



## Guidance

# The European Union referendum: the Charity Commission's regulatory guidance for charities

This guidance is for charities that may be considering public involvement in the debate leading up to the European Union (EU) referendum on 23 June 2016. Such activity will amount to political activity if the engagement can reasonably be seen as influencing the outcome. Charities will need to be aware of what the law permits and does not permit them to do.

Charities should not engage in political activity in connection with the EU referendum unless they can demonstrate that they comply with the terms of the commission's guidance on **Speaking out: guidance on political activity by charities (CC9)**, on **Charities, Elections and Referendums**, and this guidance. Trustees must be satisfied that such activity is a proper way to support the delivery of the charity's purposes and is in the best interests of the charity.

### 1. Does this political activity support, and is it incidental to, your charitable purposes?

As trustees you must consider carefully how any activity relating to the EU referendum fits with your charity's purposes. The commission's guidance on **Charities, Elections and Referendums** makes clear that there may be some circumstances in which it is appropriate for a charity to set out the pros and cons of a yes or no vote for their members, supporters or beneficiaries: for the EU referendum these are the 'remain in' or 'leave' options. It also states that, in exceptional cases, charities may consider that the outcome of a referendum is likely to affect directly, positively or negatively, the delivery of their charitable purposes.

In making decisions on involvement in the EU referendum, trustees must always take account of the key principles of charity law on political activity. If you want to provide information on how remaining in or leaving the EU would affect your beneficiaries, you must be clear how this would support your charitable purposes. You must also ensure that information you provide is based on accurate evidence.

If you have decided that the likely impact of the outcome of the EU referendum would have such a direct impact on your charity and its work that you are considering engaging in the debate on the outcome of the referendum itself, you would, under the principles of charity law set out in CC9, be engaging in 'political activity' if you decide to engage and your engagement can be reasonably seen as influencing the outcome of the referendum. Political activity can only ever be undertaken in support of your charitable purposes. The legal test is that 'any involvement must be incidental, ancillary or subordinate to the charity's purposes'. This test is important because for a charity political activity must only ever be a means to an end and not an end in itself.

You should be able to explain why you are getting involved in the EU referendum and how you reached your decision to do so. The aims and impact of the EU referendum, whether the outcome is remaining in or leaving the EU, are clearly wider than the objects of a charity. This means that it is likely that it will be by exception that charities would reach a decision to engage in political activity on the referendum. It also means that, as charity trustees, you must take great care in reaching your decision, be aware that a decision to engage in political activity will be closely scrutinised, and be able to explain the reasons why political activity would be 'incidental, ancillary or subordinate to' your charitable purposes.

## **2. Managing conflicts of interest and other risks**

You must only ever act in your charity's best interests. This means that you must identify and manage conflicts of interest. There are some specific conflicts that are likely to arise in the context of the EU referendum. You should also manage risk responsibly. You have a duty to avoid exposing your charity to undue risk, including reputational risk, or to be in breach of charity law.

### **The risk of exploitation for personal or political purposes**

A significant risk is that your charity is used as a vehicle for the expression of the personal views or political, including party political, views of an individual trustee or staff member. This is a risk to which you should be especially alert. This applies to all forms of communication, including social media, and across all your operations. For example, tweets by key individuals which are intended to influence voter behaviour, and are not in line with the charity's decided position, could risk breaching our guidance and might lead to regulatory action by the commission. As a trustee you must manage the risk of your charity being misused for a personal or political purpose. The commission recently took regulatory action against charities that failed to comply with our guidance. You should also be alert to the risk that a political party, or one of the 'remain in' or 'leave' campaigners in the referendum, could seek to exploit your charity's participation in policy discussions for its or their own benefit rather than for the benefit of your charity's beneficiaries. You must not allow this to happen.

### **The risk of a possible loss of funding**

Many charities are funded by the EU or its institutions, and conditions are usually attached to the funding. For charities that are in direct receipt of such funding, the possibility of a loss of funding will clearly be an issue. However, knowing that the outcome of the referendum could result in a loss of funding would not in itself justify political activity directed at the UK remaining in the EU. The key issue is how remaining in or leaving the EU would affect your charitable purposes and the ability of your charity to continue its work. The extent of the charity's engagement must be proportionate to the issue involved. Trustees must consider issues such as the risk posed to the charity by the loss of funding and the ability to replace the funding that is at risk of being lost. If your charity does get involved in any political activity connected with the referendum, you should ensure that, during such involvement, you publicly acknowledge the source of your funding so that the reasons for your involvement can be fully assessed. If you do not do so, this could seriously undermine and detract from the quality of your contribution to these very important issues and may attract regulatory scrutiny by the commission. In those exceptional circumstances where a charity considers the outcome of the referendum itself is likely to affect directly, positively or negatively, the delivery of their charitable purposes, full transparency about funding is especially important.

## Risks to reputation

Engaging in political activity on the EU referendum carries reputational risks for your charity and you must consider how you can avoid them. This means that if you decide to be involved in the referendum, you must be completely transparent about your reasons for deciding to be involved, ensuring that your decisions are justifiable within charity law and that the charity maintains its political neutrality as set out in CC9. You must be alert to the risk of being perceived to be aligned with a political party or with any particular organised campaign on either side of the argument, and consider carefully how you can avoid this. Any referendum related activity may attract adverse comment. Trustees must consider the possibility of this when making their decisions and be prepared to defend their decision to intervene. Failure to be able to do so could lead to regulatory action.

## 3. Recording your decision

As trustees you should keep a written record of your decisions. You can find further information on making decisions in the commission's guidance **It's your decision: charity trustees and decision making**. The minutes should record:

- how the action agreed furthers and supports your charitable purposes
- the basis on which you have decided that the activity is in the best interests of your charity within its charitable objects
- the risks involved that you have identified and how you will avoid them within charity law
- any conflicts of interest that you have identified and how you propose to deal with them

## 4. The role of the commission if things go wrong

You need to be able to explain and justify the decisions you have made. The commission, as regulator of charities, will consider a complaint against trustees or will take proactive action where it believes there is a regulatory issue for the commission, supported by good evidence. If the commission decides there is a regulatory issue, it will ask questions about your charity's decision to engage in political activity on the EU referendum, and may take further action if it has grounds to suspect that your charity has acted outside its objects and powers or that you have failed to comply with your duties and responsibilities as trustees.

## 5. Registering with the Electoral Commission

You must not spend more than £10,000 on campaigning during the referendum period (15 April - 23 June 2016), before you have registered with the Electoral Commission to become a 'registered campaigner'. If you do not register, or are not eligible to register, you cannot spend more than £10,000 on campaigning during the referendum period. During the run up to the referendum, referendum campaigners will be subject to certain rules on spending and donations. You can find more information here: <http://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/campaigners-in-referendums>.