

SHEILA MCKECHNIE FOUNDATION

POWERING CAMPAIGN PEOPLE

THE CHILLING REALITY

How the Lobbying Act is affecting charity & voluntary sector campaigning in the UK

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FOREWORD



**Sue Tibballs,
OBE**

Chief Executive

“ The impact isn’t on us, per se, but the people we represent. People not being able to engage in the political debate.”

(The Salvation Army)

A strong and independent civil society is essential to a healthy democracy¹. Successive governments have recognised that they need civil society as independent partners to deliver “an equal and fair society”², even if it is occasionally uncomfortable or inconvenient.

It is in the public interest that charities and voluntary organisations bear witness to the impact of policy, give voice to the people they serve, and support full participation in political discussion and democratic process. Their subsequent campaigning might relate to specific policies, the delivery of services, or public attitudes. Regardless of its focus, the vital characteristic is that it involves the public in the debate. However, there is growing concern that the space for civil society to operate in this way is shrinking.

In this context, our research set out to find out whether the Lobbying Act is directly affecting charity and voluntary organisations’ ability to campaign. The evidence found that it is. The Act was intended to increase transparency in election spending, which few dispute is in the public interest. This research suggests that, by reducing civil society’s ability to campaign effectively, the Act does not deliver public benefit overall. What little transparency we gain is far outweighed by the loss of so many voices of experience from our political debate.

We found that the Lobbying Act is just one aspect, albeit a totemic one, of a bigger and more complex picture. The interplay between government policies, media attitudes and shifting public opinion has increased hostility to the idea that charities and voluntary organisations should speak out on issues that affect the people they serve. Restrictions on how funding, both public and private, may be used further reduces their ability to contribute to public debate.

Presented as an effort to bring transparency to the activities of commercial lobbyists, our evidence shows that it is charities that are feeling the ‘chilling effect’ of the Lobbying Act. We found that many are now less inclined to tackle politically challenging issues publicly. Doing so risks meeting both the ‘purpose test’ and ‘public test’ of the Act, which requires registration with the Electoral Commission. This is costly, whether organisations register or, instead, try to tread the non-registration side of the line. As a result, those who wish to avoid uncertainty and extra cost are forced to step a very long way back from any potentially challengeable activity.

The result is more cautious, less responsive campaigning, and those who lose out are the people directly affected by the issues. It is their voices, ultimately, that are being silenced. Is the transparency that the Act promises coming at too high a price?

The Government's apparent position is that campaigners simply need to better understand the law. Our evidence suggests this is not a solution. A quarter have sought legal advice, just under half sought Electoral Commission guidance. Navigating legislation is also a key campaigning skill, and yet the top two reasons cited for changing campaigns involve uncertainty about the definitions in the Act³.

The status quo cannot stand. If there is a deeper solution, it lies in many parts of society. It lies in a government committed to actively upholding the rights of civil society organisations to be political (but not party political). It lies in leadership by politicians of all parties, who will 'defend to the death' campaigners' right to say what is needed. It lies in charity leaders recognising and addressing the issues that challenge public confidence and trust. It lies in convincing the public of the full value of civil society.

Charity and political leaders must work together to re-open civil society space. In the context of shrinking spaces around the world, the UN Rapporteur has already warned of increasing pressure on UK civil society⁴. The UK is keen to be a global leader in human rights and good governance⁵. To do so, it needs to keep its own house in order. Revisiting the consequences of the Lobbying Act, in combination with the other factors we have identified, will be an essential step.

Sue Tibballs, OBE

Chief Executive

Sheila McKechnie Foundation

ABOUT THE RESEARCH

Why?

In 2017, the Sheila McKechnie Foundation Annual Campaigner Survey found that nearly 90% of respondents said that the legitimacy of campaigning was under threat. 87% cited government measures, such as the Lobbying Act, as a reason. However, only 13% reported campaigning less.

At the same time, senior government figures have been saying that, although it might be uncomfortable, the Lobbying Act is not stopping anyone from doing anything. The Government's position appears to be that people simply need to understand it better.

Our challenge, then, was to investigate what impact the Act was having that led to these high levels of concern in the sector, and whether the Government's proposed solution is reasonable.

Who?

We issued invitations to voluntary and charity sector organisations across a range of sizes, issues and types (from service providers to infrastructure bodies).

In total, 92 voluntary and charity sector campaigners and senior managers took part. 86% worked for registered charities. We carried out 11 telephone interviews, a focus group with seven organisations and conducted an online survey that received 74 responses. In the online survey, 30% of respondents were chief executives and 21% were senior managers. In the interviews and focus group, 22% were chief executives and 44% were senior managers.

Where findings are reported in percentages, unless otherwise stated they are drawn from our online survey. In most cases, multiple answers were permitted. The percentage shows the share of those who chose this option out of the 74 respondents who chose at least one option.

Issues that they dealt with covered: human trafficking, criminal justice, conflict & humanitarian aid, culture & recreation, domestic violence, international development, human rights, older people, social security & pensions, environment

& animals, education, migrants, asylum seekers & refugees, employment & training, housing & homelessness, economic justice, local services (public & voluntary), children & young people, equality issues (including age, disability, gender, race, sexuality), and health, wellbeing & social care.

What?

The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (commonly called 'the Lobbying Act') has three parts. We are concerned with Part Two, which regulates the expenditure that a non-party campaigning organisation must declare to the Electoral Commission during the period leading up to an election. It amends the existing Political Parties, Elections and Referendum Act 2000, which focused on political parties, election spending and donations.

The Act is ostensibly about transparency. It does not, in itself, ban or restrict any types of activity already permitted under law or charity regulation. It only requires that they be declared in certain circumstances, in which case the organisation must register with the Electoral Commission. We spoke both to organisations that had and had not registered.

It is important to note that practical examples in this report should not be taken as guidance or the final word on interpretation of the Lobbying Act. Each situation is unique and organisations should refer to official guidance or advice before assessing how the Act affects their own activity.

Talking about the Lobbying Act is not an easy conversation. It is technical and complex. It requires organisations to interrogate whether they are letting down the very people they are supposed to serve, and may also have implications for relationships with the public, government, funders and donors. On a personal level, it involves asking people to discuss why they are not working as they would wish, and may challenge the very values that drive so many campaigners - that their role is to 'speak truth to power' and, ultimately, to make the world better.

We appreciate the time, effort and frankness that participants brought to the research.

EXECUTIVE SUMMARY

In 2013, Helen Mountfield QC warned that the proposed Lobbying Bill would be *'likely to have a chilling effect on the expression of views on matters of public interest by third sector organisations'*. In 2017, despite multiple inquiries and repeated recommendations from both inside and outside Parliament, the Government refused to make changes to clarify the legislation.

The apparent position of the current Government that all is needed is better understanding of the law⁶. Unfortunately, the best will in the world cannot transform ambiguous legislation into clear guidance. In attempting to draft such guidance, it seems us that the Electoral Commission faces an impossible task.

Greater transparency is a worthy goal, but such regulation should improve the way our democracy functions and deliver a positive public benefit overall. In this case, the benefit is being able to see how much some charities have spent on some types of activity. Our research finds that the cost is a withdrawal from our public and political debate of organisations that work with and for ordinary people, often the most marginalised or vulnerable.

The effects of the Lobbying Act on how charities approach campaigning can't be isolated from other policies and opinions that reduce the ability of charities to speak out⁷. Taken together with the specific effects of the Lobbying Act, the political and policy environment has reduced the role charities and voluntary organisations play, individually and collectively, to amplify the most marginalised voices in society.

Key findings

Our research found that the Lobbying Act has concretely affected charities and voluntary organisations in the following ways.

People's voices go missing from the political debate: There was consensus amongst interviewees that the administrative burden of the Act reduced the capacity of organisations to represent issues affecting their beneficiaries and enable supporters to engage in political debate. As one CEO put it *"Small charities have lost the opportunity to amplify their voices. And losing the opportunity to create movements of shared interest, especially with people who have lived experience, means that their voices are not being heard."*⁸

Makes it harder for charities to pursue their mission: 51% say it has affected their ability to achieve their organisational mission or vision. Organisations working on politically sensitive or controversial issues, like welfare, disability, and immigration, see it as higher risk and feel more wary about how the Act might affect them.

Reduces coalition activity: One third of survey respondents report a negative effect on coalition building, reflecting the findings of other reviews. Several organisations identified the impact on coalition working as the biggest issue with the Act because it had directly stopped activity from happening. The impact was felt most acutely by smaller organisations and churches.

Reduces the ability of charities and voluntary organisations to support local democratic engagement: Larger organisations struggle to provide local staff or volunteers a sufficiently straightforward summary of the Act for them to plan with confidence, and activities have been cancelled as a result. Smaller organisations and churches, who depend on collaboration to build their capacity, are fearful of coalition rules. While some simple activities appear unaffected (e.g. transporting people to vote), many report avoiding others designed to help people to participate in political debate and discussion.

Affects their agility and responsiveness: As a result of the Act, 34% of respondents say they are less agile or responsive and 36% report slower decision-making. Effective campaigning and advocacy often depends on being able to make day-to-day decisions with alacrity. The lack of clear and unambiguous guidance makes decision-making slower and can push it up to a more senior level than was previously necessary.

Discourages a proportionate approach to risk management: Many organisations report feeling the need to take a very cautious position and 35% of respondents say they now spend more time negotiating with risk-averse senior managers. To continue to campaign while staying outside the Act (and thus saving registration costs for other work) requires a clear understanding of its parameters. Since its ambiguity makes such an endeavour nearly impossible, organisations are forced to step a very long way back from any activity that could be *even potentially* challengeable. 42% say they have avoided activity where they were *uncertain* it comes within the scope of Act.

Alters the tone and assertiveness of campaigning:

35% say they have avoided issues seen as too politically 'live' and 36% say they have changed their language or tone. There is a widespread concern that this caution may have made communications less effective overall.

Diverts significant time and money away from core work and towards compliance: Whether or not organisations are registered with the Electoral Commission, the Act has a cost. Main factors are the considerable time spent on planning campaigns to ensure compliance (43% report they have adapted their campaigning) and the amount of time spent on tracking and administration. Larger organisations report investing significant time in advising on the Act internally, answering queries and delivering materials and workshops to local and service staff, volunteers and campaigners in their networks.

Stops some activity completely: Despite the general determination of charities and voluntary organisations not to completely stop their participation in public and political debate, there have been some clear instances of activity being cancelled. Examples in our research mainly focus on public comment on politically sensitive issues, work in coalition with others and activity designed to help people participate in political debate.

A rational response to ambiguous legislation

Consciously stepping into the ambit of the Act (which requires registration with the Electoral Commission) has a very real financial cost, which some are able and willing to pay. Those who wish stay outside the Act, and thus save registration costs for other work, require a clear understanding of its parameters. Since its ambiguity makes such an endeavour nearly impossible to manage sensibly, many organisations feel forced to step a very long way back from any activity that could be potentially challengeable. The result can be more cautious, less responsive campaigning. Those who lose out are the people directly affected by the issues, who may see slower progress or feel less able to make their voices and experiences heard in the democratic process.

Only 32%

report no change to their campaigning.

What should we do about it?

There are differing views on exactly how the Lobbying Act needs to change – from full-scale repeal to implementing the recommendations of the Hodgson Review. There is near-universal consensus, though, that the status quo cannot stand. The demands of compliance with this ambiguous and confusing legislation is constraining civil society's ability to hold power to account and amplify people's voices into the political debate – arguably one of its most important roles.

In a recent speech, Matt Hancock, Secretary of State for Digital, Culture, Media & Sport said, "I want to see civil society recover its confidence to speak into our public life. The greatest social and political changes in our history have come about because independent people formed associations to press for change. If that means respectful criticism of government, so be it... The business of civil society is society, and within the limits of charity law, you have the right to campaign, to persuade the public, and to press for change in the systems which affect the life of this country."⁹

Now is the time for a reasoned discussion about the value that civil society brings to our democracy and what freedoms and regulations are necessary to ensure it works well. This needs to bring charities, voluntary organisations, politicians, regulators and funders to the table for a free exchange of views.

Ultimately, it is up to the Government as the accountable body for such freedoms and regulations, to ensure that the interaction of policies and legislation do not unreasonably constrain what civil society may speak into public life and how. Charity regulation already requires charities to be non-partisan. It recognises that they have the right to be political, just not party-political. A law designed to increase transparency is now preventing many of them from doing just that.

"The original intention of the Lobbying Act was good, but the public imagination now says that any attempt to influence is illegitimate. But an uninfluenced democracy is a dictatorship. There's a danger that the voluntary sector makes itself illegitimate by ceasing to influence. We see influence as good as long as it is transparent."
(The Salvation Army)

DETAILED FINDINGS

PART ONE: IMPACT OF LOBBYING ACT ON CAMPAIGNING

Charities say that the Lobbying Act has made it harder to pursue their mission

In our survey, 51% of respondents report that the Lobbying Act has ‘affected [their] ability to achieve [their] organisational mission or vision’.

How charity leaders decide to respond to the Act often depends on their own purpose, vision and mission. Organisations committed to speaking out on politically sensitive and controversial issues like welfare, disability, and immigration see it as higher risk and feel more wary about how the Act might affect them.

“Our charitable purpose has guided our decisions – the importance of working with people in power, advocacy and speaking out. We have been determined not to let the Act affect our activity, but we have done it at some cost – staff time, trustee time.” (Quakers in Britain)

“I think we have been less affected by the Act. We’re quite robust about it, as long as it’s not party political, we put our neck out. But I know about other organisations who have felt very constrained. For example, another charity in our sector – they wanted to comment about the racist coverage during the election but chose not to.” (ROTA)

A charity’s strategy and analysis of risk also makes a difference to whether they see the Act as a constraint or not.

“For us not to speak out on issues of environmental justice, would be failure to represent the concerns of our supporters.” (A large environmental charity)

“In 2017 we took a fairly sensible approach and because it was about housing supply we were able to take that risk, but if our focus had been about welfare, our process may have been different.” (A housing charity)

Participants acknowledge that assessing compliance has been an opportunity to ‘focus minds’ on how campaigning helps to deliver their organisation’s mission. However, this is scant comfort to those who feel forced to take difficult decisions. For example, Citizens UK reported that, on the basis of legal advice, it had to cease one of its core activities – facilitating public engagement through election debates called Accountability Assemblies. It was deemed to be a regulated activity and, in order to continue, the organisation would need to register with the Electoral Commission. It decided it could not justify diverting funding into the costs of such an undertaking.

“It has neutralised our charitable objective dramatically” (Citizens UK)

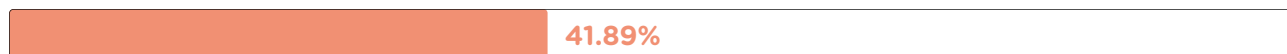
The organisation’s charitable purpose is to support members to raise social justice issues, and ‘to seek a seat at the table so that their voices can be heard’. Therefore, the restriction on their principle means of doing this was deemed to have a particularly devastating effect.

Charities have changed how they campaign

The majority of interviewees state that they have carried on campaigning, but that the Lobbying Act has affected how they campaign. This is supported by the results of the survey, in which only 32% of respondents report no change to their campaigning. This is an important distinction and reveals that a complex picture has unfolded since the Act came into force.

If you adapted your campaigning activity, what was the reason for this? (please select all that apply)

To avoid activity that we were uncertain came within the scope of the Act



Uncertainty caused by a retrospective regulated period



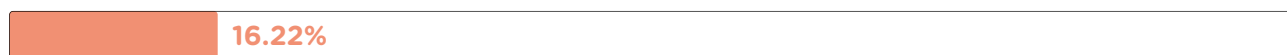
To avoid having to register with the Electoral Commission



In response to partners being more risk-averse



To avoid activity that we knew came within the scope of the Act



Online survey question. Multiple choice, multiple answers permitted. Percentage shows share of those who chose this option out of all respondents who chose at least one (N=74)

Even where charities are determined not to change their campaigning, as they believe they would never hit spending limits, many still report a change in their approach and processes.

“I don’t think it has affected our campaigning activity in an obvious way. We haven’t met the spending thresholds. But there is this ‘chilling effect’ which has affected our cautiousness, we have been more anxious about what we’re saying [around election times], but it hasn’t stopped us from doing anything as campaigning is fundamental to our work.”
(Women’s Aid)

In several cases where charities have registered, they mention that they are prepared to incur the cost of monitoring and reporting on regulated activities but find some aspects excessively burdensome.

“We don’t campaign on any scale, and it’s not affecting our lobbying except it’s making us more mindful about what we do. We have to invest a lot of time and effort in doing that – some of it is entirely appropriate but some is disproportionate.” (Salvation Army)

In terms of specific activities, changes are most pronounced in:

- Coalition working
- Local campaigns
- Supporting democratic participation and representation.

The impact on coalition activity has been significant

Although not a universal experience, a large number of interviewees feel that joint campaigning has been affected. One third of survey respondents report a negative effect on coalition building, with one stating they have ceased working in coalition altogether. Other reviews have also found that the formation of charity and voluntary sector campaigning coalitions is very difficult under the Act (Aveco, 2017 and Hodgson, 2016).

The ‘working together’ rules make each organisation in a coalition jointly liable for total spending (BOND, 2017). This is given as the main reason by organisations who have withdrawn from coalitions. Several organisations identify the impact on coalition working as the biggest issue with the Act because it has directly stopped activity from happening.

DETAILED FINDINGS (cont'd)

“There was an attempt to run a collaborative faith-based conference around the concept of ‘the common good’, but we couldn’t guarantee that every party would be able to interpret and stick to the rules so the event fell apart..The coalition issue is huge for us. It’s written into the way churches operate that they’ll always seek to work in co-operation first. It runs counter to that whole ethos.”
(The Salvation Army)

Two of the organisations that comment about collective spending rules are large charities who decided to register. They explain how their size and status as registered organisations is an issue for smaller partners.

“Elements of joint campaigning have been affected – we think we have been contacted less by other organisations about doing joint work e.g. letters. Organisations can’t face the bureaucracy and we’re a large organisation which brings a lot of weight to a calculation to a small organisation. My fear is that the Act has acted as a deterrent.” (Quakers in Britain)

The impact of collective spending rules is also highlighted by small organisations.

“Collaboration has always been my first step, but it was the first thing to go under the Lobbying Act – for example in a past role I couldn’t risk partnering with a big charity in case we were caught by the shared spending limit and had to register. I had to decline a campaign partnership with a brand name charity, which was a huge loss of potential impact. What used to be a big opportunity is now a huge risk. People often just don’t go there any more – I’ve seen far less collaborative campaigning than at any time in the last fifteen years.” (Clinks)

Membership organisations or those with networks made up of smaller organisations highlight the issue for smaller charities further.

“As a church, we’d normally work with other churches collectively around the election. There was definitely a stepping back from that in both 2015 and 2017. For smaller denominations it’s a big disadvantage. The bigger ones can get on and do things on their own account, but smaller ones can’t.”
(The Salvation Army)

Local campaigning and engagement activity is hard to guide and monitor

The issues for local organisations or branches are demonstrated in examples about the impact of the constituency rules. Membership organisations that routinely support and involve a network of local groups have a good overview of the problem.

“We’re really worried about the constituency levels especially with the retrospective element. With the local campaigning we do, there is a risk we will fall foul of the rules. It hasn’t happened to date, but we’re really worried about this... Working together was one of the biggest issues, together with constituency work – there was a risk that it would take us over the limit.”
(A large environmental charity)

“Constituency spending limits can cause trouble when local churches find themselves embroiled in a big local issue. We might have to put lots of resource into a single constituency to manage it.” (The Salvation Army)

“In 2015 we decided not to register and to run a positive, apolitical campaign and not to plan any activities which would meet the purpose test. We wanted to avoid compliance issues dominating our work. So the Act shaped what we did nationally and it also influenced some local activities, for example, it meant we refused and cancelled some local candidate visits.” (Age UK)

PART TWO: IMPACT OF LOBBYING ACT ON APPROACHES TO CAMPAIGNING

The Lobbying Act has reduced the agility and responsiveness of campaign activity

The regulatory regime created by the Lobbying Act fundamentally jars with the way campaigning in the charity and voluntary sector works. Rarely is campaign activity mapped out many months in advance, and effectiveness often depends on being able to make day-to-day decisions with alacrity.

34%

say they were less agile or responsive

36%

report slower decision-making

The lack of clear and unambiguous guidance makes decision-making slower and can push it up to a more senior level than was previously necessary. Despite Electoral Commission invitations for organisations to contact them directly, this approach rarely offers the speed or clarity that people seek.

"The Electoral Commission doesn't seem to understand the nature of campaigning. Their advice seems to assume that you have detailed plan of work that unfolds, step by step, over a particular timescale. The reality is far more agile, and constantly responds to the real world: week by week, day by day.

"You keep clear sight of your primary objective (e.g. nuclear disarmament) and some of the activity you intend to take to get there (these public debates or that economic analysis), but you also jump on opportunities as the world unfolds. All your plans will be re-written if there's a news story about poor nuclear security or an international crisis.

"A good campaign inserts itself into and tries to influence the debate. By its very nature, it needs to be politically salient and important to the public. You can't do that by planning every action a year in advance." (Quakers in Britain)

The Lobbying Act discourages a proportionate approach to risk management

Consciously stepping into the ambit of the Act (which requires registration with the Electoral Commission) has a very real financial cost, which some are willing to pay. Indeed, 31% of survey respondents said that they would prefer to register if they had the organisational infrastructure and capacity to deal with the extra work this requires.

To continue to campaign with confidence while staying outside the Act (and thus saving registration costs for other work) requires a clear understanding of its parameters. Since its ambiguity makes such an endeavour nearly impossible, organisations are forced to step a very long way back from any activity that could be even potentially challengeable.

35%

say they have to spend more time negotiating with risk-averse senior managers

Undoubtedly, the lack of clarity has made charities even more careful when considering the risks of speaking out. Charities repeatedly refer to being more cautious, anxious and fearful of falling foul of the rules or 'getting things wrong'. In other cases, participants talk about becoming 'more considered' and taking more time to weigh up the risks of planned or potential campaign activity.

DETAILED FINDINGS (cont'd)

"Instead of thinking 'what can we do?' you think 'what can we do and not get into trouble?' So, you read the advice and none of it makes sense. None of it was consistent." (Clinks)

"We've been more risk averse. I'd like to proudly say otherwise, but it has, it's certainly made me more risk averse." (A large environmental charity)

"Previously, in 2015, my organisation just shut up during general elections as it was all too difficult to understand. Negotiating any space to campaign on anything in 2017 was tricky, as the spending rules inspire an incredible amount of fear among senior managers." (Online survey respondent)

The result can be meeker, blander, less responsive campaigning. Those who lose out are the people directly affected by the issues, who may see slower progress or feel less able to make their voices and experiences heard in the democratic process.

Changes to the tone and assertiveness of what charities say could threaten their advocacy

Considering how to communicate is an important way the Act has affected charities' campaigning. Many interviewees say they think more carefully about whether and how they communicate because of the Act.

Direct comment in print or broadcast media falls outside the scope of the Act (as these channels are required by other regulation to ensure balance). However, the moment a press release is published on a website or a quote is repeated on social media it enters the public domain and must be checked to see if it falls within the scope of Act.

"There was also a lot of nervousness around social media - really I think people stayed away from activity, rather than take the risks." (Large health charity B)

In many cases, tone and language are considered to ensure the charity won't come under scrutiny. There is a widespread concern that this caution may have made communications less effective overall.

35%

report avoiding issues seen as too politically 'live'

36%

report they have changed their language or tone

"We have maybe not been as punchy - our communications have been a little blander because of nervousness around the Act." (Large health charity B)

"The Act hasn't impacted the types of activity we have done, but we have changed the way we present things, for example on the website and social media. The tone, style and language of creative content. So, this could have an impact on how our messages reach outside of our supporter base - it has made it more difficult." (RSPB)

"The Lobbying Act put a layer of caution on our messaging development so that we were seen to be completely neutral and impartial." (A housing charity)

The difficulties associated with anticipating what does and does not fall within the scope of the Act, and particularly interpreting the 'purpose test', are examined in more detail in the following sections.

PART THREE: THE REAL COST OF COMPLIANCE

The Lobbying Act remains ambiguous, confusing and impossible to interpret with any certainty

In the four years since the Act became law, interpretation of some of its most fundamental principles is still unclear. This is referred to by most interviewees.

43%

say they have adapted their campaigning to avoid activity they are uncertain comes within the scope of the Act

The Government's position is that all that is needed is a better understanding of the legislation. However, a significant proportion have sought legal advice or guidance. They are a group for whom interpreting legislation is a key campaigning skill. Despite this expertise, and the availability of information, the Lobbying Act remains opaque. This suggests that it is the Act itself that is the problem.

One in four survey respondents have sought their own legal advice, but in only a third of cases did it fully help them to determine what activity was regulated and whether they needed to register with the Electoral Commission. Nearly half have sought advice or guidance from the Electoral Commission itself.

Organisations have had to invest significant time advising on the Act internally, answering queries and delivering materials and workshops to local and service staff, volunteers and campaigners in their networks. This is felt to be necessary because the Act is complex, key elements of the Act like the 'purpose test' are viewed as subjective and hard to interpret, and guidance is unclear or conflicting.

"There has been lots and lots of confusion amongst staff and our campaigners, preventing them from getting on with things. It affected our London campaigner the most, she became our Compliance Officer - her time was completely diverted to compliance, rather than campaigning." (A large environmental charity)

"The Act has definitely had an impact because there is a lack clarity, and because of the complexity and opaqueness. The Act is incredibly complex." (Large health charity B)

"There is a huge amount of contradictory advice and guidance which hasn't helped." (Action for Children)

"We were confused about whether the Act applied or not. We did seek guidance, but the Electoral Commission guidance doesn't cover all the campaigning examples that we needed advice on. We couldn't find answers. We called the NCVO but they are not there to provide legal advice." (A large equality charity)

Interviewees describe high levels of anxiety and confusion amongst non-campaigning staff, volunteers and local groups or branches, who are not able to easily understand the Act because they don't have the necessary time or knowledge.

"Managers are confused. For example, a local service manager pulled out of a visit because of purdah - not understanding what purdah is. The Act added to confusion about all the different layers of guidance." (Action for Children)

"There was lots of confusion about the Act when it came out, particularly with our members. It was unclear whether spend locally would be factored in with our national work, as well as what we did with other organisations." (Women's Aid)

As a result, there are examples of local or constituency activity that didn't happen as a direct result of the Act. In several cases, the withdrawal from local engagement damaged relationships and organisational reputation.

DETAILED FINDINGS (cont'd)

“The local Women’s Equality Party wanted to visit a service – we went in circles for ages to work out if we could allow it and, if so, how. Eventually, we decided to suspend all such activity during the election period and had to decline. The party called us out publicly on social media, for not wanting to talk about women and disability, which was the opposite of what we wanted and tarnished local relationships.” (A large disability charity)

The subjective nature of the Act’s definitions is a common concern: in particular, how to assess what activity can be ‘reasonably regarded’ as intended to promote or procure an election outcome.

“What does it mean ‘reasonably regarded’? It’s a thorn in our side. How it’s interpreted can be the difference between being pursued by the regulator or a member of the public.”

(Quakers in Britain)

The ambiguity of the Act in relation to regulated activity and the breadth of campaign issues it covers was a key finding of the Civil Society Commission. The Commission recommended that the problematic ‘reasonably regarded’ test should be amended to look at whether there was intent to influence the outcome of an election (Civil Society Commission, 2015).

What passes or fails the ‘purpose test’ shifts with time, politics and public mood

Although many organisations tell us that the Act hasn’t affected the issues they campaign on, it is a greater problem where those issues are likely to be more politically ‘live’ or salient. The ‘purpose test’ is one of those applied by the Electoral Commission to determine whether any given activity is within the scope of the Act. It says that it is anything that can:

“...reasonably be regarded as intended to influence voters to vote for or against political parties or categories of candidates, including political parties or categories of candidates who support or do not support particular policies or issues...”

So, where an issue is high up the political agenda, it is more likely to become a defining issue between parties, more talked about, more likely to influence voter choices and regarded as more likely to meet the ‘purpose test’.

“We were quieter than we wanted to be. Welfare is always a big political issue, particularly benefits.”
(A large equality charity)

“The Lobbying Act restricted us from addressing specific policy areas like fuel poverty or energy prices, because there was too great a risk that one party would be more likely to champion the cause and we would inadvertently and involuntarily be in danger of meeting the purpose test.” (Age UK)

Organisations describe the particular challenge of campaigning on issues that are politically salient, even if they are long-standing priorities for the organisation.

“Subjects that become flashpoint election issues are a real problem, such as the Dementia Tax. Even if you’ve been talking about this kind of social care for years, entirely appropriately, as soon as the tax came up as a policy proposal it became a risky issue to talk about.” (The Salvation Army)

“We are constantly campaigning on the crisis in social care, it’s been a campaigning priority for Age UK for a number of years. In 2017, the Conservative Party announced a flagship policy on funding social care in their manifesto, and suddenly we felt at risk of being seen as, or accused of being, critical of a specific policy and particular party. We had no way of controlling that but, in retrospect, what we’d been saying in a purely non-partisan way could be interpreted as favouring or criticising one party or another.” (Age UK)

In some examples, organisations decided not to comment on key issues relevant to their beneficiaries during an election period because of the potential for communications to be identified as partisan and fall foul of the Act.

DETAILED FINDINGS (cont'd)

“A story broke during the election – a woman confronted the Prime Minister on the campaign trail about Personal Independence Payments (PIP) and Prime Minister’s response was not seen as good enough. Outside of an election, we would have commented on this, but didn’t feel we could comment during the election in a neutral enough way. It was a shame, we were approached for comments.” (A large equality charity)

The campaign group BOND also identifies this as a problem with how the Act can be interpreted.

“There is the chance that charities undertaking legitimate campaigning on the policy issues core to their charitable objectives could be wilfully construed as ‘promoting or procuring the electoral success of candidates’ if one of these policies happens to align more closely to one party or candidate or become highly politicised during the election campaign.” (BOND, 2017)

Charities are already regulated with regard to political activity

It is apparent that organisations are acutely aware of the importance of being transparent and ensuring that their campaigning is in line with the Act, as well as existing charity regulation. Several organisations talk about existing requirements to be non-partisan, including Charity Commission guidance, already long-established before the Act came into force.

“We’re guided by wanting to engage people with the issues we think should be talked about in the election. We are very clear that we are non-party political but have the absolute right to engage in political campaigning.” (Age UK)

The length and retrospective nature of the regulated period imposes particular burdens

There is widespread agreement amongst interviewees that the Lobbying Act imposes a particularly heavy administrative burden because of the length and retrospective nature of the regulated period, starting 12 months before any UK general elections. This was found to be an important issue by Lord Hodgson (Hodgson, 2017). Issues around tracking the wide range of activities and associated staff costs, and managing this across complex organisations, has been consistently highlighted (ACEVO, 2017).

35%

say they have adapted their campaigning activity because of uncertainty caused by the retrospective regulated period

Participants talked about having to assess how business as usual might fall under the Act, and record activity at all times because of the retrospective application of the 12 month regulated period. Added to this, the short timeframe of the 2017 snap election highlighted the challenge of compliance when time to plan campaign activity was extremely limited.

“To comply with the letter of the law, we would have had to register with the Electoral Commission six months before the snap General Election was called – probably before even Theresa May knew it would happen. Being told that a penalty for failing to register would be ‘unlikely’ was no comfort.” (Quakers in Britain)

Lord Hodgson identified that the length of the regulated period had a disproportionate effect and concluded that regulation should not capture advocacy on an issue that an organisation may carry out on a day-to-day basis. Hodgson recommended that the regulated period should be amended from 12 months to four months (Hodgson, 2016). This would be in line with the regulated period before national elections in Wales, Scotland and Northern Ireland.

DETAILED FINDINGS (cont'd)

“The biggest issue is the 12 month regulated period – assessing whether your campaigning might be construed as supporting one political party before the manifestos have even been written is impossible. In the heat of a six-week campaign period, yes, there’s a reason for us to be very mindful about what we say. But a 12 month limit is really likely to restrict our legitimate participation in public debate.” (Age UK)

The cost of compliance is diverting resources away from charitable purposes

Although in many cases activity hasn’t clearly stopped or reduced, how organisations go about campaigning has been affected as a direct result of the Act’s requirements. A major factor is the considerable time spent on planning campaigns to ensure compliance, and the amount of time spent on tracking and administration.

“Complying with the Act is so complex – we campaign on a wide range of issues – tracking across 20 different themes and applying Electoral Commission tests, creating a monster spreadsheet.” (Quakers in Britain)

“The biggest impact is the time and energy that has gone into compliance. It’s been a significant imposition on organisational time – trying to manage all the regulatory requirements. We had to do training for our local groups – we have a large number of campaigners – so that everyone could reach a good level of understanding.” (A large environmental charity)

“Planning of campaigns has been majorly affected – we have much longer lead in times. Then there is the time taken to seek legal advice so that we can robustly defend the decisions we have taken. We sought advice from the Charity Commission and the Electoral Commission because we had to be able to show our workings out, if challenged, this is how we could justify our decisions. This was a cost in time and money.” (RSPB)

Charities talk about how staff time is consumed by setting up processes and policies, consulting colleagues and advising staff and volunteers on how to navigate the rules. 39% of survey respondents say they have dedicated more time to ensuring compliance. The same number report dedicating more time to informing or advising staff and/or volunteers.

“We have continued our activity, but we there have been several effects. The Act has been seriously bureaucratic – we have spent £3k and 21 days staff time on a total £73-4k spend. We effectively had to reduce our capacity by one staff member and this restricted our engagement, particularly in the run up and aftermath of elections when forming new relationships is vital. One month of our Parliamentary Officer’s time was taken up, and other staff were also drawn into the process of compliance.” (Quakers in Britain)

“Even though we did lots of the legwork in 2015 to prepare ourselves and our local partner Age UK organisations in understanding and complying with the Lobbying Act in 2017, the time taken to provide internal advice, and the opportunity costs of this work, were significant in terms of supporting local groups to understand and consider what activities they might run locally.” (Age UK)

The diversion of staff time away from campaigning to focus on compliance is particularly significant for organisations who have decided to register. In one case, a full-time regional campaigner became the organisation’s Compliance Officer to support the whole organisation to comply with the Act.

Ultimately, compliance hits those whom charities are supposed to help

Whether or not charities decide to register, or how likely they are to hit spending thresholds, there are costs to compliance that go beyond money.

Some participants refer to ‘missed opportunities’ or an ‘opportunity cost’ because the scope of their campaign activity is affected.

“We didn’t explore things that we might have done. We reigned it in and were cautious. It’s no different now... We have to think about it all the time because of the retrospective periods.” (Large health charity B)

“It was not so much not doing things because of spend limits, because public affairs activity wasn’t going to hit the limits, but we were less ambitious.” (Large health charity B)

DETAILED FINDINGS (cont'd)

Importantly, there is consensus amongst interviewees that the administrative burden of the Act ultimately means less time is spent on campaigning. The capacity of organisations to represent issues affecting their beneficiaries and enable supporters to engage in political debate is affected as a result.

“But the impact isn’t on us, per se, but the people we represent. People not being able to engage in the political debate.” (The Salvation Army)

“When the Act restricts our ability to campaign it restricts our ability to improve life for older people. The point of campaigning is to help the organisation address fuel poverty or improve pensioner poverty, or one of the many other issues that make life miserable for older people.” (Age UK)

“We can still work to encourage people to register to vote, but we can no longer enable conversations with candidates. And that’s appalling. If you don’t have the capacity to make sure they can avoid compliance problems, it’s hard to encourage and enable them to engage.” (Large health charity A)

Reduced engagement in coalitions is a concrete example of where the effectiveness of campaigning and advocacy has been affected.

“Small organisations have lost out the most. The big organisations find it easier to get on and do things themselves a lot of the time. Small charities have lost the opportunity to amplify their voices. And losing the opportunity to create movements of shared interest, especially with people who have lived experience, means that their voices are not being heard. The red tape prevents that collaboration.” (Clinks)

PART FOUR: BEYOND THE LOBBYING ACT

The 'chilling effect' extends beyond the Lobbying Act

How far the impact on campaigning can be ascribed to Act, and the Act alone, is unclear. However, it is certainly totemic. As relatively recent legislation, which the current administration declined to amend, Part Two has come to represent its attitude to charity and voluntary sector campaigning. This stands in contrast to Part One of the Act, which was intended to curb the excesses of commercial lobbyists but is widely perceived to be entirely toothless¹¹.

"The Lobbying Act was the nail in the coffin, leading to people self-silencing. Organisations are afraid to shake up public attitudes." (Clinks)

Alongside the Lobbying Act itself, most participants in the research talk about a 'wider atmosphere'. This is characterised by questions from politicians and the public about whether campaigning is a legitimate charity activity, together with negative perceptions about the value of charities. We found that charity campaigners experience the Act in this context, and view it as both a symptom and a cause of wider attitudes about the role charities play in civil society.

"Changing public attitudes towards charities means that the reputational cost [to the Government] of coming for us is lower than it would once have been. We're not the good guys any more. At the next General Election, one calculation I'll make will be looking at what the environment is like and how ready people might be to come for us." (Large health charity A)

Importantly, we found that changes charities are making to the way they campaign as a result of the Lobbying Act are simultaneous with their response to other policies, as well as interaction with funders. This is the case whether they are directly affected or because, together with the Lobbying Act, they add to an atmosphere in which organisations feel that their legitimacy is threatened.

"In my mind the impetus behind Lobbying Act and the government contract restrictions are the same." (Anonymous)

"I wouldn't say our charitable purpose has been explicitly undermined by the Act, but the whole atmosphere has changed around charities and campaigning. The chilling effect is there, but we haven't changed what we do, it's just affected how we make some decisions." (Women's Aid)

The evidence suggests that organisations are not affected by the Lobbying Act in isolation, but as part of a steady flow of changing attitudes and policy trends. It supports CAF's contention that the 'cumulative negative effect' of various policies on civil society's ability to advocate on behalf of their beneficiaries may be more worrying than any one single policy (CAF, 2017).

Are there any other external factors that currently affect your ability to campaign? (please select all that apply)

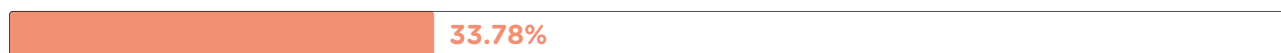
Relationships with funders and donors



Funding conditions (e.g. grants agreement clauses)



Attitudes of politicians



Attitudes of media



Public attitudes



Charity Commission guidance (campaigning and political activity, CC9)



Charity Commission guidance (elections and referendums)



Online survey question. Multiple choice, multiple answers permitted. Percentage shows share of those who chose this option out of all respondents who chose at least one (N=74)

Policy and funding trends

The CAF discussion paper *Do as I say, not as I do* sets out how policies enacted in the UK, including the Lobbying Act, can be seen as part of a global trend of ‘closing space for civil society’. According to the International Center for Not-For-Profit Law there have been 120 laws proposed or enacted in 60 countries constraining the freedoms of association and assembly since 2012 (CAF, 2017).

CAF identifies the Lobbying Act, the ‘anti-advocacy’ clause, new grant standards, and the Charity Commission guidance issued at the time of the EU referendum as key policies making up the trend in the UK. It also highlights issues raised in Scotland, noting calls for stricter rules on civil society organisations’ advocacy, and the use of disparaging language by media and political commentators, such as accusations of charities “squandering” public funding (CAF, 2017).

45%

say funding conditions (e.g. grants condition clauses) affect their ability to campaign

Alongside their experience of the Lobbying Act, several participants mention other policies introduced in the last few years that explicitly or implicitly curtail their ability to speak up for their beneficiaries.

The impact of the ‘anti-advocacy’ clause inserted into grant agreements is explicitly referenced by two organisations, in relation to before and after it was paused (the Government replaced the clause with new grant standards) (CAF, 2017).¹²

DETAILED FINDINGS (cont'd)

"We have findings of national importance from research work that comes out of government funded projects, but we have to take this up very carefully because of our contracts... So far, we have been able to get round it, but we're anxious about the order in which we do things." (Anonymous)

The behaviour of other funders in relation to charity campaigning is also mentioned.

"Funding is a big consideration - no matter how legitimate it might be, neither the public nor some funders currently have much appetite for charities making political statements. Toxicity of the current debate is changing us, for some, from paragons of virtue to people wasting time and money on campaigning or legal advice." (Clinks)

"One funder noticed a lack of applications for policy work in criminal justice. Probation contracts from some prime providers now have 'gagging' clauses, so no comment is allowed on the quality of services as it's regarded as commercially sensitive information. Some contracts are long and complex, but organisations have no legal capacity to compete. People's response is to go quiet." (Clinks)

47%

say relationships with funders and donors affect their ability to campaign

Several participants reference the approach of the Charity Commission, and the range of regulation that is now in place.

"When I say it's a combination of things, I mean all the different regulation, the layers and the retrospective rule...The Charity Commission - it's different than the Act as at any point they can decide that they don't like something you're doing. We have been more concerned about the CC9 guidance than the Act in some cases, such as with scoring the manifestos when we spend considerable time ensuring that we would be able to justify the activity to the CC and that it was being done in a completely impartial way." (A large environmental charity)

"We've been more affected by data changes than the Act - our public facing fundraising activity - more affected because of the publicly held information." (Large children's charity)

Political attitudes

Extensive use of negative rhetoric, calling into question the legitimacy of campaigning by civil society organisations, has layered on top of new policies. Several interviewees mentioned the comment made by Brooks Newmark MP about charities staying out of politics.¹³

34%

say that attitudes of politicians affects their ability to campaign

This may have influenced the way in which organisations have responded to the Lobbying Act. For example, 'political activity' and 'party political activity' have been conflated in debate about the introduction of the Lobbying Act and charity campaigning more generally. It unhelpfully blurs lines and may have added to the difficulty of interpreting the 'purpose test', resulting in them erring on the side of caution despite legitimately being able to engage in political activity and advocacy (CAF, 2017).

Examples given in our research suggest that the so called 'chilling effect' needs to be understood in relation to the use of negative rhetoric as well as the wider policy trends.

"It is not necessarily the Act itself, but the fear of getting it wrong. I think charities are not campaigning up to the line (of what they can do) but stepping back instead." (RSPB)

"Brexit has been key, for example race organisations have wanted to say things about the racist coverage, but haven't. No one wants to put their head above the parapet. They're scared of trolling." (ROTA)

DETAILED FINDINGS (cont'd)

Public attitudes

"There have also always been a certain section of politicians and the media who think charities should only be services and not campaign, i.e. we should only run nature reserves. This idea has gained more traction. There has been a shift in the acceptance of what a charity is. This was heightened at the time of the general elections and Brexit." (RSBP)

Importantly, participants have experienced these attitudes to charity campaigning from political stakeholders and media influencers, as well as from the wider public. In several cases, directly from a charity's own supporters.

"There is a lack of understanding about what charity campaigning is. If you say at a local level that removing ramps is a problem then it is seen as justifiable and leads to local campaigning. But changing the system so that these things don't happen in the first place feels more unacceptable now." (CLIC Sargent)

"I want to highlight the impact of changing public attitudes about how charities should be behaving - including not doing anything political. That perception could affect a charity's confidence to speak out about issues that matter." (A health charity)

31%

say that media attitudes affect their ability to campaign

30%

say that public attitudes affect their ability to campaign

APPENDIX: METHODOLOGY

Qualitative research

Eleven telephone interviews were undertaken with a range of charities from different sectors. The interviews were semi-structured to allow interviewees to develop ideas and speak more widely on the issues raised. A focus group with seven participants was also held with representatives from different charities and sectors. The selected sample for the qualitative interviews included charities working on different social issues.

Quantitative research

An anonymous online survey was run by the Directory of Social Change. It was promoted specifically to charity and voluntary sector campaigners, and others with a knowledge of the Lobbying Act, across social media and through charity and voluntary sector partners. Participation was self-selecting. There were 74 responses.

FOOTNOTES

1. The World Health Organization defines civil society as “a social sphere separate from both the state and the market. The increasingly accepted understanding of the term civil society organizations (CSOs) is that of non-state, not-for-profit, voluntary organizations formed by people in the social sphere.” UN Reflection Series e-library at: <http://unreflection.unssc.org/mod/glossary/showentry.php?courseid=3&eid=19&displayformat=dictionary>
2. The Compact, Cabinet Office, December 2010
3. See page 8 – Charities have changed how they campaign
4. ‘Closing space for civil society in UK, UN expert warns’, UN Human Rights Office of the High Commissioner press release, April 2016
5. Foreign & Commonwealth Office Single Departmental Plan, December 2017
6. Government to reject Lord Hodgson’s proposals to reform Lobbying Act, Third Sector (news), 15 September 2017 - <https://www.thirdsector.co.uk/government-reject-lord-hodgsons-proposals-reform-lobbying-act/policy-and-politics/article/1444725>
7. See page 18 – The chilling effect extends beyond the Lobbying Act
8. Clinks – the criminal justice infrastructure charity
9. Matt Hancock speaking on civil society in the 21st century, 16 May 2018 - <https://www.gov.uk/government/speeches/matt-hancock-speaking-on-civil-society-in-the-21st-century>
10. Overview of regulated non-party campaigning, Electoral Commission, https://www.electoralcommission.org.uk/__data/assets/pdf_file/0003/165963/to-activities-npc.pdf
11. Alliance for Lobbying Transparency, April 2016, <http://www.lobbyingtransparency.org/blog/2016/4/1/a-year-old-the-lobbying-register-is-as-useless-as-predicted>
12. Rt Hon Matt Hancock MP (2016) Government announces new clause to be inserted into grant agreements Available at <https://www.gov.uk/government/news/government-announces-new-clause-to-be-inserted-into-grant-agreements>
13. ‘Brooks Newmark: charities should keep out of politics,’ Civil Society, 3rd September 2014, accessible at: <https://www.civilsociety.co.uk/news/brooks-newmark--charities-should-keep-out-of-politics.html>

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