**Agenda item: 5**

**TB(14)48**

**National Council for Voluntary Organisations (NCVO)**

**Board Meeting**

**12 September 2014**

**Electoral Commission and registration**

**Purpose**

To advise the board of the possible registration with the Electoral Commission under the new Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 rules.

**Recommendation**

The board are asked to:

1. agree that the Board agree with the assessment that NCVO is not required to register as a non-party campaigner with the Electoral Commission under the new non-party campaigning rules
2. that this decision be reviewed at each board meeting until the end of the regulated period
3. Should the chief executive consider a different approach be needed between board meetings this will be discussed with the chair.
4. **Non-party campaigning rules**

1.1 Under the Political Parties, Elections and Referendums Act (2000) there are rules on what non-party campaigners can spend on regulated campaign activity in the run up to elections.

1.2 The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 has made a number of significant changes to the rules, namely:

* increasing the expenditure thresholds for registration with the Electoral Commission,
* widening the range of ‘regulated campaign activity’ that counts towards ‘controlled expenditure’,
* reducing the overall spending limits,
* introducing new constituency spending limits.

1.3 The regulated period for non-party campaigners at the 2015 UK Parliamentary general election begins on 19 September 2014 and will end on polling day 7 May 2015.

1.4 The non-party campaigning rules apply to spending on ‘regulated campaign activity’, defined as ‘activity that can reasonably be regarded as intended to promote or procure the electoral success of a particular party or candidate’.

1.5 In deciding if activity falls within the scope of the rules, the Electoral Commission applies a two-limb test: a ‘purpose test’ and a ‘public test’.

**2. The purpose test**

2.1 The activity can reasonably be regarded as intended to influence voters to vote for or against:

* one or more political parties
* political parties or candidates that support or do not support particular policies or issues or
* categories of candidate.

2.2 Campaign activity can meet the purpose test even if it does not name a particular party or candidate. For example, campaigning for a policy that is closely and publicly associated with one or more political parties can meet the purpose test.

2.3 Even if the intention of the campaign activity is to achieve something else, such as raising awareness of an issue, it can still meet the purpose test.

**3. The public test**

3.1 Even if they meet the purpose test, activities will only be regulated campaigning activity if they also meet the public test – that is, if the activity is aimed at, seen or heard by, or involves the public, or a section of the public.

3.2 An organisation’s official members or ‘committed supporters’ (people who support the organisation in the same way as members) will not be considered part of the public.

**4. NCVO and registration as a non-party campaigner**

4.1 On the basis of NCVO’s understanding of the rules set out above, it is our opinion that we are not required to register with the Electoral Commission as a non-party campaigner.

*On the ‘purpose test’*

4.2 As a registered charity whose activities must be in compliance with charity law, NCVO’s activities are unlikely to meet the purpose test. In particular, NCVO is always very careful to ensure that any campaigning and political activity is undertaken in a way that stresses our independence and political neutrality. NCVO does not give support to a political party, or to a candidate or politician.

4.3 Our assessment that NCVO’s activities would not meet the purpose test is confirmed by answering the questions suggested in the Electoral Commission guidance to decide whether a campaign activity meets the purpose test.

1. **Tone**
* Is the tone of the campaign negative or positive towards a political party or parties, or category of candidate, or a policy that a party or category of candidate supports or does not support?
* We ensure our tone is neutral in all our communications, and take special care that when expressing any criticism or support this is clearly about the policy issue, not the particular party or candidate.
1. **Context and timing**
* Is NCVO campaigning on an issue that is prominent in public debate? Is NCVO campaigning on an issue that clearly represents an area of difference between political parties? Is NCVO campaigning as a reaction to a policy or position of a political party? Is NCVO campaigning close to the date of an election?
* At the moment, NCVO is not carrying out any public campaign on issues that meet these criteria. Should circumstances change, the board will be made aware of this and the questions listed above will be revisited.
1. **Call to action**
* Are any NCVO campaigns asking people (whether explicitly or implicitly) to vote for a particular political party, parties or category of candidate at an upcoming election?
* As a charity acting in compliance with charity law, NCVO does not give its support to any one political party. We may express support for particular policies which will contribute to the delivery of our own charitable purposes, but when doing so we ensure that our independence is maintained, and perceptions of our independence are not adversely affected.
1. **How a reasonable person would see the activity**
* Would a reasonable person regard your campaign as intended to influence people’s voting choices?
* In light of the answers above, it is our opinion that a reasonable person would not regard any of our activities as intended to influence the electorate’s voting choices.

**5. On the ‘public test’**

5.1 Nearly all of NCVO’s advocacy work and policy communications take place within meetings between senior members of staff and Ministers, government officials, and MPs. The Electoral Commission’s guidance explicitly states that:

*‘Electoral rules do not generally cover lobbying or influencing MPs, governments or Parliamentary lobbying unless you involve the public in that activity and your campaign can be seen as intended to influence voter choice during a regulated period.*’

5.2 Our online communications are mostly restricted to member organisations, and therefore would also not meet the public test (the guidance expressly says that an organisation’s official members will not be considered part of the public).

5.3 Where NCVO does undertake communications to non-members, these will count as being aimed at the public. However, non-member communications would also not be considered regulated campaign activity because it is unlikely that their content could be regarded as ‘intended to promote or procure the electoral success of a particular party or candidate’.

Karl Wilding

Director of Public Policy

August 2014