the date of an election and also meets the other factors, is more likely to be reasonably regarded as intending to influence voters to vote in a particular way at the upcoming election.*

14.10 *An ongoing campaign is unlikely to be reasonably regarded as intending to influence voters to vote in a particular way at the election.*

**How a reasonable person would see the activity**

14.11 *Campaign activity will only meet the purpose test if a reasonable person would regard the activity as intending to influence voters to vote in a particular way at an upcoming election.*

14.12 It should be noted that the test is not whether a charity's actual intention is to change the voting intentions of electors, but where its campaigning can be

reasonably regarded as intended to promote or procure electoral success as per the definition above. There are few Court rulings or judgments on many pertinent electoral law/ non-party campaigning issues: for example, the 'Purpose Test'. Interpretations are thus not always clear and plainly could be the subject of disputes (for example, with the Electoral Commission) and/or litigation.

- 14.13 In many cases, changing certain facts or the timing of a Campaign, sometimes just by a little, could increase or decrease the risk - which is why in terms of the facts and the circumstances, the analysis ultimately has to be conducted in 'real' time. For example, a campaign may not have significant traction or immediate public recognition, but could in the course of campaigning become a high-profile issue used by political parties, candidates, the media or others to highlight major differences between political parties or candidates.
- 14.14 The test must be applied at the time of the campaigning as the analysis relies not just on the tone of the non-party's communication, but on external variables such as the salience of the issue and the policy positions of parties and candidates.
- 14.15 The draft Statutory Code of Practice states in relation to the Purpose test that it must also be applied at the time as follows:

*Purpose Test - Extract from the draft Statutory Code of Practice*

*'Whether an activity can reasonably be regarded as intending to influence voters to vote in a particular way is commonly known as the 'purpose test'. The purpose test must be applied at the time, (our emphasis) or in the event of a retrospective regulated period as if at the time, spending on the activity is incurred. If spending was incurred prior to the regulated period but the activity takes place during the regulated period, the purpose test must be applied at the time the activity takes place.'*

***Analysing your organisation's activities – charity and electoral law***

- 14.16 Your organisation's different activities and types of campaign require separate analysis both as to charity and electoral law. The analysis may depend on a range of factors concerning the facts and circumstances including:
- Content of your charity's campaign - it is not necessary to name a political candidate or political party for the Purpose test to be passed:
  - Timing of your charity's campaign - will a public facing campaign be run close to the election?
  - Tone - for example, does the material use disparaging treatment or language, not aimed at developing an audience's understanding of an

issue? Or does the material cast a category of candidate or type of policy in a positive light?

- Consider the material from an outsider's perspective. Would a reasonable person view the campaign content as helping or hurting the chances for election of any particular political party, candidate or groups of candidates?
- The exact ask and content of the call to action is important as is the timing.

14.17 In relation to electoral law during a regulated period, it is likely that comparing policy positions of parties against policies which are expressly approved by your organisation could be reasonably be intended (at least in part) to promote the electoral success of parties advocating your organisation's approved policies.

14.18 The '*Electoral Commission Overview of Non-Party Campaigning*' states that in almost all cases, an activity will meet the purpose test if it:

- *identifies political parties or candidates who support or do not support your campaign's aims*
- *sets out or compares the position of political parties or candidates on a policy you are promoting in a way that can reasonably be regarded as intended to influence voters to vote for or against particular parties or candidates*
- *promotes or opposes policies which are so closely and publicly associated with a party or parties or with categories of candidate that it is reasonable to regard your campaign activity as intended to influence voters to vote for or against political parties or candidates.*

### **The Public Test**

14.19 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 draft 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*'.

14.20 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.

14.21 The draft 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.'*

**What is the regulated period?**

14.22 The regulated period for a UK Parliamentary General Election (UKPGE) (retrospective) is the 365-day period leading up to and including polling day (4 months for Scottish Parliament, Welsh and NI Assembly). A non-party campaigner is unlikely to be reasonably regarded as intending to influence people to vote in an election if it did not know or expect that the election would be called.

14.23 The draft Statutory Code says as follows:

*'Where a regulated period is applied retrospectively, any pre-announcement activity will only be regulated if, at the time it was carried out, it could reasonably be regarded as intending to influence voters to vote in a particular way at a relevant election. [See definition of relevant election in Annex B.]*

*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. A campaign activity that is focused on an issue rather than on how a voter should vote, is unlikely to meet the purpose test if there are no upcoming relevant elections.*

- *Campaign activity will only be regulated as a result of a retrospective regulated period in either of the following circumstances:*
- *Campaign activity that meets the purpose test in any relevant election that is taking place at the time of the activity, even if it is not a UK Parliamentary election or a Northern Ireland Assembly election, will be regulated if a retrospective regulated period is applied'.*

14.24 An activity that is campaigning for the next election, regardless of what election that is, and meets the purpose test, will be regulated if a retrospective regulated period is applied.

14.25 As the next UK Parliamentary General Election has to take place by January 2025, campaigners will know that they are in a regulated period from January 2024. Otherwise, if the election is called earlier, the retrospective period may apply, for example, if a non-party campaigner has campaigned in a recent election or has a standing campaign to unseat certain MPs.

### **The Activity Test**

14.26 The following are covered by the activity test:

- the production or publication of material made available to the public or a section of the public in whatever form and by whatever means (e.g. leaflets, adverts, websites, social media, reports 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 non-party;
- transport (by any means) of persons to any places with a view to obtaining publicity;
- public rallies or other public events, other than annual conferences of the non-party or processions or protest meetings within the meaning of the Public Processions (Northern Ireland) Act 1998.
- Expenses e.g. premises hire, provision of goods, services or facilities are also caught.
- Staff costs for non-parties have to be accounted for, while staff costs for political parties are exempt. Recording small amounts of staff time could be very burdensome for non-party campaigners. The Electoral Commission says that you need to make *'an honest and reasonable assessment of the proportion of staff costs that can be fairly attributed to your regulated campaign spending'*.

14.27 The key exceptions are: material that you send to your members or committed supporters; volunteer time (not staff time) and if your organisation is covered in a newspaper or a periodical (not paid ads), as well as TV and broadcast media interviews and reporting e.g. on the BBC/Sky, where the broadcaster is regulated by Ofcom. The fact that coverage in newspapers is not covered is the subject of criticism given the influence of the print and other media.

### ***What do charities need to consider regarding the activity test?***

14.28 Charities need to consider whether their proactive campaigning will include:

- Leaflets
- Canvassing
- Market research
- Press Conferences
- Paying for transportation
- Public rallies
- Emails
- Facebook
- Twitter
- YouTube
- Instagram
- Tik Tok
- Newspaper advertisement
- Paying influencers or celebrities on social media
- Video games
- Will there be staff time spent on the above?
- Will the activity on Facebook, Instagram (or any other social media platforms your charity plans to use) be paid for, promoted, sponsored?

14.29 There are anti-avoidance provision concerning expenditure that takes place before the controlled period, but the activity takes place during the regulated period.

## **15. Joint campaigning and coalitions**

*In brief*

15.1 It is very important for charities to be aware of the joint working rules and to take appropriate steps during the regulated period, this is because if your organisation or someone on your behalf has a 'common plan' with other campaigners, each campaigner's spending counts towards the registration threshold.

*In more detail*

15.2 The draft Statutory Code states that:

*'An existing umbrella organisation that makes decisions about their campaign activity independently will not be joint campaigning unless it enters into a plan*

*or arrangement with other non-party campaigners in which they all intend to incur controlled expenditure.'*

- 15.3 The draft Code states that a new organisation set up to carry out campaign activity that constitutes a group of other organisations and then spending money is not joint campaigning.
- 15.4 If your organisation or someone on your behalf has a '*common plan*' with another campaigner, then any regulated spending (including staff time) by each campaigner counts towards the regulated spending total for both. For example, if the organisation is in a common plan with another organisation who spends £19,000, but your organisation only spends £1001, each non-party campaigner is deemed to have spent £20,001.00 and both should have registered with the Electoral Commission before collectively exceeding the registration threshold.
- 15.5 One organisation could register as the "lead campaigner" with the Electoral Commission, but is then responsible for reporting the other organisation's spending.
- 15.6 Trustees need to decide whether they wish to avoid being caught by the joint working rules. The first and simplest way to avoid electoral law is for each coalition member, in relation to a joint campaign to not incur any regulated spending. Broadly this means that each campaigner does not engage in spending (including staff time) on public facing materials or certain activities *that could reasonably be seen as promoting or prejudicing the success of political parties or groups of candidates that share the same policy positions*. As previously discussed, whether this test is passed may depend on the salience of the campaigning issue, the exact point in the electoral cycle, as well as the tone of any communication
- 15.7 The draft Statutory Code states as follows:

***'What is joint campaigning?***

- ***Working with other non-party campaigners***
- *Non-party campaigners may decide to work together on a campaign. Where the non-party campaigners work together on **regulated campaign activity**, the rules on joint campaigning may apply.*
- *The rules on joint campaigning apply to registered and un-**registered** non-party campaigners.*
- *A non-party campaigner takes part in joint campaigning where the following circumstances are all present:*
  - *they enter into **a plan or other arrangement** with one or more other non-party campaigners*

- *all non-party campaigners Involved **intend to incur** controlled expenditure in pursuance of that plan or arrangement*
  - *one or more of the non-party campaigners Involved **actually incurs** controlled expenditure in pursuance of the plan or arrangement and*
  - *that plan or arrangement can reasonably be regarded **as intending to achieve a common purpose.***
- *All of the spending on the joint campaign counts towards the **spending limit** of each of the non-party campaigners Involved in the joint campaign.*
  - ***There must be more than one non-party campaigner***
  - *An existing umbrella organisation that makes decisions about their campaign activity independently will not be joint campaigning unless they enter into a plan or arrangement with other non-party campaigners in which they all intend to incur controlled expenditure.*
  - *A new organisation set up to carry out campaign activity that constitutes a group of other organisations and then spending money is not joint campaigning.*
  - ***There must be an agreed understanding that controlled expenditure will be incurred to achieve the common purpose***
  - *If there is no intention to incur expenditure there is no joint campaigning. For example, if it is agreed that all activity will be carried out by volunteers no spending will be incurred and there will be no joint campaigning.*
  - *There must be an agreed understanding as to the scope and purpose of the campaign*
  - *Non-party campaigners who happen to campaign about similar or related issues are not joint campaigners.*
  - ***There must be an agreed understanding between the non-party campaigners that each of them will incur controlled expenditure to achieve the common purpose***
  - *All controlled expenditure incurred in pursuance of the plan or arrangement will fall within the joint campaigning rules.*
  - *Joint campaigning is not simply*
    - *transferring or lending items to another campaigner or*
    - *providing money to another campaigner*
  - *This must be treated as notional spending or a donation and dealt with in accordance with the appropriate rules.*



- *Even if one of the non-party campaigners Involved in the plan or arrangement does not incur their share of agreed expenditure, any expenditure incurred will still be joint campaigning and must be reported by all non-party campaigners Involved.*
- *Any controlled expenditure incurred by a non-party campaigner that goes beyond or is incurred outside of the agreed plan or arrangement, is not part of the joint campaign but will still count towards the spending limit of the non-party campaigner incurring the expenditure.*
- *Only spending that was agreed as part of the joint campaign counts towards the spending limit of the other non-party campaigners Involved in the joint plan.'*

15.8 *The Electoral Commission's guidance that pre-dates the draft Code of Conduct states that:*

*'Your organisation may be comprised of member organisations who share similar goals and objectives but who are separate organisations and who make their own decisions as to how to campaign. You may also provide advice and assistance to the member organisations and it will not be unusual for both you and the member organisations to campaign on the same issue. The guidance then goes on to say: 'In such cases, you should make an honest and reasonable assessment, based on the facts, whether you and your member organisations are working together. If you are still unsure, you can email or call us for advice.'*

15.9 A difficulty may arise if some of the activity is pursuant to a common plan and some is not. In this case the Electoral Commission states that you should make an honest-and reasonable assessment. One option is for each member of the joint campaign to agree a high-level circular, guidelines or reach a shared understanding that no member is intending 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.

15.10 Charities with similar policy asks could act in a way that has not been strategized or agreed with each other. It may also be that the reportable costs of regulated joint activity are very low, for example, staff time on tweets, so that even when the costs are attributed to each member, they are still within the unregistered spending threshold. The latter is higher risk and more for after the event to defend an allegation that the thresholds have been exceeded.

15.11 The draft Code of Practice sets out the activities that are likely to be joint campaigning and not joint campaigning:

- **Activities that are 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.*
- **Activities that are not 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. See sections on notional spending and donations.*

### *Lead and Minor Campaigners*

15.12 Where there is a joint campaign, the draft statutory code states that one of the registered non-party campaigners may agree to report all of the joint campaign spending by each of the non-party campaigners involved in the joint campaign. The registered non-party campaigner who agrees to report all of the joint campaign spending is known as the lead campaigner. A non-party campaigner whose joint campaign spending is reported by a lead campaigner is known as a minor campaigner.' Where a group of campaigners jointly spend over the notification threshold, but some of those campaigners do not reach the notification threshold, the lead/minor campaigner laws allow one campaigner, the lead campaigner, to submit a notification to the Commission and report all of the spending on the joint campaign. The minor campaigners do not have to submit a notification.'

## 16. What is targeted expenditure?

*In brief*

16.1 Targeted expenditure is where organisations are engaging in targeted expenditure for one political party only: for example, the Labour or Conservative Party. A charity cannot carry out any targeted expenditure.

*In more detail*

16.2 The draft Code of Practice states:

- **Regulated campaign spending** by all registered non-party campaigners during the regulated period for a UKPGE that is aimed at promoting the electoral success of one particular registered political party or any of its candidates is called targeted spending.
- Spending on campaign activity will not be considered targeted spending unless the campaign identifies the political party or its candidates.
  - Campaign activity that names a single political party or its candidates in a way that can be regarded as intended to influence voters to vote for only that political party or its candidates will count as targeted spending.
  - Campaign activity that identifies a single political party or its candidates in such a way that it can be reasonably regarded as intended to influence voters to vote for only that political party or its candidates, will be considered targeted spending. This could be by using a campaign slogan, party logo, or a policy so synonymous with only one political party.
- A negative campaign aimed at influencing voters not to vote for a particular political party or any of its candidates is not targeted spending.
- Targeted spending will count towards the overall spending limit for a non-party campaigner and is subject to the general laws on regulated campaign activity.

## 17. Can we publish a manifesto as part of our campaigning activities?

*In brief*

17.1 At this stage of the electoral cycle (July-October 2023 (Party Conference Season), 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 to try and influence the pressure the parties to commit to the policy asks. For example, if your charity does not explicitly

compare its views with political parties or candidates and the charity's manifesto contains no calls to action to vote, does not overtly promote or disparage a political party and is framed as having political parties as its audience.

*In more detail*

- 17.2 As such, the risk level at this stage of the electoral cycle attached to a political party or candidate picking up a core recommendation of the charity is low, particularly if the charity can show that it has been working on the issue/recommendation prior to the political party or candidate picking up the issue. It is a legitimate activity for the charity to seek to influence candidate manifestos/commitments so as to promote its charitable purposes for the public benefit. This is different to the charity seeking to actively promote a candidate or party, or influence voters to vote for a candidate or party, on the basis of the extent to which a candidate's manifesto or commitments reflects your charity's asks.
- 17.3 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."*

**18. Can we meet with MPs and PPCs as part of our campaigning activity?**

*In brief*

- 18.1 Meetings with MPs and PPCs and Targeting Seats at this stage of the electoral cycle (April -October 2023, Party Conference season) may be one of the activities that an organisation wishes to carry out. The Charity Commission guidance requires charities to engage with a cross section of parties. However, the Commission's guidance does also acknowledge 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."*

*In more detail*

- 18.2 Subject to general risk assessment and overall non-partisanship and evidenced cross party engagement, a charity can hold private meetings with MPs and PPCs because, for example, 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, private meetings with key influencers.

- 18.3 Depending on the stage in the electoral cycle and whether there is a regulated period for electoral law, publishing the contents of a meeting e.g. in a photo or a tweet should be risk assessed taking into consideration both charity and electoral law.
- 18.4 For example, this should be risk assessed, but if the charity is to target seats or constituencies, there must be a non-partisan rationale for doing this. For example, there is a mixture of types of seats (not just marginals or target seats for one political party), maintaining an impartial approach as to how voters wish to vote. It is also important that any engagement does not appear to be piggy-backed or run alongside candidates' campaigns. It is important overall that your organisation works on a non-partisan basis.

## **19. Coalition Campaigning**

### *In brief*

- 19.1 Charities need to carefully consider whether a joint campaigning activity furthers the charity's purposes and if not, whether the charity needs to withdraw from the campaign or whether it can opt-out of a specific campaign as part of a coalition. These decisions are subject to continuous risk assessment and should be recorded carefully.

### *In more detail*

- 19.2 The overarching position for the charity is that any joint campaigning must further your charity's charitable purposes, as well as be undertaken in accordance with the risk mitigations in CC9.
- 19.3 These considerations will also relate to every other charity that is a member of the joint campaign. Insofar as the joint campaign carries out campaigning that is outside the purposes of a particular charity, then the charity will need to risk assess the position.
- 19.4 Accordingly, if the campaigning activity is outside the purposes of a charitable member, the charity will need to consider whether: a) they need to withdraw temporarily from the campaign or b) the charity can be 'isolated' from the campaigning activities.
- 19.5 Option b) could include:
- A documented record kept by the joint campaign that a member has not opted-in to the campaign.
  - During the period leading up to an election, no public use of the name and logo of the member by the joint campaign, on the website or in social media.
  - Listing all the members of the joint campaign who do support a campaign once there has been official sign-off by the member.

- Members of the joint campaign are not able to self-organise and promote a campaign as a discrete group of members without particular sign off procedures..
- Other protections to be workshopped/brainstormed.

19.6 Where a charity is working with other non-charity members, it should undertake some due diligence on its non-charitable and directly political members as follows;

- Are any members intending to register with the Electoral Commission as a non-party campaigner?
- Are any members engaging in targeted expenditure approved by a political party, so that the member is directly campaigning for say, the Conservative Party or the Labour Party?
- Are any members intending or aiming to help or hinder parties or candidates that hold certain views?

19.7 It is sensible to draw up an agreement on how the campaign will work and a complaints policy to manage any complaints.

## **20. What risk mitigations can an organisation put in place to avoid Controlled Expenditure during a Regulated Period?**

*In brief*

20.1 There are various risk mitigations that an organisation can engage to avoid controlled expenditure in a regulated period, for example, around influencing activities, commenting on legislation as it goes through Parliament and reactive campaigns.

*In more detail*

20.2 The following risk mitigations can help prevent a charity from meeting the definition of controlled expenditure:

- Influencing activities that exclusively and privately target:
  - MPs, PPCs
  - National press offices of political parties
  - Private meetings with key influencers

are not caught provided that they are not publicised afterwards.

- Commenting on legislation as it goes through Parliament
  - Focus on why the Bill should become law, rather than on whether particular parties or candidates support or do not support the Bill or policy.
  - Timing activity to co-inside with Parliamentary debates on the Bill, rather than continuing to campaign after the Bill has passed into law.

- Asking members to lobby to support the Bill, and not imply support for a party or candidate.
- Reactive campaigns:
  - Press release only to the media i.e. press release not on organisation's website or tweeted.
  - Interviews: BBC, ITV, Sky, local radio, foreign language channel 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.

### 20.3 What are the risk areas?

- 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 litigation.
- Avoid hashtags identified with a party or candidate and be very careful when retweeting.
- Think carefully about language associated with particular parties or candidates.
- If political party or candidate uses your campaign, the independence of your organisation must be maintained.

## 21. Digital Imprints

21.1 The Election Act 2022 introduces a new requirement around digital imprints. This means that from November 2023, when certain campaign material is published, it needs to contain certain details to show who is responsible – known as an 'imprint' for transparency purposes. Again, this is to ensure and if it is applicable, they apply all the time, like printed imprints and not just in a regulated period. that there is transparency for voters about the identity of the individual or organisation campaigning.

21.2 The Electoral Commission has now produced draft Statutory Guidance on imprints that has been laid before Parliament in accordance with Section 54 of the Elections Act 2022. In most circumstances, charities that choose not to register with the Electoral Commission will not be required to use a digital imprint. The Statutory Code states that:

If you are a registered charity, then if you follow charity law and guidance from the relevant charity regulator, your material is unlikely to have a primary purpose on the list, because many of the sorts of campaigns that have those purposes are prohibited. For example, charities must remain independent of

party politics and must not support a political party or candidate, or create a perception of support as a result of their actions or participation.

## 22. What other laws will apply to our campaigning activity?

*In brief*

22.1 It is important to bear in mind that other laws will also be relevant and may impact the planning and implementation of your campaign.

*In more detail*

Examples include:

- **Data protection/UK GDPR laws** – where political campaigning material is sent to individuals, it is treated similarly to other forms of direct marketing. See link to Information Commissioner's specific guidance.
- **Advertising laws** – this area is regulated by the Advertising Standards Authority and the Broadcast Committee of Advertising Practice, with the aim to ensure that any material is socially responsible and does not mislead the recipient. For example, if you have a quote in your materials, the quote must be real rather than made up.
- **Defamation law** is relevant and a complaint may be made against your organisation if a statement made in campaign material harms a person or an organisation's reputation. However, importantly, there are many defences that you may be able to rely on, including being able to prove that a statement is true, which is a complete defence. This ties in with other requirements in relation to campaigning relating to ensuring you have credible and robust evidence to back up any claims that you make and should be part of your overall risk management activities.
- **Intellectual property law** – again, it is important to ensure that you have the rights to use the content of your campaign material – so for example, if you plan to use a sound or video clip, you should ensure that you know who owns it and whether you have permission to use it (or how you go about obtaining permission).
- **Various protest and public order legislation** including the Public Order Act 2023 which places conditions on the ability to protest.

22.2 You may need to seek further advice if you are unsure of how these laws will impact your campaign activity.

### Key guidance:

Electoral Commission – Overview of regulated non-party campaigning



[https://www.electoralcommission.org.uk/sites/default/files/pdf\\_file/to-activities-npc.pdf](https://www.electoralcommission.org.uk/sites/default/files/pdf_file/to-activities-npc.pdf)

Electoral Commission – Non-Party Campaigners Code of Practice DRAFT

<https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-consultations/consultation-draft-npc-code-practice/npc-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

	<b>Roles and responsibilities</b>	<b>Policy Documents</b>	<b>Protections</b>
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 comply 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</p> <p>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

	<b>Question</b>	<b>Response</b>
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?	<p>Explain why the activities are not party political and include reference to a risk assessment.</p> <p>[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].</p>
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.	<p>Is all campaign material factually accurate?</p> <p>Emotive and Controversial material that may rouse strong emotions in some</p>	<p>Set out evidence base and links to sources of information.</p> <p>The campaigns are grounded in facts and evidence as follows: [please insert].</p> <p>If the material may be seen as emotive or controversial, explain why it is being used. For example:</p> <p><i>The Trustees are willing to accept the risks of undertaking a campaign which poses some risks because of the potential benefits the campaign might bring, and which might include:</i></p> <ul style="list-style-type: none"> <li>• <i>greater public understanding (and perhaps increased donations)</i></li> <li>• <i>a change in behaviour</i></li> </ul> <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"> <li>• Risk of acting outside charity's purposes/misuse of charity funds?</li> <li>• Breach of legal/good practice requirements on campaigning?</li> <li>• Costs and benefits?</li> <li>• Risk of failure to meet objectives?</li> <li>• Financial risk?</li> <li>• Reputational risk?</li> <li>• Risk to independence?</li> <li>• Unintended consequences?</li> <li>• Other?</li> </ul>	<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.	Charity Commission Guidance CC9 states:	Explain how the charity's purposes are furthered.

	<p>‘a charity wishing to participate in such an alliance should consider whether:</p> <p>there is a reasonable expectation that the arrangement will help to further or support the charity’s purposes</p>	
17.	<ul style="list-style-type: none"> <li>any expenditure can be justified as being an effective use of resources</li> </ul>	Set out budget and justification for expenditure.
18.	<ul style="list-style-type: none"> <li>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.</li> </ul>	<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"> <li>opt out procedures.</li> <li>Ringfencing risk and activity.</li> </ul>
19.	<ul style="list-style-type: none"> <li>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.</li> </ul>	List protections to ensure a charity’s monies are only spent on its charitable purposes and not wider or different charitable purposes.