

Guidance on Political Activity in relation to Students' Unions

Introduction

Students' unions are charitable membership organisations that exist to advance the education of students, including by representing the interests of students and helping to ensure that they benefit from a broad and rich educational experience outside of the lecture hall. Students' unions will actively seek to provoke and secure positive change in the policies and practices of colleges and universities, local and central government, as well as corporations and businesses, wherever they affect the experience of students as students. At their best, students' unions encourage active participation by students in a variety of activities and areas of interest, including in social, political, economic and cultural debates.

In doing so, students' unions will typically play host to dozens of equally active clubs and societies, host vigorous and controversial debates and publish vibrant and provocative student media. In representing the interests of students, students' unions will also often come into contact with politicians at many levels, legislatures, public authorities and agencies. They may also seek to raise issues which affect the interests of students in the public consciousness to achieve public support. This kind of activity may be inherently political in character.

The *political activities* of students' unions are regulated by law. Relevant statutes (laws written by a legislative body such as a Parliament), include:

- Charities Act 2011 (in England and Wales)
- Charities and Trustee Investment (Scotland) Act 2005 (in Scotland)
- Charities Act (Northern Ireland) 2008 (in Northern Ireland)
- Education (No. 2) Act 1986 (relevant sections apply across the whole of the UK)
- Education Act 1994 (in England, Wales and Scotland)
- Representation of the People Act 1983 (across the whole of the UK)
- Political Parties, Elections and Referendums Act 2000 (across the whole of the UK)
- Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act 2014 (across the whole of the UK)

Some of these laws give powers to regulate the activities of students' unions to particular bodies, for example:

- The governing bodies of colleges and universities
- The Charity Commission (in England and Wales), the Office of the Scottish Charity Regulator (in Scotland) and the Charity Commission for Northern Ireland (in Northern Ireland)
- The Electoral Commission

In addition, the Courts have a general role in interpreting and applying the law.

Finally, all of the bodies will take into account relevant case *law* (rulings by courts in the past that may establish a legal precedent to guide future rulings). Some case law is very important in establishing what students' unions can and can't do in relation to political activities.

So it's quite a complicated picture. The purpose of this briefing is the experience of NUS to demystify it and establish some very clear

'golden rules' that students' unions should follow to avoid some of the most common legal pitfalls. More detail is available in our guidance on protecting free debate at the following link: <http://beta.nusconnect.org.uk/resources/protecting-free-debate>

This briefing is in two parts. The first part outlines the main rules affecting students' union campaigning, which are well established and remain essentially constant. The second part addresses a series of points that add more detail to the basic position. We will regularly amend the second part and re-issue new advice if better advice becomes available. Students' unions should check this resource often, and we will also aim to alert you when amendments are made.

It is important to understand that this briefing represents general guidance on the legal background, but it is not legal advice. We can assist students' unions in finding appropriate sources of legal advice specific to their own needs, if required. Furthermore, the intention of the guidance is to assist trustees, officers, and managers to come to informed decisions; it is not an attempt by NUS to regulate the activities of students' unions, which is not our role.

Part one: the golden rules of students' union campaigning

In law students' unions are considered charities. This is due to some important legal rulings made by the High Court, and partly because of the Education Act 1994 (which clarifies that students' unions should abide by charity law). Most students' unions are registered with either the Charity Commission (in England and Wales) or OSCR (in Scotland), but some smaller students' unions are not required to register. The Charity Commission for Northern Ireland has recently been established and is in the process of registering charities active in Northern Ireland. Even if a students' union is not registered with the relevant body, it must still abide by charity law.

Fortunately, the basic rules on the political activities of charities are well established. Although there are some complicated areas (some of which are covered later), the basics are quite straightforward. There are three 'golden rules'. Complying with these golden rules will help students' unions avoid breaching charity law requirements but, if you are unsure of how they apply in a particular case, please feel free to contact us.

Golden rule one – students' unions shouldn't use their resources to campaign on an issue that does not affect "students as students".

It is generally accepted that students' unions can and should campaign on issues that directly affect students because of their student status or their position as a student in the community. It is also likely to be legitimate to campaign on issues that are likely to affect students in the near future (e.g. graduate unemployment), or on issues that are likely to affect future students as students (e.g. a change of funding policy that takes effect in three years' time). It is important to remember that, constitutionally, students' unions will often exist for the benefit of students in a particular university or area. So, campaigning will only be lawful where the issue affects students (or future students) in that university or area. This could include national issues which affect those students or future students.

It will not be lawful for a students' union to commit resources to campaigning on an issue that affects students but only because they are people in the community like everyone else. To do so would mean the students' union was acting outside its charitable objects, which is sometimes called acting 'ultra vires' (ultra vires just means 'outside the powers' in Latin).

So, for example:

Permitted campaign issues	Restricted campaign issues
Against tuition fees for college or university education in any part of the UK (provided it affects students in the area covered by the students' union)	Against structural reform of the school system, e.g. against academies and free schools
In favour of increased local transport services (in the area of the students' union), or national student travel discounts	In favour of nationalising rail transport operators
In favour of scholarships in the relevant university, including advocating scholarships for students affected by particular adverse circumstances, such as conflict situations	Against military action being taken by the UK or any other state

Crucially, this principle only relates to campaign action. It does not mean that a students' union cannot facilitate debates on wider issues which do not directly affect students as students; in fact, as an educational charity this debating role will be central to the union's core purposes. If these debates reach a resolution, the union can take an official position on any issue (including those where it would not be allowed to campaign on the issue). This is sometimes called 'reaching a corporate conclusion'. So even where an issue does not meet the test of directly affecting students as students,

students' unions can lawfully do any of the following things:

- Host a fair and balanced debate involving students and/or guest speakers on any issue
- Provide fair and balanced information to its members on any issue
- Adopt resolutions on any issue through its formal democratic structures, such as union councils, general meetings and referenda
- Communicate any resolutions decided on by those bodies to its members
- Represent positions taken to the university or college, or to NUS

More examples are available in our guidance on protecting free debate at the following link:

<http://beta.nusconnect.org.uk/resources/protecting-free-debate>

In all cases, if the issue involved does not affect 'students as students' then it is very important to ensure that the process of *debating* the issue, reaching an agreed position and *representing* the union's position does not cross the line into *campaigning*. This is not always a hard and fast distinction. Spending money on a fair and balanced debate is likely to be acceptable. However, a students' union should avoid spending money on implementing the position reached as a result of that debate, unless it directly affects students as students. In representing the union's agreed position to its members, the university or college, or the NUS, it is also important to ensure that the communication does not stray into campaigning. Whether it does will depend mainly on the audience, the amount of resources spent on the communication and the tone of the communication. For the communication to be lawful, it should:

- be carefully targeted only at union members, the university or college or the NUS
- explain the position clearly, and say how the decision was made (i.e. by what process – council, referendum, etc.), including the

process for encouraging contribution by those wishing to promote opposing views

- involve only minimum expenditure; the union should not spend any more than the minimum amount necessary to communicate the position effectively

Under no circumstances should a students' union advocate a position on an issue that does not meet the 'students as students' test to the general public.

The guidance above seeks to explain limitations that apply under charity law. Thought should also be given to whether particular motions or other debates involve material that may be defamatory or breach other legal requirements.

Golden rule two – students' unions should maintain neutrality when it comes to political parties

Students' unions don't have to be neutral on *issues* (subject to the rules set out above, they can take positions on any issue, and campaign on some issues), but they do have to be neutral when it comes to party politics. This means that a students' union cannot support or oppose any political party or candidate.

Unlike issues that fail the 'students as students' test (where the union can take a view but cannot campaign) a students' union should not pass a resolution in favour or against a political party or parties. The issue here goes beyond any question of whether the students' union is campaigning or spending money on matters which do not affect students as students. The issue is about ensuring that the students' union avoids *being, becoming or appearing to be partisan*. For the avoidance of doubt, though, a students' union should certainly never support a campaign for or against a political party or candidate.

Nothing prevents members of a students' union, including its elected officers, from personally and actively supporting or opposing political parties or candidates. It is also permissible for individual members to organise

themselves in groups outside of the union's structures to support or oppose parties or candidates, as long as such groups raise their own funds to do that and do not represent themselves as being affiliated in any way to the students' union (including on social media). Where paid sabbatical officers are involved, a students' union should ensure that the officers are not using their paid time to support a political party. They also should not use property of the students' union to provide such support, such as computers and office space.

Golden rule three – students' unions should not give money to other organisations to do things that they are not allowed to do themselves

A students' union can't donate or allow its funds to be used to support campaigning on an issue that would be outside of its charitable objects (because it does not affect the education or interests of students), or for partisan political purposes. Nor should a students' union establish or fund a student society to campaign on an activity that the union itself would not be allowed to campaign on.

There is an important role for NUS here. Because NUS is not a charity and has considerable funds that do not come from charitable sources (unlike the affiliation fees paid by students' unions), we can campaign on issues that students' unions can't campaign on, and we can directly challenge political parties, provided we comply with other relevant rules, such as under electoral law.

Part two: specific issues

The Lobbying Act

- The Lobbying Act passed in 2014 is not actually the legislation that counts; what the Lobbying Act did was amend the earlier Political Parties, Elections and Referendums Act 2000 (PPERA), to increase the restrictions on expenditure by third party campaigning organisations in elections

(which PERA already covered before the Lobbying Act, but less restrictively).

- An organisation has to register with the Electoral Commission under PERA if all of the following criteria are met:
 - The organisation intends to campaign on an issue (or issues) in the twelve month period preceding a scheduled General Election. For the 2015 General Election the regulated began on 19 September 2015 and will last for seven and a half months until the General Election.
 - The campaign could reasonably be expected to be experienced by members of the public (this is sometimes called the 'public test')
 - The campaign could reasonably be regarded as intended to promote or procure electoral success (or failure) for particular candidates or political parties (this is sometimes called the 'purpose test')
 - The organisation plans to spend (or has spent) more than £20,000 in England (or £10,000 in any of the other UK nations)
- An organisation also cannot lawfully spend more than £9,750 during the regulated period on campaigning activity focused on a particular constituency, if that activity passes the 'public test' and the 'purpose test', whether or not it registers with the Electoral Commission (referred to as the 'constituency limit').
- In *theory* it is possible that a students' union could carry out normal and lawful campaigning activity on an issue that is so closely associated with a political party or candidates that this could be regarded as intended (at least partly) to promote them in an election (and by implication, disadvantage other candidates or parties). If a union ran a campaign of this nature and

spent more than the specified limits, then the union might have to register with the Electoral Commission under PPERA (or might commit an offence if spending focused on a particular constituency exceeded the 'constituency limit').

- In *practice* we do not consider it likely that any students' union will run a campaign that meets the 'purpose test' and the 'public test' and exceeds the spending thresholds. Activity exclusively directed at students' union members will not pass the 'public test'. Therefore students' unions should not normally register under PPERA and will not be affected by the 'Lobbying Act'. If students' unions wish to mitigate the possibility they might need to register, they should ensure that their campaigning expenditure on anything that might meet the purpose test is lower than the threshold for them (depending on where they are in the UK) and that any such spending focused on particular constituencies does not exceed the 'constituency limit'.
- If you believe you may run a campaign that involves the public, meets the 'purpose' test and does not stay below the registration threshold, you should contact us for more detailed advice. Our aim will usually be to provide guidance to ensure students' unions are not required to register, because the accounting requirements of doing so are quite unwieldy.
- For the UK General Election in 2015, NUS expects to run campaigning activity that meets all the criteria, and we will soon be registering with the Electoral Commission.

Clubs and Societies

- Students' unions should ensure that it is possible for different societies to advocate all sides of a controversial issue, especially one that does not meet the 'students as students' test; unions do not have to proactively set up new societies to 'balance

the debate', but they should not block the formation of societies in such a way as to create bias, or the appearance of bias.

- Students' unions should also ensure that funds allocated to clubs and societies are fairly distributed; they don't necessarily have to have equal funding, but funding should be objective criteria such as the number of members of each club. Students' union clubs and societies are technically part of the students' union - they are not autonomous from the union regardless of whether or not they have their own constitutions. So, sensible best practice would be for students' unions to ensure that any clubs and societies advocating controversial positions, especially positions which do not meet the 'students as students' test, are established outside of the structures of the students' union, and that none of the members of their executive committees are also holders of elected officer positions within the union itself (e.g. on the union executive), to help ensure that they are genuinely autonomous from the union. These rules may not be strict legal requirements, but can help to ensure that the union can demonstrate that it is not acting through a student society as a 'front' to advocate a view that it cannot promote itself.
- Party political clubs and societies (e.g. Labour Clubs, Conservative Clubs) may be formed, and such a society is generally permitted to support the political party it relates to. Where political societies receive funds from the students' union, they should not use that funding to support political parties directly; so that even though they are allowed to promote partisan views within the student community (contributing to the educational experience of the students involved), they are still not allowed to use students' union funds to campaign (e.g. by hiring a minibus to take people out on canvassing trips, or by printing literature to canvass the general public). Under no circumstances should students' union clubs

and societies donate funds received from a students' union to a political party or candidate.

- Nothing prevents the individuals who are the members of a political club or society from raising and pooling funds personally and informally to support political parties or candidates, or make direct donations to them, but this process should not be facilitated or assisted by the union.

Student Media

- Student newspapers, magazines, and broadcasts (by whatever technical means, including internet broadcasts and podcasts) count as publications of the union itself and therefore are covered by the provisions of charity law. Efforts are often made for very good reasons to afford editorial independence to such media, but students' unions should be aware that in law the trustees are ultimately responsible for ensuring material published by these means does not cause a breach of charity law by the union.
- Student media can be an important forum for achieving the students' union's role in facilitating debate amongst students. In line with the basic principles of charity law outlined above, any issue can be reported and debated within student media (provided the material complies with other legal requirements, such as defamation law), including issues which the union is not permitted to campaign on, as a way to advance the education of participating students. However, as with other forums for debate, it is very important to ensure that debates are facilitated in a politically-neutral manner. So, student media should be edited in a manner that seeks to present all sides of a debate in a fair and balanced way.
- Student media may also be an important means by which the union can communicate the formation of a 'corporate conclusion' on an issue to its members (e.g. reporting the

outcomes of a union council meeting). However, this should be limited to communicating the outcome of meetings and motions in a standard, consistent and balanced manner, which does not stray into 'campaigning'. Student media output can also be deployed as part of a campaign on an issue that affects "students as students" (see above), but it cannot (even if editorially independent), campaign on an issue that does not affect "students as students".

- There are some key practical steps that should be taken. Students' unions should ensure that student media presents contentious debates (especially debates of a party-political nature) in a fair and balanced way, ensuring all sides of an argument are properly represented. You should also ensure that student media does not take up a campaigning stance on an issue that the union would not be permitted to campaign on (so a front page headline that says "Our Campaign: Abolish Tuition Fees Now" would be permitted, but a headline that says "Block the Fibchester Bypass" would not be acceptable, unless the impact of a new bypass on students at Fibchester was direct in some way, e.g. as demolition of student residences).
- Where a publication or broadcast is administered by a separate legal entity that is not a charity the position may be complex, but the general principle will be that if the entity is controlled by and/or reliant on funding from a students' union (or students' unions) then that students' union should ensure it abides by charitable limits on its activities.
- Student media can raise legal issues in areas other than charity law, such as defamation law. Some guidance on defamation law as it applies to students' unions is available in our guidance on protecting free debate at the following link:
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- In the case of broadcasts on FM/AM radio, additional regulations around political balance may apply, and further advice should be sought from OFCOM.

'No Platform'

- A students' union can choose not to invite people to speak where it believes that would not be in the best interests of its student members, in terms of advancing the education and interests of students.
- Where an independent group of students or a student society invites a person to speak whom the students' union itself would not, the issue can become legally complex and involve resolving conflicts between student safety and freedom of speech. Revoking an invitation which has already been given could have implications under equalities legislation.
- We would be happy to provide more detailed guidance in this area where required. Please feel free to speak to your NUS Contact if you have any questions with any questions.
- There are specific rules on political hustings during election periods. The starting point is that hustings open only to students' union members are most likely to avoid legal or regulatory issues if all candidates standing in the election are invited, or if there are objective reasons for excluding any candidates. However, this is a complex area and we will issue specific guidance on this in the run up to the 2015 General Election.

Boycotts

- One way in which a students' union may wish to act politically is to boycott goods and services from particular suppliers and/or particular groups or individuals associated with particular political situations.
- Where the issue involves boycotting suppliers of services in the interest of students, either locally or generally, this

may be straightforward as a matter of charity law (e.g. boycotting a particular local nightclub due to its policies and practices, or a particular local transport firm over its pricing). However, there may be other legal implications, such as under defamation law.

- Where the issue involves a boycott that does not promote the interests of 'students as students', then all the charity law rules set out above will apply. In particular, the union may be able to adopt that position and communicate it to its own members and the college or university with which it has a direct relationship, but it must not campaign for that boycott generally or advocate it to the public. Where communicating the agreed position to union members and the university or college, the students' union should be very careful to avoid straying into campaigning. Communication should be carried out in the usual manner as would apply to other union motions or decisions. The union should be mindful of its obligation to ensure a safe and non-threatening environment for students and should generally avoid, for example, putting up posters or plaques advocating the agreed position. Communicating the position to the university or college generally should not go beyond a letter to the university, or raising the issue in a university council meeting.
- If a union chooses to boycott any suppliers, it should bear in mind that this will not generally be a legitimate reason to break any existing contracts and the union may need to allow existing contracts to lapse according to their terms. Students' unions should also seek to avoid any incurring an 'opportunity cost' from choosing a more expensive supplier as a result of a boycott.
- Students' unions should avoid boycotting individuals or groups of people (other than a policy of barring those who represent a threat to member safety, such as by virtue of racist or fascist views).

- Boycotts can raise more complex legal questions, and if you have a boycott proposed locally you should contact us for further information. In particular, boycotts can raise issues under equality legislation.

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