

Too Political? Charities and the Legal Boundaries of Campaigning

Professor Debra Morris

Overview

- Charity Law
- Charity campaigning in the spotlight
- Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014
- Human Dignity Trust Case
- Concluding Comments

Charity Law

- Charity cannot have a political purpose, which is one which:
 - furthers interests of a political party
 - seeks to procure changes in laws of this or another country
 - seeks to procure a reversal of government policy or of particular decisions of governmental authorities in this or another country

McGovern v Attorney General (1982)

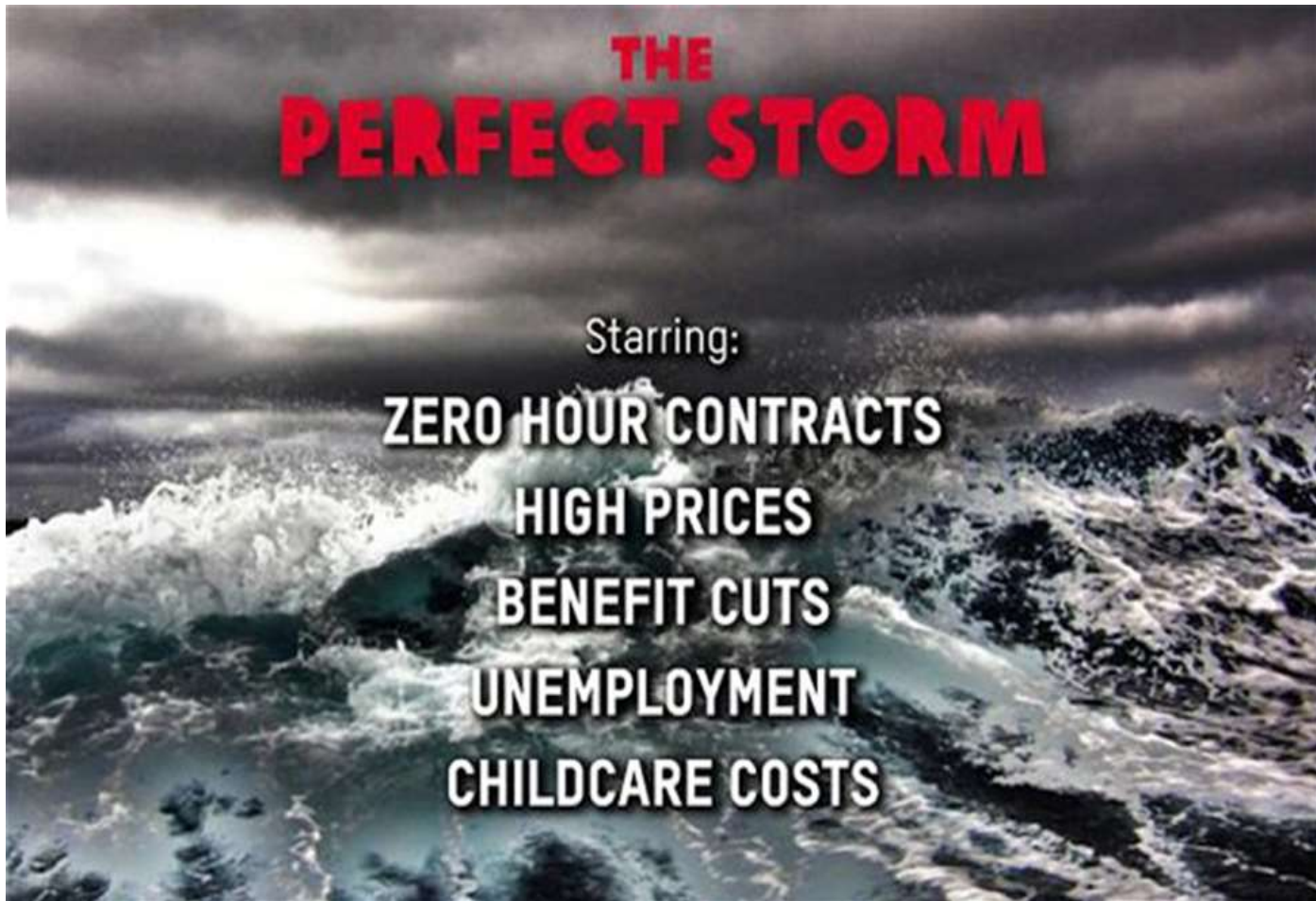
Charity Law

- political activity to pursue a charitable purpose OK
- campaigns carried out in furtherance of charitable objects may coincide with or even be adopted by a political party
- very fine line to be drawn here
- perception of bias may be damaging to both individual charity and the sector as a whole

Campaigning in the spotlight

- 2011 - Iain Duncan Smith, Secretary of State for Work & Pensions: 'ridiculous and irresponsible behaviour' (Child Poverty Action Group)
- 2012 - Conservative MP Brian Binley: 'I am becoming increasingly concerned about their political involvement' (Save the Children)
- 2014 - Brooks Newmark, in his maiden (nearly only?) speech as Minister for Civil Society: charities should stay out of 'the realms of politics' and 'stick to their knitting'

Campaigning in the spotlight



Campaigning in the spotlight

- CC Statement of Regulatory Approach, 2014: particularly alert to 'fraud, terrorist activities, abuse of vulnerable beneficiaries and improper politicisation'
- CC's 2008 guidance on campaigning and political activities by charities (CC9) to be reviewed after general election? (recently retracted)
- CC proposal (on hold) that there should be a requirement to declare how much charities have spent on campaigning in their annual return

Campaigning in the spotlight

- February 2015 - written statement to Parliament by then Secretary of State for Communities and Local Government, Eric Pickles, to the effect that charities may lose government grants if they campaign against Government
- Concern about 'sock puppets'
- standard grant agreements to impose a new anti-lobbying, anti-sock puppet clause

The Lobbying Act 2014

- CC already active in this area
- Act may impair charities' ability to speak out in the run-up to elections
- Expands scope of existing rules
- Some charities may need to register with Electoral Commission
- The law is complex

The Lobbying Act 2014

- If spending on 'controlled expenditure' does or is planned to exceed £20,000 in England, £10,000 in the rest of UK, or £9,750 in any one parliamentary constituency
- = money spent on activity that can reasonably be regarded as being intended to influence voters to vote for/against political parties or categories of candidates, including those who do/not support particular policies
- Activities can = lobbying even if intention is to achieve something else, such as raising awareness of an issue (OK for charities to do)

The Lobbying Act 2014

- No requirement for lobbying to be aimed at particular political candidate or party
- Lawful charity campaigns which are aimed at generating support for particular policies, in line with a charity's purposes, may constitute lobbying
- Must reasonably be regarded as intended to promote or reduce electoral prospects of a political party/ies, or a group of candidates, including those who support or oppose a particular policy
- Activities must be aimed at, seen or heard by, or involve the public (includes social media)

The Lobbying Act 2014

- 2015 general election - 68 bodies registered as non-party campaigners with the Electoral Commission, including:
 - charities e.g. Arthritis Research UK, Stonewall, Salvation Army
 - other campaigning groups (including Amnesty International UK) and private consultants
 - the cosmetics firm Lush
 - various individuals
 - several trade unions

The Lobbying Act 2014

- Do charities ever need to register?
- Charity Law does not allow support for political parties or candidates
- What if close alliance between charitable objects and policies?

The Lobbying Act 2014

- Electoral Commission guidance:
 - Spending will not become regulated simply because a party has publicly adopted a policy that you are already campaigning for
 - spending on your campaign activity will not be regulated only because the policy issue which you have been campaigning on becomes a major dividing line between political parties, or has always been aligned in the public's view with a particular political party
 - ... where a charity reacts publicly to policy announcements which clearly affect the achievement of its charitable purposes, this will not generally be regulated

The Lobbying Act 2014

- BUT, Lobbying Act consumed significant time, energy and other charitable resources
- Serious concerns about ‘chilling effect’ of being gagged
- Fear of breaking the law or reputational risk of receiving vexatious complaints
- Lots of (unnecessary?) legal advice sought
- Charities self-censoring?

Human Dignity Trust Case

- HDT helps those whose rights are violated by criminalisation of private homosexual acts between consenting adults
- Challenges legislation in countries with constitutional Human Rights protections that appear incompatible with such laws, or that have signed up to international Human Rights treaties that are inconsistent with them

Human Dignity Trust Case

- Application for charitable status was rejected by the CC – political purpose to uphold Human Rights in an overseas country since it would require a change in the law
- HDT appealed to the Charity Tribunal
- Charity Tribunal allowed the appeal

Human Dignity Trust Case

- CC - HDT existed for a political purpose
- HDT - litigation aimed at upholding citizens' constitutional rights does not seek to change law but to enforce and uphold superior rights guaranteed by that country's constitution
- Tribunal - particular type of constitutional litigation supported and conducted by HDT was fundamentally different in nature from activities found to be objectionable as political in *McGovern v Attorney General (1982)*

Human Dignity Trust Case

- Tribunal - purposes were for the public benefit because the purported criminalisation of relevant conduct represented a serious breach of international Human Rights norms
- Tribunal - there was a public benefit in seeking to interpret, clarify and protect superior constitutional rights

Human Dignity Trust Case

- Could other 'political purpose' activity be re-framed as 'Human Rights' activity?
- Implications of case could be very wide
- Note that promotion of Human Rights recognised as a charitable purpose as early as 2005

Human Dignity Trust Case

- Tribunal: ‘as a matter of law this decision is confined to its own facts and does not establish a legal precedent for the registration of other prospective charities’
- But, decision will influence future discussions about the scope of the charitable purpose of advancing Human Rights
- Helps other charities campaigning in the field of Human Rights

Concluding Comments

- Dilemma for the charitable sector
- Charities play a valuable role in public life and have a long and proud tradition of engaging in campaigning for changes to law or policy that support their purposes
- Charities also recognise that their independence and political neutrality is of paramount importance to their successful campaigning

Concluding Comments

- Restrictive developments in run up to election sends a signal that charities may only challenge or oppose government policy at their peril
- Chilling effect:
‘we cannot fail to have noticed that in the recent general election campaigning charities were not as prominent as they have been in the past’
- Increasing interest of politicians in charities’ activities and the progressively more adversarial relationship with some elements of the media has made the issue increasingly political, requiring charities to tread very carefully

Concluding Comments

- Perceived regulatory hurdles mean that charities are self-censoring
- Perceived major reputational risk in a sector that is risk averse
- Charities concerned about the appearance of the very act of registration with Electoral Commission
- But, charity law prohibits support for political parties/candidates since charities are not able to exist for political purposes
- Maybe problems are not so much legal but cultural?

Concluding Comments

- HDT allows charities to advocate for change
- But note that the CC was very hostile in this case
- Explained by the pressure from the political and media interest in charities' campaigning activities?

Concluding Comments

- Note recent attempt to legislate for charities' right to undertake political campaigning
- Government response:
- 'categorically clear that the Government support charities' right to campaign within the law. Many charities use campaigning and advocacy effectively and legitimately to support their charitable purposes'

Concluding Comments

