

Determining the regulatory barriers: charities, politics and developments from England and Wales

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As service providers or ports of last call, charities and their regulatory framework at both theoretical and practical levels are faced with difficult questions regarding accountability, governance, independence and conflicts of interest. Particularly is this so given the rise in the importance of the charitable and wider voluntary sector over the last decade; the much lauded search for a ‘third way’; and the blurring of the distinction between the public and private sectors. Central to all these issues lies the political nature of charities and the extent to which that political nature can be utilised. In the jurisdiction of England and Wales the regulatory framework currently prohibits certain political purposes and activities undertaken by charities with the rationale that to do so protects donors, taxpayers and the general public, prevents the judiciary from having to pronounce upon the public benefit in a political act and preserves the role of the legislature.

There are, however, signs that there may be diminution of the regulatory barriers within the jurisdiction of England and Wales. After many years of asserting that the regulatory framework required robust barriers to prohibit certain political purposes and activities, the UK Government has recently indicated that it wishes to create ‘the right enabling environment’ for advocacy and campaigning (HM Treasury and the Cabinet Office, *The future role of the third sector in social and economic regeneration: final report Cm 7189 (2007)*, para 2.7) and has asked the Charity Commission as sector regulator to reconsider its guidance to charities on this issue.

Taking a legal perspective, this paper will consider the role of dissent and the campaigning activities of charities in England and Wales, focusing upon the role of regulation in encouraging political engagement and debate but also safeguarding against deemed ‘unacceptable’ political activities and from extremism. It will also highlight the conflicts that can arise where government policy promoting political engagement is not mirrored in the regulatory framework.

This paper, though focussed on English and Welsh law, will be of interest to an international audience as a comparative approach to voluntary organisations, regulation and censoring debate.

This paper will draw upon the recent English jurisprudence – a jurisprudence that has wide-ranging significance for any organisation wishing to lobby against contentious and politically sensitive issues – including the House of Lords decision in *R (on the application of ProLife Alliance) v. British Broadcasting Corporation* [2003] 2 All ER 977 and other appeals under the Communications Act.

This paper will also draw upon current reports on the regulation of political activities by charities, including:

The *Report of the Advisory Group on Campaigning and the Voluntary Sector* (London: Advisory Group, 2007)

HM Treasury and the Cabinet Office, *The future role of the third sector in social and economic regeneration: final report* Cm 7189 (2007).

Green Paper, *The Governance of Britain* Cm 7170 (2007)

It will also consider the Charity Commission's recent additional guidance to charities on political activities: Charity Commission, *Campaigning and political activities by charities – some questions and answers* (London: Charity Commission, 2007) and the forthcoming revised Charity Commission guidance (expected to be published in Autumn 2007).