

# Supporting political activity

**With the recent wave of environmental activism and the turbulent political climate, charity leaders need to be aware of the rules for charity grant-funders looking to support political activity.**

Jess Collings provides a useful overview of this complex area of charity activity.



Jess Collings Solicitor

T: 020 7551 7649  
j.collings@bateswells.co.uk

Jess works across both the Dispute Resolution and Charity teams, with a particular focus on all things political. She advises political parties, candidates and campaigners on election rules, internal disputes, regulatory issues and getting their message across effectively while complying with the legal frameworks that apply.

While 'political activity' is not the monster it is often made out to be – and can be an effective and legitimate way for a charity to pursue its charitable purposes – charity law does impose some constraints on political activities and campaigns. These can apply even where a charity is not carrying out political activity itself, but is considering whether to provide funding to a third party (whether a charity or another organisation) that may be doing so. So, what do charitable grant-funders need to watch out for?

## What 'type' of activity is involved?

In spite of myths to the contrary, charities most certainly can both carry out and support political activity. Having said that, there are some restrictions. So, the first step, when presented with a funding proposal that might involve political or advocacy work, is to identify whether or not the activity is permissible. Charity Commission guidance *CC9 Campaigning and political activity guidance for charities* sets out the different types of activities in this area and whether a charity can undertake them – these principles apply equally where a charity is not carrying out the activity directly, but is providing funding or other support to another body to do so:

- i) **'campaigning'**: more helpfully referred to as 'non-political campaigning', this is advocacy activity which is aimed at influencing public attitudes or understanding or influencing the behaviour of private bodies (e.g. lobbying a large drinks manufacturer to use less plastic and running a campaign to encourage the public to use alternatives to plastic);
- ii) **'political activity'**: more helpfully referred to as 'political campaigning', this is advocacy and influencing activity which is aimed at securing or opposing a change in the law, policy or decisions of public bodies, governments and political figures in the UK or abroad (e.g. lobbying the government to impose a tax on large plastics manufacturers); and

iii) **'party-political activity'**: e.g. supporting or advocating against a political candidate, politician or political party. Charities must never engage in this type of activity (e.g. running an advertising campaign encouraging people not to vote for a political party because it does not support a tax on large plastic manufacturers).

It might be difficult to work out whether a funding proposal falls within (i) or (ii) above. The main differences between the two are that the Charity Commission is likely to view political activity as higher risk (for example, there might be a risk of reputational damage or being perceived as crossing a line into party-political activity) *and* a charity has to make sure that political activity is not the sole or main way in which it supports its charitable objects.

## Does funding the activity further our charitable purposes?

The basic principles that apply to charitable grant-funding do not change just because you might be funding political activity. As always, you need to ensure that the proposed activity will further your charitable purposes. And you need to be particularly careful if the recipient organisation is not a charity: there are a number of additional considerations here, such as a need to restrict the grant so that it can only be spent on activities that a charity could carry out. Remember that you cannot fund another organisation – charitable or not – to do something that you couldn't do yourself.

## Is there an election coming up?

What's often referred to as the 'Lobbying Act' is actually the Political Parties, Elections and Referendums Act 2000 (PPERA) and it can impact on charitable advocacy activities in the run up to an election.

- In a 'regulated period' ahead of an election (usually 12 months for a General Election) PERA imposes controls and transparency requirements on



spending in the UK by any individual or organisation whose activities could be 'reasonably regarded' as intended to influence voter choice. Charities carrying out legitimate, lawful, political or campaigning activities can fall within the scope of this broad, objective test (even though a charity's activities can never actually be intended to influence voter choice, as this would be prohibited party-political activity). The restrictions include limits on how much can be spent on these so-called 'regulated activities' in the run up to the election and certain transparency requirements.

- The requirements apply to the organisation actually carrying out the regulated activities – not generally to the funder. But in rare cases a charitable grant-funder might be caught – for example, if it provides a grant for a very specific activity that it had strategic input in choosing and managing.
- Charities and other organisations that undertake regulated activities must ensure that the funds they receive towards those activities are from 'permissible donors'. This broadly means from a UK source – such as a UK company operating a business in the UK, or an individual on the UK electoral register. It can include UK charitable companies and other types of charitable entities (although the rules applying to trusts and unincorporated associations are more complex).

So charitable grant-funders should ensure that they only fund anything that could qualify as a 'regulated activity' if they are a 'permissible donor' under election law. Although the regulatory responsibility usually falls principally on the recipient and not on the donor, it will generally be in the interests of the grant-funder to avoid being party to any breach of the rules. Funders may also need to consider the source of their own funding – for example, where it has been provided by an associated overseas funder and passed on to the recipient.

### Charitable companies and political donations?

Charitable companies that are grant-funding another organisation's political activity might need to check whether their company law members have authorised the company to make political donations. This requirement – imposed by the Companies Act 2006 – should only apply to charities when the company will be funding what would be viewed by company law as a 'political organisation' – essentially an organisation that carries on, or proposes to carry on, activities capable of being reasonably regarded as intended to affect public support for a political party, candidate or referendum proposition. The requirement is subject to a 'de minimis' threshold of £5,000.

### ELECTIONS

Bates Wells is one of the few UK firms to specialise in electoral law.

We are happy to advise you on any areas of concern, both generally and in the run-up to an election or referendum. We will also provide regular updates on our website on issues as they arise.

For any queries on any aspect of the law affecting politics, elections and campaigning, please contact our Politics, Elections and Campaigning team <https://bateswells.co.uk/services/politics-elections-and-campaigning/>

### FIND OUT MORE

Charity Commission guidance CC9 Campaigning and political activity guidance for charities is at <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>