

General election 2017: a note on election and charity law issues for university communications and campaigns teams

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Introduction

A general election provides universities and organisations such as Universities UK with a great opportunity to talk about the issues that matter to us, and the areas where we would like political parties and the next government to engage with us once the result of the election is known.

We should not shy away from lending the expertise and knowledge from the sector to inform debate over the coming weeks. But we know that some universities are concerned about falling foul of election or charity law by saying or doing something which calls their political impartiality into question.

The following advisory note sets out a number of issues and legal constraints that UUK members should be mindful of in the run up to the general election on 8 June 2017, but which we hope gives you confidence to get involved in campaigning and to offer opportunities for debate within your institution.

This is UUK's interpretation of existing guidance and good practice and does not constitute legal advice. It is based largely on the legal situation for England and Wales, but there is more on differences for Scotland and Northern Ireland in the section on the devolved nations.

Charity law and universities

Higher education providers that are charities (including, since 1 June 2010, those that are exempt charities) are subject to direct regulation by the Charity Commission.

Charity law stipulates that charity must be established for exclusively charitable purposes – an organisation established for a political purpose cannot be a charity. Charities may generally undertake campaigning and political activity provided that:

- it is in furtherance of their charitable purposes;
- it is permitted subject to the terms of their governing documents;
- they never engage in any form of party political activity;
- they retain their independence and political neutrality; and
- political activity does not become their sole and continuing activity.

Under charity law, charities must not support or oppose a political party or candidate. However, subject to the above conditions, they can engage in campaigning and political activity aimed at securing, or opposing, any change in the law or policy of central government, local authorities or public bodies in support of their charitable purposes.

Universities can play an important role during elections, helping to facilitate and inform public debates, and they should feel confident in doing this, as long as they heed relevant guidance:

- For England and Wales, the Charity Commission has produced [guidance on elections](#)
- For Scotland, OSCR (Scottish Charity Regulator) has guidance in the form of [FAQs](#)
- For Northern Ireland, the Charity Commission for Northern Ireland has more details [on this section](#) of its website

While many charities felt deterred from campaigning at the last general election in 2015 and during the EU referendum in 2016, this guidance is actually fairly enabling. It should not unduly hinder charities campaigning in a responsible and non-partisan way.

For example, five things that universities can do, are:

1. Continue campaigning and supporting issues which you have consistently spoken about
2. Host a debate between candidates or invite them to issue-focussed events
3. Speak to candidates and seek their views on issues
4. Publish and promote academic research and analysis on topical issues relevant to the election
5. Host seminars and discussions on topical issues relevant to the election

There are of course some restrictions, but these are common sense and areas which universities will already be mindful of in communications and public-facing activities.

A key point in the guidance is that charities “*must leave it to the electorate to make their own decisions about how to vote*” and therefore anything which suggests support for a particular party or candidate(s) should be avoided.

Therefore, five things universities can't do are:

1. Advocate for or endorse the views of any individual party or candidate
2. Explicitly compare the university's views to those of individual parties or candidates
3. Donate funds to any individual party or candidate
4. Allow their organisation to be cited in a candidate's manifesto or publicity materials
5. Only interact with/offer opportunities to a single party or limited range of candidates.

Finally, the guidance acknowledges that sometimes staff within charities will wish to be involved in party political activities in their individual capacity, including as candidates. Where this is the case, it should be declared by the staff member and the charity should consider how best to manage a potential conflict of interest such as ensuring an appropriate separation between the individual speaking in a personal capacity and as a representative of the university.

The Charity Commission's document, [Speaking out: Guidance on campaigning and political activity by charities](#), provides helpful information – mostly in a Q&A style – on a range of issues from engaging with politicians and political parties, to the use of emotive materials.

Election law and universities

The Political Parties, Elections and Referendums Act 2000 (PPERA) was introduced after political funding scandals to give transparency on donations and spending by parties, and was amended by the Lobbying Act 2014. PERA sets out the framework for registering with the Electoral Commission, spending and donation controls, and reporting requirements.

The regulated period (i.e. the period during which organisations need to monitor and report their campaign-related expenditure) technically started on 9 June 2016 – and that's not a typo! But this will often be hypothetical as it will typically be difficult to argue that any activity undertaken before the 2017 general election was announced was intended to promote election success for a political party, parties or candidates at that election. So, most organisations will incur regulated expenditure only from the announcement of the election on 18 April until the election on 8 June. There will be some exceptions to this general rule, where organisations have been involved in regulated activity in relation to any by-elections since 9 June 2016, the forthcoming local and mayoral elections in May or the recent Northern Ireland Assembly elections. However, this is unlikely to be the case with most universities.

Universities should ensure they are aware of the Electoral Commission's [guidance](#) for non-party campaigners. This sets out the spending limits for non-party campaigners on certain regulated activities.

What is regulated activity? The test is if an activity can reasonably be regarded as intended to promote or reduce the chances of electoral success for one or more political parties or any group or category of candidates, including parties and candidates who share particular views or policy positions. The rules should not apply unless an organisation is reasonably regarded as intending to influence the public to vote in a particular way. An activity can still be regulated even where a party or candidate is not expressly mentioned.

Where a charity produces election material it must make sure that promotion of its aims is not confused with promotion of a political party or candidate. This is because a charity must not deliberately encourage support for any particular party or candidate.

Spending on election material that is distributed to the public may be regulated by the Electoral Commission 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

For example, charities sometimes produce material that sets out or compares the position of parties or candidates that support or oppose a policy that they are promoting, where these views relate to the charity's purposes. This is likely to be regulated activity under PPERA, meaning that any expenditure on this material would be "controlled expenditure"

Universities would need to register with the Electoral Commission if they intend to spend more than £20,000 in England or £10,000 in each of the devolved nations on controlled expenditure – but this is unlikely to affect most charities and universities. Although Universities UK registered with the Electoral Commission ahead of the EU referendum, we are not intending to register ahead of the general election as we do not anticipate spending anywhere near the £20,000 mark on activities which would be regulated under PPERA.

If your university is going to be campaigning ahead of the general election, it may be useful to keep some record of spending in certain categories if you think you may be spending near the £20,000 threshold on things such as:

- Any spending on campaign leaflets/printed materials
- Any spending on campaign-related advertising
- Any spending on social media collateral related to your campaign
- Any spending on political events, including hustings

Influencing activities – such as materials, briefings or meetings which exclusively target MPs, prospective parliamentary candidates, press offices of political parties or private meetings with key influences are not caught by this, as on public-facing activities and materials are regulated by PPERA.

Clearly much of this is a subjective judgement about whether a reasonable person might regard your campaign as intending to influence voter choice. Therefore there are a number of things you should pay attention to during the regulated period:

- Tone: be careful that your campaign is not negative or positive towards a particular political party or policies that particular groups of candidates support or oppose.
- Context and timing: is this an issue you have campaigned on/spoken publicly about for some time? This offers more safety than campaigning on new issues.
- Call to action: are you asking people to vote (explicitly or implicitly) for a particular political party or candidate?
- Twitter: Avoid hashtags identified with a party or candidate, and be careful when re-tweeting (i.e. you can retweet a candidate or political figure, but would need to consider doing the same across the political spectrum).
- Branding: think carefully about colours/images you use in any campaign materials, such as colours or images associated with particular parties, and use of ballot box images.
- Terminology: think carefully about using terminology overtly associated with a particular party as this can reinforce support or opposition for a party and their policies (an example from the 2015 general election would be use of the phrase 'bedroom tax' which was a label created by a party against this policy, not its official title).

Purdah

The term ‘purdah’ is in use across central and local government to describe the period of time immediately before elections or referendums when specific restrictions on the activity of civil servants are in place. The terms ‘pre-election period’ and ‘period of sensitivity’ are also used.

The pre-election purdah period before general elections is not regulated by statute, but governed by conventions. The Cabinet Office issues guidance for civil servants in UK government departments, and the staff and members of non-departmental public bodies (NDPBs) and other arm’s length bodies (ALBs) on their role and conduct during election and referendum campaigns.

Guidance for civil servants for the 2017 general election was issued by the Cabinet Office on [20 April 2017](#). The pre-election period for the 8 June general election started at midnight on Friday 21 April 2017.

Purdah therefore refers to restrictions for civil and public servants and public bodies, and not for universities (where they are not themselves public bodies). It does, however, mean that some announcements impacting universities which might normally be expected over the coming weeks – including the outcome of the Teaching Excellence Framework – cannot happen until after the election period (this has now been confirmed for Wednesday 14 June 2017).

The Scottish Government has published separate [guidance](#) Scottish Government civil servants working in the Scottish Government and its agencies, and for staff and members of national devolved public bodies, on their role and conduct during the UK general election campaign. The guidance is consistent with guidance given to staff in UK departments during Scottish Parliament pre-election periods.

The devolved nations

As mentioned above, there are three charity regulators covering the UK: the Charity Commission for England and Wales, the Scottish Charity Regulator (known as OSCR), and the Charity Commission for Northern Ireland.

The rules are broadly similar for each, although in some cases the regulator is more permissive outside of England and Wales, particularly in Scotland. OSCR’s guidance on charity campaigning, for example, clearly states that a charity can “*support a policy advocated by a political party (but not the party itself)*” where this is a way to achieve their charitable purposes.

[Charities and politics](#), published by the Charity Commission for Northern Ireland, provides guidance for charities in Northern Ireland on political purposes, political activity and campaigning. This guidance states: “*A charity must remain independent and not align itself with a particular political party. It may support or oppose particular policies, including those advocated by a particular party, as a means of achieving its charitable purposes, but must never support or oppose a political party or politician...In supporting a policy that a political party advocates, a charity should make clear its independence to its supporters, the general public, and those whose views it is seeking to influence.*”

The Charity Commission of England & Wales makes a similar statement in its general guidance note [Speaking out: Guidance on campaigning and political activity by charities](#), in which it states that “*“a charity may give support to a specific policy which is advocated by a political party. A charity cannot give general support to a political party, because all political*

parties have a range of policies.” The Charity Commission’s separate [guidance on elections](#) suggests that charities need to take particular care to protect their independence during a pre-election period, and avoid explicitly comparing their policy positions to those of parties and candidates, but nonetheless suggests that charities may continue to campaign on policies which coincide with (or differ from) those of parties and candidates, provided they make their independence clear and do not do anything to encourage support for any party or candidate.

Managing risk

Charities should not be deterred from speaking out on issue of importance to them during the period before the general election, nor should academics, students or staff be put off engaging in discussions about political issues as part of their work and study. But there are some areas of risk which universities should ensure they have thought about, including whether these areas need to be brought to the attention of, or be approved by, the university’s governing body (i.e. the charity trustees).

It may be useful to keep a record of activities and the decision-making process to approve these for any high profile or potentially controversial areas which you can refer to if asked by the Electoral Commission or the Charity Commission.

There are safeguards and ways to minimise risk during the pre-election period if you:

- Ensure you have read relevant guidance and are familiar with charity and election law
- Campaign on / talk about issues which you have previously been public about (business as usual)
- Stay neutral and objective
- Consider carefully the pros and cons of public activities and issues such as working with other organisations and how you engage with political parties and candidates.

What can I do? Some scenarios for universities during the regulated period

The following section provides some guidance based on questions Universities UK has already received from members about activities being considered or already underway ahead of 8 June 2017.

One of the parties comes out with a policy we agree with and have campaigned on for some time (for example, removing students from the net migration target). Can the university welcome this/support it?

Universities should be careful about expressing explicit support for specific policies – but that doesn’t mean you cannot comment. Charity Commission guidance CC9 says *“a charity may give support to a specific policy which is advocated by a political party. A charity cannot give general support to a political party, because all political parties have a range of policies.”* It also states: *“In supporting a policy that a political party or government also advocates, a charity should stress and make clear its independence, both to its supporters and to those people whose views it is seeking to influence.”*

In this example, if a party says they will take students out of net migration targets, it would be reasonable to comment to the effect that the University of X has long advocated that international students are removed from net migration targets, or that the university supports policies which support policies which will remove students from net migration targets.

However, it would be sensible to avoid a statement which says something like: *“We support Party X’s policy which will remove students from net migration targets.”*

In any publicity material (including printed material, media interviews and websites) a charity may promote its views on issues which relate to its objects and activities. However, the charity must steer clear of explicitly comparing its views (favourably or otherwise) with those of the political parties or candidates taking part in the election. For 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. The key point is that whilst charities can attempt to influence public opinion on a particular issue if it furthers or supports their objects, they must leave it to the electorate to make their own decisions about how to vote.

You should, in particular, be aware that charities are not permitted to make any explicit public comparison, either orally or in writing between the university’s (or UUK’s) position and any candidate’s position. For instance, you should not say: *“We agree with Fred Smith that funding for universities should be increased”*. You might say instead: *“We believe university funding should be increased”*.

One of the parties comes out with a new policy which would be disastrous for us. Can the university raise objections to this?

Yes. It would be stifling if you were not able to comment. However, you should consider how best you can communicate that this policy is damaging without explicitly and publicly denouncing the party responsible for it. You could do this by explaining why the policy would be damaging, and what your university/sector has instead been calling for or would like to see instead.

Can our university publish a manifesto detailing issues which we would like all parties to consider?

Yes. A number of charities publish a manifesto in order to publicise the issues which they campaign on, and in particular the changes they are calling for on behalf of their beneficiaries. This is acceptable where the charity is trying to persuade the political parties to adopt the policies which it advocates, or is simply trying to raise the public profile of those issues. It is not acceptable where the intention is to influence voter behaviour.

If a charity is approached by a political party for permission to refer to the charity in their manifesto, whether in relation to a political party or generally, the charity must refuse the request. This is because of the risk that the charity will be appearing to endorse the political party itself.

In terms of the branding, use of language and the images you select, be wary about anything which associates your publication with a particular party or suggests that the document is trying to influence voters: it should be about trying to influence political parties and candidates to understand and adopt issues which matter to you.

Where one or more policies outlined in the manifesto are closely and publicly associated with a particular political party, it is possible that expenditure on the manifesto could be controlled expenditure under PPERA, as discussed above.

Can I hold a hustings event? What do I need to consider?

Absolutely. Universities are uniquely well placed to host/organise hustings events because of their facilities, because of their locations, and because there are large numbers of voting aged

people (students, staff and local residents) who can benefit from an opportunity to hear from candidates.

The Electoral Commission published [guidance on hustings](#) for the local elections, but this is a useful guide for the weeks ahead. You can organise non-selective hustings (i.e. where you invite all parties to field a candidate) or selective hustings (i.e. where you select particular parties or candidates). It is clearly easier to avoid accusations of being partisan if you invite all candidates, although this may not be reasonable if there are too many (a hustings where there is a dozen candidates would not cover much ground!). If you do want to selectively invite candidates, then ensure you think carefully about the grounds on which you are selecting, such as the main parties by vote share. If you do hold a selective hustings, it would be good practice to ensure that during the course of the event (on a screen, on printed material, or in introducing the event) all other candidates standing are referenced and that you have good reasons, which you can share publicly, about why not all candidates are represented. Should a candidate be invited, but decide not to come, this would not be the university's fault providing all candidates had been given the same opportunities to attend.

Charity Commission guidance recognises that in some cases it may be appropriate for a charity not to invite certain candidates on more subjective grounds, such as because they may alienate the charity's supporters, or result in risks to public order. Members should contact their local police force for guidance on this last point. It is important to note that even if excluding candidates on subjective grounds is acceptable as a matter of charity law, it could result in the event being regulated under election law, and so result in controlled expenditure under PPERA or regulation by the separate rules under the Representation of the People Act, which regulates local constituency spending.

Under PPERA, an event will not be regulated if it is not public, such as if it only involves a charity's members. However, care should be taken around relying on this exemption, as live tweeting or inviting a small number of guests from outside of the membership could cause the event to become public.

Finally, consider who is best placed to chair the event to ensure impartiality and a well-run event. We have generally used someone from the media or with a journalistic background. Impartial chairing is also essential to ensure the hustings does not result in difficulties under charity or election law.

A candidate wants to visit our campus to speak to students and staff. Should we allow this?

This is acceptable. In this scenario you are agreeing to a request from a candidate, rather than you issuing the invitation. You would need to consider similar requests from other candidates on the basis of the same impartial policy.

You should also think about not giving any undue advantage to one candidate because of the fact that they are visiting your university or meeting your students. While you can reference/record this event through tweeting or posting factual news articles, you should consider how much space and prominence to give this to avoid implying support for a particular candidate or party. You should also treat any other candidates in the same way.

An academic is publishing a report in an academic journal which analyses and critiques current government policy on an issue (e.g. housing policy or health service provision). Can this still be published? Can the university issue a press release and publish on the website? Can the university tweet about this?

It can still be published by the journal, but the fact that it is a pre-election period may make additional publicity by your university more challenging. You can send out a press release, you can tweet links to any coverage and to the research as published on your website. However, in the university's coverage of the research, you should think about the language used (such as playing the headline of your press release with a straight bat rather than something more sensationalist), and in quotes, tweets etc make factual statements rather than ones which go further and express an opinion on current policy.

Constraints should not be placed on the ability of academic staff to express their views (particularly in their capacity as academics) beyond any such constraints that would typically apply to their ability to speak on other matters of political controversy under the university's usual policies and procedures.

An academic is asked to/wants to give a media interview that makes clear the merits or flaws in a party's policy announcement (for example a professor in health management wants to criticise UKIP's policy on the NHS). Can s/he do this? What should the individual and the university consider?

The academic can do this and s/he should make it clear that they are doing so as an individual academic and that they are not speaking on behalf of the university or their department. It would be odd for the individual not to use their academic title, as they are commenting based on their academic expertise, but consideration should be given to what extent it may appear that the individual is speaking on behalf of the university – for example, do they regularly give interviews as a spokesperson for the university on topics beyond their area of academic expertise? If so, inserting phrases which make it clear that the views they are given are based on their academic work would go some way to deal with any accusation that this is an attempt to influence voters.

In usual circumstances outside of an election period, the university might use its digital channels to highlight the media mention, even though this is providing comment rather than something based on a particular research output. However during the regulated period using official channels to promote the article could be seen as trying to influence voters by critiquing a policy or track record clearly identified with a particular party.

An academic or member of staff wants to endorse a local candidate, giving a supportive quote for her local campaign leaflet. In doing so they plan to use their professor title and university. Can they do this?

University staff are, of course, at liberty to take part in political activity and to show their support for a particular party or candidate as an individual. They can identify themselves using their job title/employer, indeed it would be strange in some contexts for them not to do so.

However, the individual and the university should consider whether by being quoted in this way it would appear to voters that the individual is speaking on behalf of the university (for example, if they are someone who regularly speaks for the university in the media). If this is the case, consideration should be given as to whether it is still appropriate to include the job title/employer details.

The university comms team is planning vlogs/blogs from experts demystifying the manifestos and headlines based on the university's academic research. This will be based on research, evidence and analysis and not on individual political views. Any issues here that we should know about it?

It is important for universities to balance the policy of neutrality with obligations in respect of freedom of speech or expression, and academic freedom. In this example, academic experts

will be giving views on topical issues based on their knowledge of the academic area. This is entirely legitimate, but if this is being produced and published by the university (rather than by an individual through their own channels) it would be advisable for such vlogs/blogs to compare different policies without expressing a view as to which is better/worse which could be seen to be influencing voters.

Can we re-tweet anything from political parties or candidates in the run up to the general election?

You can, but as with re-tweeting in general you should not only consider what the tweet says but who it comes from and what your twitter followers may think as a result. For example, if a candidate from party B attends an event to talk to students at your university and tweets something about this being an interesting/lively discussion you could re-tweet this, but you would want to ensure that you do not only re-tweets posts from this particular candidate or his/her party. As with social media in general, think about the timeline: too many posts on a particular issue or by a particular person or organisation can look partial and not reflective of the wide range of issues and interests covered by your university.

Can university staff meet/correspond with candidates during the pre-election period?

You can continue to meet candidates/political figures during this period. Any private meetings would not be considered regulated activity under PPERA.

You can approach the candidates in an election, setting out the university's concerns and areas where you will be seeking support from your new MP and asking for their opinions on them. However, you should be especially wary of associating, or becoming associated in the minds of the public, with a particular candidate or political party and so it would be advisable to ensure that you meet with a wide range of candidates.

What steps do we need to take if a member of staff is politically active during the pre-election period or standing as a prospective parliamentary candidate?

Students and academic staff of all levels and backgrounds should be free to contribute to political debate and to be politically active if they choose. However, you need to ensure that there is not a conflict of interest or any potential confusion about whether an individual is speaking on behalf of the university or in a personal capacity.

If anyone in a prominent public-facing role, such as someone who regularly provides comments or quotes on behalf of your university, is standing for election or actively campaigning for a particular party or candidate, you should consider whether it is appropriate for them to continue being a spokesperson during the next few weeks of the campaign or ensure that there is clarity about whether they are speaking on behalf of the university or as an individual. The same also goes for social media.

Can the university join forces with other organisations (charities, campaign groups) to raise the profile of particular issues?

The university is entitled to campaign jointly with others, where the campaigning activity would support delivery of its charitable purposes, provided it complies with the usual restrictions on campaigning and political activity by charities as outlined above. If the joint activity results in controlled expenditure under PPERA, that expenditure is likely to be attributed to all of the participating organisations for electoral law purposes, meaning that care should be taken if the PPERA rules are likely to apply.

Can we keep lobbying Members of the Scottish Parliament, the Welsh Assembly or Northern Ireland Assembly in the run up to the UK general election?

There are some things to consider when approaching representatives of the devolved parliaments/assemblies even though they are not directly affected by the UK general election. For example, if you are in contact with a member of the Scottish Parliament (MSP) during the election period you should be aware of, and take steps to mitigate, any risk that your involvement with the MSP might be seen as an endorsement of the political party that they represent, even if they are not themselves standing as a candidate.

Further reading

Charities and Campaigning: Electoral Commission (produced in conjunction with charity regulators for England, Wales, Scotland and Northern Ireland)

http://www.electoralcommission.org.uk/_data/assets/pdf_file/0010/165961/intro-campaigning-charities-npc.pdf

The Charity Commission's site on charities, elections and referendums, including English and Welsh language versions of ***Campaigning and political activity guidance for charities (CC9)***:

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

The Electoral Commission's site produces guidance on campaigning by Third Party organisations and individuals other than registered political parties, particularly in relation to permitted expenditure in the run up to the election. This can be found at:

<http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigners>

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