

Third Party Campaigning Review – response from the Sheila McKechnie Foundation.

About the Sheila McKechnie Foundation

The Sheila McKechnie Foundation (SMK) was established as a charity in 2005 to help develop a new generation of campaigners to tackle the root causes of injustice and inequality. We exist to connect, inform and support campaigners. We do this by providing training and support across the UK and Europe through training courses and events, online resources and a national awards programme.

The scope of our response

Our response to this review is guided by a principle of creating greater transparency about the political process, and in so doing, providing campaigners with a tool to understand and analyse who is influencing government. Not all of the questions directly relate to SMK; therefore we have only responded to those that do. In addition, our response relates to issues affecting civil society organisations, as that is our area of expertise.

To inform our response we have conducted a survey of the campaigners that we have worked with in the last two years. The survey respondents were from small organisations: 60% had an income of less than £99,999 per year. We received 30 responses in total from a sample of over 200 organisations and 69% of the respondents were from those that were involved in campaigning in some way.

Summary

We are pleased that Lord Hodgson is conducting this review of third party campaigning and believe that the questions in the call for views and evidence show an understanding of many of the current issues. We fully support any proposal to increase transparency in the political process. However, in our view there are existing methods of effectively regulating campaigning by charities and civil society.

The new rules introduced in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (the Lobbying Act), have created confusion and increased bureaucracy for civil society organisations at a time when demand for their services is greater than ever and when funds for these services are being reduced. In our response, we have set out our views on how to reduce these burdens and the confusion.

Response to the questions

Question 1. There should be regulation of lobbying activities, but we do not believe that charities require further regulation relating to campaigning.

We believe there are already sufficient rules in place that regulate charity campaigning:

- The voluntary sector's work, including its campaigning work, is regulated by the Charity Commission.
- There is also specific regulatory guidance, CC9, which sets out clear rules for charity campaigning.
- All charities must prepare accounts and make them available on request. All registered charities whose gross income exceeds £25,000 have a duty to file accounts with the Charity Commission.
- Charities' accounts are published online and are searchable on the Charity Commission website, ensuring transparency and probity.

We believe that CC9 sets out clear, sensible and balanced rules about campaigning and political activity and that the guidance in its current form is adequate to ensure that charities do not undertake political campaigning.

Question 2: SMK believes that for many civil society campaigners, who are often representing the views of people whose voices are not heard, there is little distinction between advocacy and either political or electoral campaigning. The only significant difference is when and where that advocacy takes place. However, if there is to be regulation, it should focus on electoral campaigning.

Question 3: We believe that the regulatory system should take regard of the differences between third parties. Registered charities who are already regulated by an external organisation, in this case the Charity Commission, should not be subject to additional requirements. Instead, the Charity Commission should ensure that it fully monitors charities' campaigning activities.

Question 4: We do not believe that “reasonably regarded” is the right test and feel it is too subjective. The test should be based on actual intention or actual effect. This intention or effect should be arbitrated on by an independent organisation. In the case of charities, this organisation should continue to be the Charity Commission.

Question 5: We believe that both the public test and the purpose test can be improved upon. With the purpose test, as detailed in our response to question 4, the use of the phrase “reasonably be regarded” is problematic and subjective. With the public test, the use of the phrase “aimed at, seen by and heard by the public” is very wide and general.

Question 6: We do not believe it is possible to define who a member or committed supporter is in a consistent way. This is due to the way in which social media is being used by civil society campaigners. Websites such as change.org and Facebook enable members of the public to show their support for a campaign very easily, e.g. by clicking a link and promoting their interest. These individuals could also be members or committed supporters and this creates confusion as to how an organisation should classify them.

Question 7: We did not register with the Electoral Commission, nor have we worked directly with any organisation that has.

Question 8: We believe there is merit in requiring third parties to provide information on what they are campaigning on and the reasons for it. However, there is no value in this being applied to registered charities, as any campaigning that they undertake will need to meet their charitable objectives as set out in the existing Charity Commission guidance.

Question 9: There is some anecdotal evidence that the Lobbying Act did have a chilling effect on some organisations' campaigning activities. However, in our survey of those that planned to campaign in the lead up to the 2015 election, only 17% (i.e. two) organisations said that the Act stopped them from campaigning.

However, part of the reason for this is likely to be ignorance of the detail of the Act. In our survey, 42% of respondents (those that answered 4 or less on an awareness scale of 1-10) stated that their awareness of the detail of the Act was low. In addition, we asked respondents how much time and money they spent to discover if the Act applied to their activities. Responses ranged from 1 hour and £50 to 30 hours and £500. As one respondent put it:

“Even though the eventual impact was low, the presence of the Act was stressful and consumed time in what is an entirely volunteer-led organisation”.

Question 10: The list of campaigning activities is the right one.

Question 11: As stated in our response to question 9, the Lobbying Act has increased burdens on small civil society organisations that are carrying out campaigning activities. Anything that increases these burdens, including additional staffing or overhead costs, would be an unwelcome move.

Question 12: We believe that the current regulated period is too long. We would recommend that the regulated period for campaigning activities should start when Parliament is dissolved or a national, regional or local “purdah” period begins. 365 days is too long a period and stifles the voices of many organisations that are vital to our civil and democratic lives.

Questions 13 and 14: We believe that the spending limits are broadly fine, but that larger civil society organisations with branches across the UK will find it difficult to aggregate their spending in a way that does not increase bureaucracy at their branch level.

Questions 15: We did not register with the Electoral Commission.

Question 16: We believe that proving intent may be difficult, particularly due to the use of the subjective phrase “reasonably regarded” and that the focus should be on what the effect actually is.

Question 17: We do not believe that the concept of targeted spending is helpful, as it (and other definitions in the Act) can make it difficult for smaller civil society organisations to decide if the Lobbying Act applies to their activities.

In our survey, 58% of respondents rated the ease of finding out if the Act affected their activities as below 5 on a scale where 10 was the highest achievable score. This demonstrates that it is already hard for these organisations to ascertain the impact of the Act on their work and that multiple limits and definitions of spending are unhelpful in this context.

Questions 18 and 19: We did not undertake joint campaigning.

Questions 20 and 21: There are currently a range of different thresholds that organisations need to consider for their activities. A simpler approach would be to harmonise these so that organisations have one set of thresholds for registration with the Electoral Commission and one for the other requirements flowing from the Lobbying Act.

Question 22: We believe that the purpose of reporting expenditure and donations should be to provide the public with transparency regarding political processes. The current processes do not support this purpose due to the delays in reporting creating a lack of real time information. The current processes also rely on self-reporting, which has inherent limitations.

Question 23: The rules on donations are broadly workable, but are unnecessary for many civil society groups. Registered charities are already required to provide annual accounts to the Charity Commission. These are publically available and set out sources of donations.

Question 24: We do not believe that the current distinction between donations for regulated campaign activity and other donations is workable. For many civil society organisations that receive donations it will be very hard to distinguish between funding that has been given to them to support their general work, which may include some campaigning, and donations given just for campaigning.

Question 25: We believe the current system is the least worst option, but that it has severe limitations in relying on self-reporting.

Questions 26: We believe that having two different regulatory systems is unhelpful. In addition, for registered charities there are actually three systems, when you include the Charity Commission. This places burdens on charities and leads to confusion as to which regulatory system has priority.

Question 27: In our survey, only 26% of respondents used guidance from any of the sources listed in paragraph 66 of the consultation paper to decide if the Lobbying Act applied to their activities. Of those that did, the majority found them helpful.

However, the vast majority of respondents used guidance from other voluntary sector organisations such as NCVO or from their national head office. This suggests that they found this guidance more user friendly and/or authoritative. The current public sector guidance should be made more definitive, with decision trees and flowcharts provided to help enable organisations to decide if their activities are covered by the Lobbying Act.

Question 28: We believe the scenarios set out in paragraphs 68 and 69 demonstrate the significant levels of confusion that will be seen during the upcoming devolved elections.

Question 29: We do not believe that spending limits are the most effective way of limiting undue influence. During the run up to the 2015 General Election there were key interventions by groups or individuals to influence voters in ways that were entirely unaffected by the Lobbying Act. These included groups of senior business leaders and various celebrities and newspaper editors telling the electorate who to vote for. The Lobbying Act did nothing to stop these activities (and nor should it), but it did lead to confusion and increased bureaucracy amongst civil society organisations.

Question 30: We do not believe there should be a distinction between offline and online material. However, there should be a distinction between material produced by an individual supporter or group of supporters of a campaign and by the organisation or group that is coordinating that campaign. The latter should be regulated, but the former should not, as groups/organisations have little control over how their activities are used by others.

Question 31: We believe the only way of regulating online activity is to focus on activity that comes from the official social media channels of the campaigning organisation or group. Any other activity, i.e. comments from supporters or additional content from other unofficial sources, should not be monitored.

Question 32: We believe there will be more campaigning over the next five years, particularly from organisations supporting those that are affected by this government's long term economic plan, including welfare reforms. We also believe the referendum on the United Kingdom's membership of the European Union will place a strain on many of the procedures and processes created through the Lobbying Act.

Question 33: We believe that in order to be sensitive to the pressures in our response to question 32, registered charities should not be subject to monitoring over and above the requirements of the Charity Commission. We also believe that smaller civil society groups with low incomes of under £50,000 per year should not be required to waste their valuable time and resources navigating the confusing rules that have flowed from the Act.

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