

Regulatory Case Report

The Royal United Services Institute for Defence and Security Studies
Registered Charity Number 210639



This is a Regulatory Case Report of the Charity Commission's Compliance case concerning research conducted by the Royal United Services Institute for Defence and Security Studies 'the Charity'. The research was commissioned and paid for by Sir Menzies Campbell MP and used for a Liberal Democrat party publication. The Commission's report is published on 15 September 2009.

The fact that the Charity had undertaken research for Sir Menzies Campbell MP raised public interest issues because it suggested support by the Charity of a political party. In addition, it appeared that this research was not furthering the Charity's purposes for the public benefit because the material was not sufficiently widely disseminated. These issues have the potential to impact not only on the work and reputation of the Charity but on public trust and confidence in charities generally.

Accordingly, and having regard to the principles of best regulatory practice, the Charity Commission ('the Commission') has decided to publish this Regulatory Case Report¹ on its recent regulatory compliance case into this Charity.

This report also identifies issues for the wider sector.

The Charity

1. The Royal United Services Institute for Defence and Security Studies was founded in 1831 and is governed by a Royal Charter of incorporation granted in 1860. The Charity was entered on to the Commission's Register of Charities on 4 October 1962 (charity registration number 210639).
2. The Charity's objects are the promotion and advancement of the science and literature of the three services (Army, Navy and Air Force).
3. The Charity undertakes or sponsors research and disseminates its findings through seminars and publications such as journals.
4. The Charity's accounts for the financial year end 31 December 2007 show an income of £2,792,427 and expenditure of £2,989,101.

¹ More information on Regulatory Case Reports can be found on the Commission's website www.charitycommission.gov.uk under the heading 'Inquiry Reports and Regulatory Case Reports'

Source of Concern

5. The Electoral Commission referred to the Commission under s.10 of the Charities Act 1993² information that Sir Menzies Campbell MP had used a donation to commission research from the Charity. This research paper related to the 'Military Covenant'³ and was used for a Liberal Democrat party political paper, written by Sir Menzies Campbell MP, entitled '*No Choice but Change*' and published on 26 September 2008.
6. This raised concerns for the Commission that the Charity may have supported a politician and/or political party, and had acted in a way which called into question the Charity's independence from party politics. It was also unclear whether the Charity research had been used by the Charity for the public benefit because of its limited dissemination. Each of these issues may constitute infringement of the charity trustees' duties and responsibilities and the Commission's published guidance, including guidance on charities engaging in political activities⁴, and therefore warranted further investigation.

Issues examined

7. The Commission opened a regulatory compliance case on 25 March 2009. The Commission's substantive investigations were concluded on 3 August 2009.
8. The purpose of the Commission's case was to determine if the Charity had improperly, whether directly or indirectly, supported a politician and/or political party by agreeing to undertake paid research exclusively for Sir Menzies Campbell MP and whether this had affected the Charity's independence.
9. During the course of its case, the Commission made a number of enquiries to determine the nature of the arrangement between the Charity and Sir Menzies Campbell MP and what factors were taken into consideration by the Charity before agreeing to undertake the research commission. This work included:
 - reviewing information supplied by the Electoral Commission;
 - corresponding with and meeting the Charity to obtain further information; and
 - reviewing the research paper produced by the Charity and the paper '*No Choice but Change*' written by Sir Menzies Campbell MP and Ben Jones, a senior political adviser in Parliament.
10. This was the first occasion where the Commission has engaged with the Charity regarding concerns of this nature. The Charity co-operated fully with the Commission's enquiries throughout and has welcomed the regulatory advice and guidance the Commission has provided. The Commission has received assurances from the Charity that it strives to remain independent of party politics at all times.

² Section 10 of the Charities Act 1993 provides that "...any relevant public authority may disclose information to the Commission if the disclosure is made for the purpose of enabling or assisting the Commissioners to discharge any of its functions". The purpose of section 10 is to provide a statutory gateway to allow the disclosure of information to the Commission by other public authorities, where the purpose of the disclosure is to enable or assist the Commission to discharge any of its functions

³ The Military Covenant refers to the mutual obligation between the Nation, the Army and each individual soldier. In putting the needs of the Nation and the Army before their own, they (the soldiers) forego some of the rights enjoyed by those outside the Armed Forces. In return, British soldiers must always be able to expect fair treatment, to be valued and respected as individuals and that they (and their families) will be sustained and rewarded by commensurate terms and conditions of service. For more information visit <http://www.army.mod.uk/join/terms/3111.aspx>

⁴ CC9 – Speaking Out: Guidance on Campaigning and Political Activity by Charities

Findings

11. As a result of its investigation and information supplied by the Charity, the Commission's findings are as follows:

12. *The request for research from Sir Menzies Campbell MP*

Sir Menzies Campbell MP contacted the Charity in 2008 to commission a research paper on the Military Covenant to assist with his paper, *'No Choice but Change'* a Liberal Democrat publication. The Charity undertook this commission and produced a paper entitled *'An Analysis of the nature and significance of the Military Covenant, some of the factors affecting it, and how it relates to broader defence issues'*. The Charity was paid £10,000 (plus VAT) by Sir Menzies Campbell MP for the research paper.

13. It was reasonably foreseeable that the Charity's research would be exclusively used for party political purposes by Sir Menzies Campbell MP.

14. Sir Menzies Campbell MP was unaware of any concerns which might have arisen from the Charity undertaking the research. The Commission's investigation focused only on how the trustees discharged their responsibilities and duties under charity law.

15. *The Charity's research*

The subject matter of the Charity's research for Sir Menzies Campbell MP fell clearly within the Charity's core purposes and planned activities. The research commission, which was fully funded by Sir Menzies Campbell MP, was viewed by the Charity as an opportunity to further the Charity's objectives.

16. The Commission considered that the Charity's research is consistent with that which it would expect of an educational research charity in its chosen area of study. The research paper produced by the Charity was

- well balanced;
- objective;
- not seeking to influence or change the law or Government policy; and
- not in support of a particular point of view which is controversial⁵ or in support of a 'party political' view.

17. The research provided to Sir Menzies Campbell MP by the Charity was not otherwise published or disseminated by the Charity in the same form, although learning from the research was fed in to the Charity's ongoing work in this area, and contributed to an article published in the Charity's journal.

⁵ Education in a Charity law context does not have to be value free and completely impartial. Education can be based on broad values that are uncontroversial which would be generally supported by objective and informed people. However, the advancement of education cannot be used to promote a political or predetermined point of view. It remains the case that the mere promotion of an opinion which is not shown to have educational value (say a particular position on a matter of public controversy) will not be charitable, or to put it another way, the attempt to inculcate a particular point of view not exhibiting a general educational tendency will not be charitable. See *Southwood v AG* 1998 WL and 2000 WL (CA (CivDiv)) *'The Court is in no position to determine that promotion of the one view rather than the other is for the public benefit'*

18. *The paper 'No Choice but Change'*

Sir Menzies Campbell MP provided the Charity with a copy of his paper, which drew extensively on the Charity's research, before it was published. The paper called for a national debate to review and determine an appropriate defence policy. Within the paper, Sir Menzies Campbell MP acknowledges the contribution made by the Charity for research support and technical advice. Although this did state that the views expressed in the paper were wholly the author's own, it did not specify which parts of the paper included the Charity's contribution. The Charity made no request for amendment to the paper before publication.

19. *The Charity's decision-making*

The Charity was able to demonstrate that it had given serious consideration to the research request and some of the implications of agreeing to undertake this work. In deciding to undertake the research the Charity had taken into account that the Charity's general engagement with political parties was spread across the political spectrum, and that the terms of the research commission allowed the Charity to produce objective and balanced research, and did not require a particular finding or political perspective.

20. However, in agreeing to undertake this request the Charity failed to demonstrate that it had properly considered whether:

- in undertaking the research the Charity was directly or indirectly supporting Sir Menzies Campbell MP and the Liberal Democrat party;
- the Charity had taken sufficient steps to protect its reputation and independence from party politics; and
- this research was a means of furthering the Charity's purposes for the public benefit.

21. The Commission does not dispute that the Charity acted in good faith in agreeing to undertake the research commission and has received payment for it. Equally, the Commission does not consider that it was the Charity's intention to support Sir Menzies Campbell MP or the Liberal Democrat party. However the Commission does consider that the Charity were wrong in accepting the commission without first enquiring of Sir Menzies Campbell MP whether he intended to use it for a political purpose.

22. The research commissioned by Sir Menzies Campbell MP was used as the basis of a party political publication. Therefore, the Commission's view is that the research provided to Sir Menzies Campbell MP and, through him, the Liberal Democrat Party, does constitute support, in that it provided Sir Menzies Campbell MP with useful material for a policy paper which was not available to other politicians, political parties or members of the public at the time.

23. The Charity has used the knowledge acquired from the research conducted for Sir Menzies Campbell MP to further its own work relating to the Military Covenant. It has not however made the specific research text available to anyone except for Sir Menzies Campbell MP. This raises a query about whether the research has, or will, reach a sufficient section of the public to constitute an activity conducted by the Charity for the public benefit. In addition, allowing Sir Menzies Campbell MP to have exclusive access to the research before disseminating it more widely created a private benefit that was more than incidental.

24. The Commission also considered that the Charity's consent to the wording of the acknowledgement from Sir Menzies Campbell MP in his paper for the Charity's contribution did not sufficiently protect the Charity. It is the Commission's view that the acknowledgement was open to misinterpretation, and that the Charity should have requested amendment to clarify that the Charity had contributed objective and factual information only, and that it had endorsed the wider policy proposals outlined in *'No Choice but Change'*.

Conclusions

25. The Commission concluded that it is difficult to see how the trustees discharged their legal duties and responsibilities to the Charity in making the decision to undertake the research commissioned exclusively by and for Sir Menzies Campbell MP.
26. In accepting the commission from Sir Menzies Campbell MP, the Charity inadvertently gave support to him and the Liberal Democrat party. This was not appropriate nor an activity that furthered RUSI's charitable objectives for the public benefit as the material was not made publicly available.

Outcome

27. The Commission provided the Charity with advice and guidance regarding the legal and regulatory requirements that must be complied with by charities engaging in the political environment. Additional regulatory advice and guidance relating to requests to undertake research from political parties and/or politicians was also provided.
28. As a result of the Commission's intervention, the Charity has amended its own internal policies and staff procedures regarding interaction with politicians and political parties to ensure that a similar situation does not occur in the future.

Issues for the wider sector

29. It is a fundamental principle that charities must remain independent from party politics and cannot give support to a political party, politician or political candidate. This is the case both as a matter of purpose and activity. This is because political parties have a full spectrum of policies, which may change. Support to a political party encompasses support of all their policies, many of which will be outside of a charity's objectives. Also a charity's purposes must, as a matter of law, be for the public benefit. A charity cannot demonstrate political support to be for the public benefit, as it is not possible for the courts to judge the public benefit of one policy over another.
30. The trustees of charities engaging in the political arena must also take care to protect the Charity's independence and perceptions of its independence. Charity trustees have a legal duty to act in the charity's best interests, and so should not take decisions that cause harm to the charity by leading to adverse publicity, or seriously compromising a charity's independence.

31. For most charities, engagement with political parties and politicians is about influencing the policies of those parties in order to benefit the Charity's beneficiaries. This may include expressing support or opposition for particular political policies, providing that doing so contributes to the delivery of the charity's purposes, its independence is maintained and perceptions of its independence are not adversely affected.
32. Charities may be asked to participate in policy debates organised by political parties. The principle governing this sort of activity is that a charity can try to influence the policies of political parties (in the interests of its beneficiaries), but must not assist any political party to get elected. This applies differently to charities with objects to advance education which do not generally engage in political campaigning and typically further their objects through the publication and dissemination of objective research.
33. All charity trustees must discharge their duties to the charity diligently, and acting in good faith. For charities advancing education, the charity trustees before deciding to undertake a particular piece of research would need to consider the likely outcome of the research and be satisfied that it furthers the charity's purposes and that it does so for the public benefit, through a sufficiently wide dissemination of the knowledge acquired from it. The trustees would also need to have identified any risks arising from undertaking the research and have made a decision that these could be sufficiently managed or mitigated, such that to undertake the research would be in the charity's best interests.
34. Undertaking commissioned research exclusively for the benefit of a political party, politician or candidate will almost inevitably result in giving support to that political party, politician or candidate. It is the Commission's view that charities should not undertake such research (paid or unpaid) at the request or commission of a political party, politician or political candidate.
35. All charities must be established with exclusively charitable purposes and demonstrate that they operate for the public benefit. In order for the research to remain charitable, any non-charitable benefits must be incidental. For charities undertaking research to advance education one factor in meeting the requirement that the research is undertaken for the public benefit is to ensure sufficient dissemination. Publishing the results of its research for a wide audience, and/or making its existence publicly known, would usually discharge this obligation.
36. Where authority for taking decisions about research is delegated, there should be a proper framework of policies and procedures for decision-making in place, to ensure that contracts for research will only be authorised if the legal requirements for charitable research are met and the terms are reasonable and in the charity's interests, in relation to the circumstances that can be known to the charity at the time⁶.
37. For more guidance on campaigning and political activity by charities please refer to CC9 which is available on the Commission's website www.charitycommission.gov.uk

⁶ More information on this point can be found in the Commission's guidance for Higher Education Institutions at <http://www.charitycommission.gov.uk/supportingcharities/higherres.asp>

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