A National Treasure? The Role of Civil Society in Promoting and Enforcing Human Rights in the United Kingdom

Samuels, H.

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1. Introduction

'The United Kingdom should truly consider its civil society a national treasure. It epitomises the kind of "unity through diversity" that civil society can so uniquely foster. The Special Rapporteur believes that these individuals –and the hundreds of thousands like them-are the reason for many of the positive attributes that are enjoyed in the country (UN Human Rights Council 2017, para. 87).

Over the last decade civil society organisations (CSOs) in the United Kingdom (UK) have found it increasingly difficult to act as human rights and social justice advocates. They have been troubled by a series of legislative and policy restrictions, direct and indirect, inhibiting their activities. Whilst this has implications for all CSOs it has presented real problems for those engaged with social and economic rights. These CSOs were consistently admonished by the Conservative/Liberal Democrat Coalition government (2010-15) for being overly political when warning of increased levels of poverty and inequality. These were the result of the government's flagship austerity policy that attempted to dramatically reduce public expenditure in response to the 2008 financial crisis (HM Treasury 2010). The resetting of government/CSO relations by the Coalition government favouring service provision rather than advocacy, and the introduction of the Lobbying Act 2014, restraining CSOs'

campaigning during elections has also had a detrimental impact on the work of CSOs.[1]

Whilst curbs on civil society are part of a global trend, the dynamics of the UK situation are of interest in illustrating the specific legal and policy techniques that can be used within a liberal democracy to weaken civil society. This is worrying at a time when the Conservative government, elected in December 2019, has made clear its intention to amend the Human Rights Act 1998, to restrict judicial review of executive action by the courts and to reform the House of Lords and the civil service (Conservative Party Manifesto 2019, 48). The fear is that this reshaping of institutions will further concentrate power and make the executive less accountable. Civil society, alongside other institutions such as the media are important mechanisms for scrutinizing the government, providing countervailing views and identifying breaches of human rights. Interfering with the autonomy of CSOs is disempowering making it harder for them to carry out these functions.

The Covid-19 global pandemic leading to the lockdown in the spring of 2020 has had negative consequences for CSOs. They have suffered a loss of income at a time when there is increased demand for their services. Whilst the government has now committed funds to CSOs there is uncertainty as to how it is to be distributed (Digital, Culture Sports and Media Committee 2020).

[1] The full name of the Lobbying Act is the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. The Lobbying Act amends the Political Parties, Elections and Referendums Act 2000 (Political Parties Act 2000). However, the amending provisions on third party registration continue to be referred to by CSOs and others as The Lobbying Act even though the provisions are now part of the Political Parties Act 2000.

It is also possible that greater financial dependence on government will cause the sector to be more restrained in its advocacy work thus exacerbating the problems discussed below.

What follows is a brief outline of the deteriorating global context for CSOs, a discussion of the policies, laws and practices used by the UK government to constrain them, and an analysis of how these restrictions have made it more challenging for CSOs working on social and economic rights to perform their critical human rights function.

2. Civil Society, Human Rights and the Shrinking Space

The last decade has seen a much more inhospitable environment for CSOs. The International Center for Not for Profit Law concludes in its survey of Global Trends in Non-Government Organisation (NGO) Law for 2016 that:

> ‘The narrowing of civic space for civil society continues to deprive individuals and groups of critical rights as well as freedom to carry on their important work to improve their communities and alter the status quo’ (International Center for Not for Profit Law 2016).

Governments worldwide have used a series of techniques making it more difficult for CSOs to operate. These include imposing legal obstacles to the registration of CSOs, enacting laws restricting access to funding especially from overseas and targeting CSOs that work with unpopular groups such as refugees (Amnesty International 2019). In some countries civic space is closed altogether with civil society actors suffering outright harassment, intimidation, imprisonment and worse (Amnesty International 2019). Civicus

links this with the increase in populist and authoritarian governments, it reports that civic space is under attack in 111 nations, over half of the world's countries, and that only 4 per cent of the world's population live in countries where fundamental rights are protected (Civicus 2019). This shrinking of civic space has occurred not only in repressive regimes, but in older democracies albeit to a lesser extent, for example, Civicus has classified the United Kingdom as a country where civic space has now been restricted (Civicus 2019 and Amnesty International 2019). Whilst the UK is not guilty of many of the most severe excesses a worrying hostility to CSOs has crept into the public discourse, accompanied by measures, that make CSOs' work more difficult (Charities Aid Foundation 2017).

CSOs' right to associate and to express their views are protected by human rights law e.g. Articles 10 and 11 European Convention on Human Rights (hereafter ECHR).[2] In addition, CSOs are instrumental in the promotion and enforcement of human rights. For instance, international human rights law recognizes some CSOs as human rights defenders (UN General Assembly 1998). The European Court of Human Rights (ECtHR) has acknowledged that when CSOs draw attention to matters of public interest they can be characterized as public or social watchdogs, and are entitled to the same strong protection under the ECHR as that given to the press (*Animal Defenders International v the United Kingdom* 2013 and *GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland 2018)*.

[2] Article 10 (Right to freedom of expression) and Article 11 (Right to freedom of association).

This current antipathy by governments towards CSOs has consequences for democracy and the protection of human rights (Civicus 2019). An effective human rights culture relies on the presence of CSOs that work on multiple levels as norm creators, policy advisors and campaigners holding government and other actors to account (UN Office of the High Commissioner of Human Rights 2014, 3). Civil society has been defined in Walzer's frequently quoted definition as, 'the space of un-coerced human association, and also the set of relational networks formed for the sake of family, faith, interest and ideology that fill this space' (Walzer 2002). Hilton et al note that it is difficult to define civil society, the word chosen to describe organisations such as charity, third sector, interest group, NGO, pressure group or voluntary group is steeped in political, social, historical and economic meaning (Hilton, Crowson, Mouhot and McKay 2012). The term adopted here is CSO, this has been used by the UK government since 2010. It states that 'civil society should be defined by activity rather than organisational form' and 'refers to all individuals and organisations when undertaking activities with the primary purpose of delivering social value, independent of state control' (Cabinet Office 2018, 26). It captures the characteristics of CSOs, as bodies that have a social purpose, are self-governing and independent of government (Garton 2009). A substantial number of CSOs are charities and receiving financial benefits, but subject to a specific regulatory regime, overseen by the Charity Commission that restricts their activities (Charities Act 2011).[3]

[3] All references here are to charity law and policy in England and Wales unless otherwise stated.

Human rights work in the UK is carried out by many CSOs and is not exclusive to self- identified human rights organisations such as Amnesty International or the British Institute of Human Rights. CSOs may choose to interact regularly or sporadically with international human rights bodies, for example, the much publicised visit of the UN Special Rapporteur on Housing to the UK in 2013 galvanised many CSOs to write submissions, and facilitated the framing of the impact of the government's controversial housing reform 'the bedroom tax' as an abuse of human rights (O'Hara 2014, 83). Similarly, CSOs submitted evidence to the Special Rapporteur on Extreme Poverty and Human Rights during his high-profile visit to the UK in November 2018 **(**UN Human Rights Council 2019).

Research on NGOS working in development has shown how groups whose founding ideology was, for example, faith or social justice based or who had become sceptical of human rights might still choose to campaign using human rights language (Miller 2019, 724). This demonstrated a recognition by these NGOs that rights could still be an effective tool if they were used tactically to achieve certain purposes such as expanding on existing rights or to convince a particular audience (Miller 2019, 734). Levitt and Engle-Merry have also described how local actors vernacularise and interpret international human rights for a domestic audience by selecting the most appropriate language and methods to achieve their aims (Levitt and Engle-Merry 2009). They may choose when to use rights discourse regarding it as unhelpful in some situations, employing instead the language of social justice and equality.

Similar patterns can be seen amongst CSOs in the UK that work on social and economic rights. Large UK national organisations such as Child Poverty Action Group (CPAG), and Age UK are clearly CSOs involved in human rights work around social and economic rights, including in the courts using strategic litigation based on human rights and equalities legislation and sometimes referencing their use of human rights on their website. On other occasions, CSOs may choose to take a different approach. This can be illustrated by the dispute that has occurred between the government and CSOs over the growth of foodbanks in the UK (Panel on Independence 2015, 37). Food poverty can be framed as a breach of human rights, for instance, in their report on the impact of austerity and welfare cuts Human Rights Watch accuse the UK government of failing to effectively implement ~~implement~~ the right to food (Human Rights Watch 2019). Domestic CSOs working in this area, such as The Trussell Trust tend not to use this phraseology, but more often speak about hunger and food poverty. This does not mean that food poverty ceases to be human rights issue because the groups defending these rights use an alternative language.

The Office of the UN High Commissioner for Human Rights notes that civil society actors may '…explicitly or *implicitly*, through the content or nature of their work' promote or protect human rights' (UN High Commissioner on Human Rights, 2014, 3). CSOs may also be active in areas that are the concern of human rights joining coalitions with self-declared human rights groups, promoting awareness of rights, influencing law and policy, collecting information, helping communities to articulate their rights, pressing for

accountability and transparency, embarrassing government, using strategic litigation and sometimes providing services for those at risk (Brysk 2013).

In sum, to practice human rights CSOs do not have to use the terminology of international human rights law but must work in a field or area protected by human rights, and at least on occasion use the language and or tools of human rights. Whether or not CSOs describe themselves as human rights groups, work regularly or intermittently using human rights language, their right to be independent, to scrutinise government and to speak freely in the language of human rights, social justice or equality must be protected. Recent obstacles to CSOs' campaigning in the UK, have taken the form of threats to their autonomy, advocacy and watchdog role, and these will be considered next.[4]

3. An Overview of The UK Context: From the Third Sector to the Big Society

Associations independent of government and absorbed with public welfare and poverty have existed in the UK since medieval times, and many have a record of campaigning work (Prochaska 1988). Whilst all governments have reshaped their relationships with CSOs the shift from the New Labour government to the Coalition government in 2010 was particularly difficult forcing to the surface longstanding tensions. A knowledge of the different policies and the transition enables a deeper understanding of the current situation.

[4] There have also been threats to CSOs based on the oppressive use of anti-terrorism laws. This is dealt with elsewhere (Wilson 2016).

The New Labour government deliberately decided to partner with CSOs in the delivery of services. CSOs were seen as 'a third sector', neither part of the state nor the private profit-making sector, but with the knowledge of communities central to effective service delivery (Kendall 2009 and Alcock 2011). Its new functions were supported by the injection of resources to help CSOs bid for contracts and grants and participate in consultations on policy. A Compact, a unique series of non-legally binding concordats, formalised the relationship between CSOs and the government and explicitly acknowledged the campaigning role of civil society (Cabinet Office 1998).[5] Nevertheless, there was a downside to New Labour's policy of using CSOs to deliver public services potentially undermining their human rights practice. CSOs were in danger of being co-opted by the state and holding back their criticism, there were accusations of a 'revolving door' between personnel from CSOs and the government, that led to them being unhealthily close (Rochester 2013). Overall, New Labour's approach to CSOs has been described as 'hyperactive' where '…the sector was effectively mainstreamed as a public policy actor…` (Kendall 2009, 71).

The introduction of the Big Society policy in 2010 by the Coalition Government signalled a 'community turn' that was far less hospitable to advocacy (Milbourne 2013, 179). The Big Society policy encouraged local activism and voluntary services rather than more 'political' national campaigning (Hilton 2012). It was intended to free CSOs from the 'shackles' of the state to allow them to organise and innovate within their communities (Norman 2010). Such

[5]The relationship between government and civil society is a devolved matter. There are separate compacts/concordats for the devolved regions. In addition, many local authorities have adopted compacts with CSOs. The Compact referred to throughout is the English Compact unless otherwise stated.

Tocquevillian conceptions of CSOs ‘invoke an idea of selfless and supposedly apolitical voluntarism-people coming together of their own free will, to work for the common good’ (Hilton, Crowson, Mouhot, and McKay 2012,3). Whilst the Big Society was not as impactful as the government had hoped there has been some version of it in force since 2010 (The Cabinet Office 2018 and Chamberlain 2018). In pursuit of this policy the Coalition government redrafted the Compact to suit its own agenda, making it more instrumental using the language of outcomes rather than ‘shared principles’ (Commission for the Compact 2011). CSOs initially welcomed aspects of the Big Society policy, but conflicts with government occurred over the withdrawal of resources, which had supported CSOs and a suspicion that civil society was being used as a cover to provide services as the state retreated (Morris 2012). The most recent large-scale independent study of civil society has concluded that ‘[b]oth austerity and inequality have made life much tougher …and radically altered the environment for many civil society organisations…’ (Civil Society Futures 2018, 5). During this period there was also increasing concern over the governance of CSOs after the highly publicised collapse of the charity Kids Company in 2015 and the damaging scandals on sexual abuse involving Oxfam and Save the Children causing a dip in public confidence (Civil Society Futures 2018).

From a human rights perspective, there were significant differences between the New Labour and Coalition government’s attitude towards human rights. Consistent with New Labour’s introduction of the Human Rights Act 1998, and other rights-based initiatives, the Charities Act 2006 was enacted which

broadened the list of charitable purposes by including human rights.[6] Some human rights groups were able to claim charitable status, and the restrictions on the advocacy work of charities was loosened (Charity Commission 2008). Conjointly, there was an affirmation of CSOs advocacy work in the Compact although no specific mention of human rights (Cabinet Office 1998, para. 9.1). This contrasts with the more antagonistic approach after 2010 when in addition, to the discouragement of CSOs' campaigning and advocacy, the Conservative party was sceptical of the value of human rights. It was in favour of repeal of the Human Rights Act 1998 and human rights concerns received a less sympathetic hearing. (Dorey and Garnett, 2016, 205). Some Coalition government ministers went further and openly denounced campaigning by CSOs as political activity that was misguided and illegitimate. The Minister for Civil Society in 2014 infamously told CSOs, specifically charities, that they should 'stick to their knitting' and stay out of politics (Ricketts 2014).

The dispute over CSOs' activism on austerity and its detrimental impact on social and economic rights was also played out over the application of charity law. A considerable number of CSOs have charitable status restricting their campaigning activities, and prohibiting them from supporting a political party, they may campaign provided that this is consistent with their charitable purpose (*National Anti-Vivisection Society v Inland Revenue Commissioners* 1948 and Morris 2015 and 2016). This has been criticised as placing unfair restrictions on charities, and there is an ongoing debate about changing the law (Garton 2009). The built-in uncertainty surrounding the law makes charitable campaigning susceptible to challenge from those who oppose the

[6] See now the Charities Act 2011.

sentiment of the campaign. This was exemplified by the dispute over Oxfam's report *Breadline, The Relentless Rise of Food Poverty in Britain*. A tweet advertising the report stated, 'Lifting the Lid on Austerity Britain Reveals a Perfect Storm' and a movie style advert which listed zero-hour contracts, benefit cuts and high prices as culpable. A Conservative MP reported Oxfam to the Charity Commission on the grounds that the advert was too political. The Charity Commission's ambiguous response was worrying to CSOs. It acknowledged Oxfam's right to campaign and accepted that it did not intend to act in a party-political way. But it also found that the tweet could be misconstrued, by those who read it, as party political campaigning. It warned Oxfam to take more care to maintain its neutrality in future (Charity Commission 2014).

The incident was used by CSOs as evidence of the vulnerability of their organisations to censure. It was perceived as excluding them from the national debate on the impact of austerity on poverty in the UK, and an attempt to undermine their ability to bring to public attention the ramifications of particular policies on social and economic rights (The Panel on Independence 2015). This sense was exacerbated by the suggestion that the Charity Commission would tighten its guidelines on campaigning and advocacy although this did not subsequently occur (Burne James 2014).

There are bound to be tensions in any CSO/government relationship, but the Big Society type policies that give precedence to community service and volunteering at the expense of advocacy and campaigning relegates activism

to second place. This did not stop CSOs from challenging government over their austerity policy that was impacting on socio-economic rights, for example the cuts to disability benefits, the ‘bedroom’ tax, and the ‘benefit cap’ were the subject of campaigns and legal challenges in the courts (Busch 2013). The government rejected the criticisms, avoided debating the issues and adopted the stratagem of labelling interventions by CSOs as political and somehow overstepping their remit. This made their rights-based work problematic, as human rights has a complex relationship with politics and law and cannot be clinically severed from either in this overly simplistic manner.

CSOs pushed back hard at the attempt to delegitimise their work and question their motives. From 2010 onwards the voluntary sectors’ literature was dominated by concerns about threats to their independence from government. A series of annual reports was commissioned by the NCVO documenting the infringement of CSOs’ autonomy and introducing a barometer of independence to measure the problem. It categorised the threats as being to the independence of purpose, voice and action (Panel on Independence 2013, 2014,2015,2016 and Civil Exchange 2017). This resistance was particularly intense when the government introduced the further restrictions, discussed below, deliberately targeting CSOs campaigning and lobbying activities.

4. Restricting Advocacy and Campaigning: Gagging Clauses and the Lobbying Act 2014.

The post 2010 government exploited the malleability of the term 'political' to delegitimise CSOs' activism. It gave little weight to the advocacy and scrutiny work of CSOs juxtaposing it with more 'worthwhile' philanthropic pursuits. This is evidenced by the introduction of the Lobbying Act, and the controversial attempts to employ gagging clauses in the form of anti-advocacy clauses in grants to CSOs. Non-Disclosure Agreements (NDAs) were imposed in contracts for services with CSOs working with public authorities.[7] Both measures caused consternation amongst CSOs.

4.1. The Problems of *Service Delivery, Anti-Advocacy Clauses and NDAs*

4.1.1 *The Problems of Service Delivery*. The decision of successive governments to use CSOs to deliver services blurred the boundary between the state and civil society posing problems for the autonomy of CSOs, and their capacity to act as defenders of human rights. The border between civil society and the state has been described as being traversed by networks of power, which operate across traditional boundaries (Morison 2000, 123). The law has struggled to decide if private service providers delivering services for the state should be subject to the obligations imposed on public authorities

[7] The terms are used interchangeably in the CSO literature and the press. The term anti advocacy clause is more appropriate for clauses in grant agreements and NDA is the term used for similar clauses in contracts for services. Both can be described as gagging clauses.

under the Human Rights Act 1998 (Palmer 2007). The different but not unrelated problem of securing CSOs independence from government, has received less attention even though it is pivotal to CSOs work. If CSOs are to act as human rights watchdogs and advocates they must maintain sufficient autonomy and distance from government.

Since 2010 CSOs' ability to function as human rights watchdogs has become more difficult for those providing services for public authorities. The Chief Executive of the Nia Project, a CSO that works on the sexual exploitation of women and children, expresses this view in one of the reports produced by *Civil Exchange*. She states that '[i]ncreasingly, state funding is driving us into a narrow service delivery role, and we are being required to act as an arm of the state rather than as an independent NGO.' She gives the example of the trafficking services being transferred to a larger CSO that she understands has agreed not to, '…take legal challenges on behalf of women where the state identification process had made a reasonable or conclusive grounds decision that she was "not trafficked" even though the success rate was high and it is a core component of upholding the right of trafficked women...' (Ingala Smith 2016, 58). More recently, Citizens Advice, a well-known independent national advice service, has contracted with the government to give advice to claimants on the very controversial new welfare benefit system Universal Credit (Department of Work and Pensions 2018a). Citizens Advice's decision has been criticised on the grounds that it may be reluctant to expose the flaws with Universal Credit because of its working relationship with the government (Martin 2018), though this is something that that the organisation

denies (Hignell 2018). The UN Special Rapporteur on Extreme Poverty noted that Universal Credit embodied the austerity agenda and benefit reform, and he summarises the difficulties caused by Universal Credit that were reported to him by those living with multiple hardships (UN Human Rights Council 2018). This makes it essential that a CSO such as Citizens Advice is able to provide an honest experiential account of Universal Credit. As a key tool of the welfare system it is a benefit critical to the avoidance of poverty and the maintenance of social and economic rights. These examples show how the line between the state and CSOs has become obscured, thus jeopardising confidence and trust in CSOs' ability to challenge human rights infringements. These problems need to be fully acknowledged and worked through if CSOs are to function effectively.

4.1.2 *Anti Advocacy Clauses*. The suspicion that the government was discouraging CSOs' activism has been exacerbated by the introduction of gagging clauses. These take the form of anti-advocacy clauses in grants awarded by government, and NDAs in contracts between CSOs and public authorities. The government plan to introduce anti-advocacy clauses was influenced by a paper published by the Institute of Economic Affairs that used negative rhetoric accusing CSOs of being 'sock puppets' who were state funded activists lobbying for causes that required the spending of taxpayers' money (Institute of Economic Affairs 2012). The paper opined that CSOs should not use public funds to lobby the government, this was an example of government lobbying itself and subsidising political activism. The initial government' proposal stated that prohibited expenditure should include,

‘activity intended to influence or attempt to influence parliament, government or political parties, or attempting to influence the awarding or renewal of contracts and grants or attempting to influence legislative or regulatory action’ (Cabinet Office 2016a). This was countered by CSOs who argued that the clauses would prevent them from passing on the insights and expertise from their work. It also showed a reluctance to debate government policy, appeared to be rather heavy handed and to disregard the human rights function of CSOs (Ravenscroft 2016 and Civil Exchange 2017).

The government paused the process and subsequently included the new rules in guidance to grant awarding government departments. The guidance prohibits paid for lobbying (Cabinet Office 2016b). It makes it clear that giving evidence to parliamentary committees, responding to consultations, meeting with ministers and providing evidence-based policy recommendations are all acceptable. The CSO can also spend other funds it has on lobbying. The government’s concessions were welcomed by the NCVO as providing clarity, but that such draconian measures depriving CSOs of access to democratic institutions were advanced by government in the first place is worrying. Others have warned that there is no room for complacency, as anti-advocacy clauses are a fetter on the freedom to engage in political life previously enjoyed by CSOs (Association of Chief Executives of Voluntary Organisations 2016). Bond asks would it be a breach of the lobbying clause and political campaigning if a CSO gives, ‘negative feedback about a government funded programme and then asks for policy change on the back of this?’ (Popplewell and Abrahamson 2018). The government’s *Civil Society Strategy* 2018

concedes that it is right that there is a prohibition on spending taxpayers' money on political campaigning, but it then states that being in receipt of public funds should not prevent CSOs making their voices heard on matters of policy or practice (Cabinet Office 2018). This is a welcome statement, but the retention of anti advocacy clauses leaves a lingering suspicion that CSO's contributions are not always welcome.

4.1.3 *Non Disclosure Agreements (NDAs*). Disquiet has also been caused by the insertion of NDAs into public service contracts with CSOs. Typical clauses restrict press announcements and prohibit publicity of the contents of the contracts. Their increasing use has been interpreted as an attempt to exert more control over the behaviour of CSOs contracting with government (Panel on Independence 2013). It reinforces the notion that CSOs should not act as advocates or participants in policy development or oppose government policy even when it undermines human rights. This runs against the grain of the Compact, which protects the independence of all CSOS (Cabinet Office 2010). It also causes conflicts for charities delivering public services as exampled by the Charity Commission guidance that charities should not be inhibited or be dissuaded from campaigning if their trustees think it is in their beneficiaries' best interest (Charity Commission 2012).

The increased use of these clauses attracted national attention in October 2018 in a headline article in The Times Newspaper. It highlighted the deployment of the clauses by the Department of Work and Pensions to prevent CSOs providing services from speaking out on the effect of Universal

Credit on the welfare system. It was also reported that the clauses required CSOs to have regard to the reputation of the Work and Pensions Minister and not to attract adverse publicity (Morgan-Bentley 2018a). At the same time the chief executives of eleven high profile third sector organisations wrote to the same newspaper to complain about NDAs. Their letter noted that '[c]ivil society does not exist solely to provide services', stressing the importance of advocacy and urging an end to the inclusion of NDAs. It concludes with the statement that

'[c]ivil society, and the people it serves, must be able to tackle the causes of problems, not just address the symptoms. We must be able to speak truth to power (Morgan-Bentley 2018b).'

The government acknowledged that an attempt to inhibit free speech would be unlawful. It explained that its intention was only to protect commercially sensitive information and to ensure CSOs adhere to good practices, for example by acting ethically and observing employment laws. It has undertaken to reconsider the contractual clauses and has reviewed its guidance on anti-advocacy clauses in grants (Department of Work and Pensions 2018b).

4.1.4 *Gagging Clauses and Human Rights Law.*

NDAs and anti advocacy clauses inhibit the human rights work of CSOs and are a potential infringement of their right to freedom of expression in Article 10 of the ECHR. The use of these clauses by a core public authority would be subject to the Human Rights Act 1998 (Section 6 Human Rights Act 1998). There has not yet been any publicly known litigation where the court has been asked to enforce a NDA against a CSO, and there are complex issues

involving the relationship between contract law and human rights. In any application to enforce such a clause the court would have to take into account the importance of the right to freedom of expression before granting a remedy (S12 Human Rights Act 1998). Therefore an anti-advocacy clause or NDA would be read subject to the right to freedom of expression in Article 10 of the ECHR, and the court would be required to consider the proportionality of the restriction on freedom of speech. Put simply, the court has to decide whether any limitation on the right to freedom of expression is necessary in a democratic society.

Human Rights law acknowledges that there are legitimate grounds for restricting the right to freedom of expression in order to protect individuals or personally or commercially sensitive information (*Guja v Moldova* 2011 and *Marchenko v Ukraine* 2010). However, the type of expression restrained by NDAs and anti-advocacy clauses appears to go beyond this. It has the potential to shield politicians and governmental bodies from adverse comment. It would be hard to justify such restrictions under Article 10 of the ECHR. The courts have consistently stressed the high level of protection given by the ECHR to political speech as concomitant with the ability to hold government to account (*Sunday Times v UK* 1979). Attempts to use gagging clauses to protect public authorities or individual ministers from legitimate and robust criticism on human rights or on other grounds are an unjustified restriction on political speech (*Castells v Spain*, *Lingens v Austria*, *Falzon v Malta*).

One of the benefits of CSOs providing services is their capacity to convey the lived experience of their service users into the mainstream. They are able to use their knowledge of the political system to advocate and campaign on their behalf. CSOs need the freedom to speak out without retribution to support rights, including social and economic rights, even if this problematises government policy. To prevent CSOs from criticising government is to thwart their ability to practice human rights. Attempts to restrict CSOs advocacy and campaigning work should be scrutinised with real rigour by any court asked to enforce a NDA.

4.2 The Lobbying Act 2014

Further restrictions on CSOs ability to participate in public discourse were introduced in the Lobbying Act. This makes it more difficult for CSOs to intervene in public dialogue in the run up to elections. It contributed to the perception that there is an outright attempt to discourage CSOs from participating in public debate on controversial matters**.** The legislation requires third party organisations that are not political parties, to register with the Electoral Commission if they spend £20,000 on campaigning within 12 months of a General Election (Section 85 Political Parties Act 2000). It places upper limits on what a third party can spend on a national campaign, and within any one constituency (Section 94 and Schedule 10 Political Parties Act 2000). In addition, it expanded the list of qualifying matters that would count towards the spending limit (Section 94 and Schedule 10 Political Parties Act 2000). Registration is required if the expenditure ‘can reasonably be regarded as intended to promote or procure electoral success at any relevant election

for one or more particular registered parties or for parties or candidates who advocate, or do not advocate, particular policies' (Section 85 Political Parties Act 2000).

Legislation that restricts spending during elections, thus ensuring that those with the deepest pockets do not dominate the debate, is essential for the conduct of fair elections. It is a prescient issue in the UK given the controversies surrounding the conduct of the referendum on membership of the European Union (Electoral Commission 2018). However, the restrictions in the Lobbying Act have gone further than required deterring CSOs joining in the public debate during elections.

CSOs vociferously opposed the provisions in the Lobbying Act when it was proposed. Their misgivings were rooted in the fear that the reduction in the amount that could be spent, combined with the increase in activities that were considered qualifying matters, meant that many more CSOs needed to register (Panel on Independence 2014). Registration was required even if a CSO had no intention to actively campaign during the election, did not name a political party, and the activity could reasonably be regarded as intended to achieve any other purpose as well (section 85 Political Parties Act 2000). In addition, CSOs claimed that the legislation inhibited coalition work with other organisations for fear that combined spending would exceed the Lobbying Act limits (Jameson 2018). During the 2015 General Election, the environmental groups, Greenpeace and Friends of the Earth refused to register in protest and elected to pay a fine as an act of civil disobedience. They claimed that the

legislation prevented them campaigning, was unworkable and that it would have prohibited activities such as the famous 2005 Make Poverty History Campaign that took place in the UK had it been in force (Sharman 2017).

Since the enactment of the Lobbying Act, CSOs' own research, based on the experience of the General Elections in 2015 and 2017, has shown that many of the fears expressed during the passage of the legislation have been realised. A major concern is that it is often difficult for CSOs to predict whether an issue is 'politically live' or 'salient' during the required period. If they participate in the public discussion, then this might be considered to be supporting a political party. During the General Election in June 2017, which was called at short notice, Age UK refrained from addressing policy areas such as fuel poverty. The Salvation Army reported that they were concerned that any comments they made on the social care proposal, dubbed the 'dementia tax', which became a contentious issue, might be interpreted as partisan. This was the case even though they had been working on issues relating to care for some time (Sheila McKetchie Foundation 2018). Consequentially, CSOs found it harder to maximise impact by inserting their long-standing work, in this instance involving social and economic rights, that unexpectedly entered the public domain during the election

The opacity of the terminology in the Lobbying Act is very unfortunate for human rights activism that depends on the ability to critique law and policy. The issuance of new guidance on the Lobbying Act by the Electoral Commission before the December 2019 General Election has helped to clarify

some of these problems and has been welcomed by CSOs (Electoral Commission 2019 and Dowell 2019). However, difficulties still remain, the Lobbying Act has been described as undemocratic by some CSOs and there are calls to repeal it or to amend it so as to shorten the period covered from 12 to 4 months and to clarify the rules on joint campaigning (Popplewell and Abrahamson 2019). Communications by the Charity Commission before the 2019 General Election were perceived as disappointing and adopting a negative attitude towards participation in the election debates (Weakley 2019). The heads of leading CSOS, also, took the step of writing to the leaders of all political parties during the 2019 General Election campaign demanding the amendment of the Lobbying Act and the restoration of civil society's right to participate during elections (Whitehead 2019).

Fetters on campaigning and activism make human rights and social justice inherently risky for CSOs during election time and are an unwarranted interference with their freedom of expression shutting them out of the democratic dialogue at a crucial time of national debate.

5. Civil Society: Securing CSOs' Advocacy and Campaigning Work

As we have seen curbing the political activities of CSOs by imposing onerous restrictions and regulations has become a common problem globally. There is no universally accepted definition of political activity. It has been said that '[d]epending on the context "political activity" could be defined narrowly or broadly to include supporting or opposing candidates for public office, supporting particular political parties, lobbying for or against specific laws,

engaging in public advocacy, pursuing interest-orientated litigation, or engaging in policy debate on virtually any issue' (International Center for Not for Profit Law 2009).

Those engaged in human rights work are uniquely susceptible to allegations that they are meddling in political matters and to restrictive practices. International human rights law has recognised the vulnerability of those CSOs that are human rights defenders. It reiterates the right both individually and in association with each other to 'promote and strive for the protection of individual rights and fundamental freedoms at the national and international levels' (UN General Assembly 1999 and UN Human Rights Council 2011). It also emphasises a host of other obligations and rights that will allow all CSOs to carry out their activities in accordance with human rights principles. The Council of Europe has well developed recommendations on NGOs and the Council of Ministers Recommendation on the Legal Status of NGOS in Europe provides strong support for the protection of NGOs independence and advocacy work. Recommendation 12 states that 'NGOs should be free to undertake research, education and advocacy on issues of public debate regardless of whether the position taken is in accordance with government policy...' (Council of Europe Committee of Ministers 2007).

Given CSOs' anxiety about threats to their human rights and social justice pursuits there is a need to strengthen these freedoms to securely embed them in government and the public consciousness in the UK. During the 2015 election the Association of Chief Executives of Voluntary Organisations produced its own manifesto. One of its action points was to demand explicit

protection of CSOs' right to campaign in the Human Rights Act 1998 or a future British Bill of Rights (Association of Chief Executives of Voluntary Organisations 2015). This could follow the precedent of sections 12 and 13 Human Rights Act 1998 which, in certain circumstances, draws the courts attention to the right to freedom of expression (section 12 Human Rights Act 1998) and the rights of religious organisations (section 13 Human Rights Act 1998). Another possibility would be to introduce a more specific provision based on international human rights law and/or Council of Europe declarations and principles. Following the example of the public-sector equality duty it could require public authorities to pay due regard to the need for CSOs to retain their autonomy (Section 149 Equality Act 2010). It would act as a useful reminder to civil servants, politicians and parliamentarians when drawing up new laws and policies of the rights of CSOs, especially those engaged in human rights work to fully participate in public debate. It would also be a reminder to CSOs of their own responsibility to maintain their autonomy and provide some reassurance that the government will respect their advocacy and campaigning functions.

Alternatively, the Compact, the agreement between government and CSOs, is a suitable vehicle for concretising the rights of CSOs to campaign and could secure their position as human rights watchdogs (The Cabinet Office 2010). This would sit well alongside the introduction of The Pact suggested in the highly publicised Civil Society Futures Report (Civil Society Futures 2018). The Pact is a set of values that civil society is recommended to commit to over the next decade. It is grounded in ideas of shifting power which ensures that communities especially those who have been excluded share in decisions

that impact them. It prioritises making connections by focusing on building links across society and insists CSOs should be accountable to the people they serve rather than to funders or government. Building trust is another significant value and this requires defending rights, calling out injustice, challenging those in power and supporting others who speak out. The Pact is directed at CSOs and reminds them that they should not become too remote from those they seek to represent. (Civil Society Futures 2018, 41). The Compact, by contrast, is a charter or a concordat that embodies the values and boundaries of the relationship between government and civil society. It was regarded as ground-breaking when it was first introduced and has been adopted in many other jurisdictions (Casey and Dalton 2008). The Compact is soft law and therefore does not have legal effect, but the courts can take it into account during an adjudication. There have been calls for the Compact to be put in statutory form, but there has been no serious attempt to follow this through (Massie 2014). The current Compact provides an undertaking from the government to '[r]espect and uphold the independence of CSOs to deliver their mission, including their right to campaign, regardless of any relationship, financial or otherwise which may exist' whilst CSOs undertake that when campaigning they will 'ensure that robust evidence is provided, including information about the source and range of people and communities represented' and will 'ensure independence is upheld, focusing on the cause represented regardless of any relationship they have with Government, financial or otherwise' (The Cabinet Office 2010, para. 1.1. and 1.7) The Compact also includes undertakings by government to consult CSOs in the design of policies and programmes. If the Compact were to be re-written, to

account for human rights, then it would at minimum instigate a period of reflection and discussion, and it could provide a more specific guarantee as regards human rights and would reflect the expectation that CSOs' functions go beyond providing services.

The disadvantage of using the Compact to protect human rights advocacy is that there is no enforcement mechanism, but more significantly it does not challenge the structure of the relations between government and CSOs. Some commentators argue that the Compact is endorsing the co-option of CSOs to the detriment of their independence, it disguises the imbalance in the power relationship by portraying CSOs as partners when in reality their values and interests may conflict with government (Commission for the Compact 2011). Notwithstanding, these criticisms it does seem that for the time being at least there is no political will to dismantle the present system of delivering public services through the private sector. There is evidence that some CSOs reject government grants for alternative independent funders, and other organisations have chosen to focus exclusively on advocacy (Wren 2016). Yet many CSOs see working with government as the best means to serve their constituent group. It is likely that governments will continue to use CSOs to deliver services. It would therefore seem opportune to use an existing instrument to shore up CSOs' position to engage in human rights advocacy vis a vis the state.

6. Conclusion

The last decade has been a trying time for all CSOs in the UK, but especially those working on social and economic rights. It has been pointed out that in the UK the restrictions on civil society '… have been subtle and gradual, but they are as unmistakeable as they are alarming…' (UN Human Rights Council 2017). New laws and policies such as the Lobbying Act and gagging clauses have discouraged advocacy and human rights work. CSOs attempts to bring their rich on the ground knowledge to bear in protecting rights were often dismissed and delegitimised by government as unwarranted political interventions.

The precarious position of CSOs in the UK and their difficulties in advocating for human rights resonates with the struggle of CSOs globally to maintain civic space (Buyse 2018). In the UK CSOs have defended their right to participate in the public discourse on human rights by drawing on their own domestic tradition of campaigning and on the norms and principles of European and international human rights. Many CSOs want to work with government to deliver services and to improve human rights, but without becoming co-opted as an arm of the state. This poses larger questions as to how the relationship with public authorities can be managed to preserve CSOs' independence (Hilton, M. McKay,J. Crowson, and Mouhot,J.F.2013).

CSOs practice of human rights must be attentive to the need to remain autonomous and to retain the ability to set their own agenda. Human rights should have at its core a pre-occupation with human suffering and the most

disadvantaged (Baxi 2008). CSOs, especially those working with social and economic rights, must continue to insist that they are given the room to act as a critical friend to government so as to preserve their position as human rights watchdogs and defenders.

Bibliography

Alcock, P. 2011. Voluntary Action, New Labour and the Third Sector. In M. Hilton and J. McKay (eds), *The Ages of Voluntarism*: *How We Got to the Big Society*, Oxford: Oxford University Press.

Amnesty International. 2019. Laws Designed to Silence: The Global Crackdown on Civil Society Organisations. https://www.amnesty.org/en/documents/act30/9647/2019/en/ (referenced 25th July 2020).

Association of Chief Executives of Voluntary Organisations. 2015. Free Society: Realizing our Nation's Potential Through the Third Sector: The ACEVO 2015 General Election Manifesto. https://www.acevo.org.uk/2014/11/acevo-manifesto-2015/ (referenced 25th July 2020).

Association of Chief Executives of Voluntary Organisations. 2016. Speaking Frankly, Acting Boldly, The Legacy and Achievements of Charity Campaigning. https://www.acevo.org.uk/reports/speaking-frankly-acting-boldly/ (referenced 25th July 2020).

Baxi,U. 2006. *The Future of Human Rights*. Oxford: Oxford University Press

Brysk, A. 2013. *Speaking Rights to Power: Constructing Political Will*. Oxford: Oxford University Press.

Burne-James. 2014. Guidance on Charity Campaigning will be Assessed after Election *Third Sector*. https://www.thirdsector.co.uk/guidance-charity-

campaigning-will-assessed-election-says-paula-sussex/governance/article/1322641 (referenced 25th July 2020).

Busch, L. 2013. Austerity and Equality. *Judicial Review* 18 (1): 6-13.

Cabinet Office. 1998. Compact on Relations between Government and the Voluntary Sector in England, CM 4100.

Buyse, A. 2018. Squeezing Civic Space: Restrictions on Civil Society Organisations and the Linkages with Human *Rights International Journal of Human Rights* 22 (8): 966-988

Cabinet Office. 2010. The Compact: The Coalition Government and Civil Society Organisations Working Effectively in Partnership for the Benefit of Communities and Citizens in England. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61169/The_20Compact.pdf (referenced 25th July 2020).

Cabinet Office. 2016a. Government Announces New Clause to be Inserted into Grant Agreements', https://www.gov.uk/government/news/government-announces-new-clause-to-be-inserted-into-grant-agreements, (referenced 25th July 2020).

Cabinet Office. 2016b. Government Grants Minimum Standards, 21st November 2016, esp. Standard6, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/573795/minimum_grant_standard_6_grant_agreements_16_11_2016.pdf (referenced 25th July 2020).

Cabinet Office, 2018. Civil Society Strategy: Building a Future that Works for Everyone. HMSO. https://www.gov.uk/government/publications/civil-society-strategy-building-a-future-that-works-for-everyone (referenced 25th July 2020)

Cabinet Office. 2012. Building the Big Society. 18th May https://www.gov.uk/government/publications/building-the-big-society (referenced 25th July 2020].

Casey, J, and Dalton, B. 2006. The Best of Times, the Worst of Times: Community-Sector Advocacy in the Age of Compacts. *Australian Journal of Political Science* 41 (1) 23-28.

Chamberlain, E. 2018. The Civil Society Strategy: What you Need to Know. 2018. NCVO Blog, 9 August. https://blogs.ncvo.org.uk/2018/08/09/the-civil-society-strategy-what-you-need-to-know/ (referenced 25th July 2020).

Charities Aid Foundation. 2017. Do as I Say, Not as I do: UK Policy and the Global Closing Space for Civil Society: 2017 Update. January 2017. https://www.cafonline.org/about-us/publications/2017-publications/2017-update-do-as-i-say-not-as-i-do-uk-policy-and-the-global-closing-space-for-civil-society (referenced 25th July 2020).

Charity Commission, 2012 Charities and Public Service Delivery: An Introduction, CC37

Charity Commission, 2014.Operational Case Report Oxfam, 202918.

Charity Commission. 2008. Campaigning and Political Activity Guidance for Charities (CC9).

Civicus. 2019. State of Civil Society Report: The Year in Review 2019. https://www.civicus.org/documents/reports-and-publications/SOCS/2019/state-of-civil-society-report-2019_executive-summary.pdf (referenced 25th July 2020)

Civil Exchange, 2016. Independence in Question: The Voluntary Sector in 2016. http://www.civilexchange.org.uk/publications (referenced 3 April 2019)

Civil Exchange,2017. A Shared Society? The Independence of the Voluntary Sector in 2017 https://baringfoundation.org.uk/resource/a-shared-society-the-independence-of-the-voluntary-sector-in-2017/ (referenced 25th July 2020)

Civil Society Futures, 2018 The Story of Our Times: Shifting Power, Bridging Divides and Transforming Society https://civilsocietyfutures.org/wp-content/uploads/sites/6/2018/11/Civil-Society-Futures__The-Story-of-Our-Future.pdf (referenced 25th July 2020)

Commission for the Compact. 2011.Use it or Lose it: A Summative Evaluation of the Compact. https://baringfoundation.org.uk/wp-content/uploads/2011/12/CompactUIOLI.pdf (referenced 25th July 2020)

Council of Ministers of the Council of Europe. 2007. Legal Status of Non-Government Organisations in Europe. Recommendation CM/Rec (2007) and Explanation. Adopted by the Council of Ministers of the Council of Europe on the 10th October 2007.

Conservative Party, Conservative Party Manifesto 2019, November 2019, https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conservative%202019%20Manifesto.pdf (referenced July 27th 2020)

Department of Work and Pensions.2018a. Citizens Advice to Provide Support to Universal Credit Claimants. Press Release. 1st October https://www.gov.uk/government/news/citizens-advice-to-provide-support-to-universal-credit-claimants (referenced 25th July 2020)

Department for Work and Pensions. 2018b. Contracts: Written question House of Commons-180065. 16th October 2018. https://www.parliament.uk/business/publications/written-questions-answers-

statements/written-question/Commons/2018-10-16/180065/. (referenced 25th July 2020).

Digital, Culture, Media and Sports Committee, 2020 The Covid-19 Crisis and Charities HC 281, May 2020 https://committees.parliament.uk/committee/378/digital-culture-media-and-sport-committee/news/146310/governments-emergency-funding-too-little-too-late-to-protect-charities-from-covid19-crisis/ (referenced 27th July 2020)

Dorey, P. and Garnett, M. *The British Coalition Government, 2010-15: A Marriage of Convenience*, London: Palgrave Macmillan

Dowell, D. 2019. New Electoral Commission Guidance for Charities: The Lobbying Act Shouldn't Stop You From Campaigning. NCVO Blog. https://blogs.ncvo.org.uk/2019/09/23/new-electoral-commission-guidance-for-charities-the-lobbying-act-shouldnt-stop-you-from-campaigning/ (referenced 25th July 2020).

Electoral Commission, 2018. The Electoral Commission: Report of an Investigation in Respect of the Leave.EU Campaign Limited. 11 May https://www.electoralcommission.org.uk/__data/assets/pdf_file/0018/243009/Report-on-Investigation-Leave.EU.pdf (referenced 25th July 2020).

Electoral Commission, 2019, Non Party Campaigners. https://www.electoralcommission.org.uk/i-am-a/party-or-campaigner/non-party-campaigner-2019-elections (referenced 25th July 2020).

European Court of Human Rights and Other-

*Animal Defenders International v the United Kingdom (*2013) 57 EHRR 21

Castells v Spain (1992) 14 E.H.R.R. 445

Falzon v Malta (2018) ECHR 106.

Guja v Moldova (2011) 53 EHRR 6

GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland No 18597/13 (2018) unreported-9 January

Lingens v Austria (1986) EHRR 407.

National Anti-Vivisection Society v Inland Revenue Commissioners [1948] AC 31

Marchenko v Ukraine (2010) 51 EHRR 36.

Sunday Times v United Kingdom (1979) 2 E.H.R.R. 245

Garton, J. 2009. *The Regulation of Organised Civil Society*, Oxford: Hart.

Hignell, K. 2018. Helping People with Universal Credit: Independent Tailored Support to Make an Initial Claim. https://wearecitizensadvice.org.uk/helping-people-with-universal-credit-963f0fc480fb (referenced 25th July 2020).

Hillier, A. 2018. Oxfam: A Crisis to End All Crisis, *Third Sector* 20th March. https://www.thirdsector.co.uk/oxfam-crisis-end-crises/communications/article/1459831 (referenced 27th July 2020)

Hilton, A. 2014. Charities Must Take Drastic Action Against the Lobbying Act. *Third Sector*, 30th July, https://www.thirdsector.co.uk/alex-hilton-charities-drastic-action-against-lobbying-act/communications/article/1305764 (referenced 25th July 2020)

Hilton, M. Crowson, N. Mouhot, J.F.and McKay, J. 2012. *A Historical Guide to NGOs in Britain: Charities, Civil Society and the Voluntary Sector since 194*5, Basingstoke: Palgrave MacMillan.

Hilton, M. McKay,J. Crowson, and Mouhot,J.F.2013. *The Politics of Expertise: How NGOs Shaped Modern Britain*. Oxford. Oxford University Press.

HM Treasury. 2010. Spending Review. Cm 7942

Human Rights Watch. 2019. Nothing Left in the Cupboards: Austerity, Welfare Cuts, and the Right to the Food in the UK. https://www.hrw.org/report/2019/05/20/nothing-left-cupboards/austerity-welfare-cuts-and-right-food-uk (accessed 25th July 2020)

Ingala Smith, K. 2016. How the state is restricting our independence of action and voice in Civil Exchange, Independence in Question: The Voluntary Sector in 2016 http://www.civilexchange.org.uk/publications (referenced 25th July 2020)

Institute of Economic Affairs, 2012. Sock Puppets: How the Government Lobbies Itself and Why. https://iea.org.uk/publications/research/sock-puppets-how-the-government-lobbies-itself-and-why (referenced 25th July 2020).

International Centre for Not Profit Law. 2009. Political Activities of NGOs: International Law and Best Practices. 12 *International Journal for Not for Profit Law* 1

International Center for Not for Profit Law. 2016. Survey of Trends Affecting Civic Space 2015-16 Global Trends in NGO Law, *International Journal of Not for Profit Law* 1-21.

Jameson, N. 2018. We Call for a Repeal of the Lobbying Act: A response to The Chilling Reality: How the Lobbying Act is Affecting Charity and Voluntary Sector Campaigning in the UK' June 4 https://www.citizensuk.org/lobbying-act (referenced 25th July 2020)

Jump, P. 2010.Charities should Campaign Less, says Oliver Letwin *Third Sector* 26th January 2010. https://www.thirdsector.co.uk/charities-campaign-less-says-oliver-letwin/communications/article/979828 (referenced 25th July 2020)

Kay, L. 2018. Regulator Opens Inquiry into Save the Children. *Third Sector* 11 April https://www.thirdsector.co.uk/regulator-opens-inquiry-save-children/governance/article/1461767 (referenced 25th July 2020)

Kendall, J. 2009. The UK Ingredients in a Hyperactive Policy Environment. In J. Kendall (ed) *Handbook on Third Sector Policy in Europe: Multi-Level Processes and Organised Civil Society*, 67-94. Cheltenham: Edward Elgar.

Levitt, P and Engle Merry, S. 2009 'Vernacularisation on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States' *Global Networks* 9: 441-461.

Martin,G. 2018. Charity Defends its Universal Credit Link. *Third Force News,* https://thirdforcenews.org.uk/tfn-news/charity-defends-its-universal-credit-link (referenced 25th July 2020)

Massie, B. 2014. We Need a Statutory Compact with Teeth in Slocock (ed), *Making Good: The Future of the Voluntary Sector* 79-82 http://www.civilexchange.org.uk/making- (referenced 25th July 2020)

Milbourne, L. 2013. *Voluntary Sector in Transition: Hard Times or New Opportunities*. Bristol: Policy Press.

Miller, H. 2019, Human Rights and Development: The Advancement of New Campaign Strategies, *International Journal of Human Rights* 23 (5) 719-739

Morgan-Bentley, P. 2018. Don't Gag Us Over Welfare Reform, Charity Leaders Say *The Times* October 17.

Morgan-Bentley, P. 2018. Esther McVey's Bid to Silence Benefits Critics is Condemned *The Times*, October 18th.

Morison, J. 2000. The Government-Voluntary Sector Compacts: Governance, Governmentality and Civil Society. 27 (1) *Journal of Law and Society* 98-132.

Morris, D. 2012. Charities and the Big Society: A Doomed Coalition? *Legal Studies* 32 (1) 132-153.

Morris, D. 2015. Charities and Political Activity in England and Wales: Mixed Messages. *The Charity Law and Practice Review* 18 (5): 91

Morris, D. 2016, Legal Limits on Political Campaigning by Charities: Drawing the Line *Voluntary Sector Review* 7(1): 109 -115

Norman, J. 2010. *The Big Society: The Anatomy of the New Politics*, Buckinghamshire: University of Buckingham Press.

O'Hara, 2014. *Austerity Bites: A Journey to the Sharp End of Cuts in the UK*. Bristol: Policy Press.

Palmer, S. 2007. Public, Private and Human Rights Act 1998: An Ideological Divide' [2007] 66 (3) Cambridge Law Journal 559-573.

Panel on the Independence of the Voluntary Sector,2013. Independence under threat: The Voluntary Sector 2013, The Baring Foundation. http://www.civilexchange.org.uk/publications (referenced 25th July 2020)

Panel on the Independence of the Voluntary Sector,2014. Independence Undervalued: The Voluntary Sector 2014, The Baring Foundation. http://www.civilexchange.org.uk/publications (referenced 25th July 2020)

Panel on the Independence of the Voluntary Sector,2015. An Independent Mission: The Voluntary Sector in 2015 http://www.civilexchange.org.uk/publications (referenced 25th July 2020)

Popplewell, R. and Abrahmson, Z. 2018. Civil Society Strategy: What NGOs Need to Know. 9th August. https://www.bond.org.uk/news/2018/08/civil-society-strategy-what-ngos-need-to-know (referenced 25th July 2020).

Prochaska, F. 1988. *The Voluntary Impulse: Philanthropy in Modern Britain*. London: Faber and Faber.

Pruce, J. 2015. The Practice Turn in Human Rights Research in Pruce, J. (ed) *The Social Practice of Human Rights*, pp. 1-New York: Palgrave Macmillan.

Ravenscroft, C. 2016. Anti- Advocacy Clause is Counter Productive. NCVO Blog, 6 February 2016 available at https://blogs.ncvo.org.uk/2016/02/06/anti-advocacy-clause-is-counter-productive/ (referenced 25th July 2020).

Ricketts, A. 2014. Civil Society Minister Brooks Newmark criticized for saying charities should stay out of politics *Third Sector* , September 2013, https://www.thirdsector.co.uk/civil-society-minister-brooks-newmark-criticised-saying-charities-stay-politics/policy-and-politics/article/1310802 (referenced 25th July 2020)

Ricketts, A. Charity leaders calls on parties to amend campaigning rules, *Third Sect*or, 19th November 2010 https://www.thirdsector.co.uk/charity-leaders-call-parties-amend-campaigning-rules/policy-and-politics/article/1666249

Rochester, C. 2013. *Rediscovering Voluntary Action: The Beat of a Different Drum*. London: Palgrave Macmillan.

Sharman, A. 2017. Greenpeace Threatens High Court Action over Lobbying Act's "permanent threat" *Civil Society News*. 22nd May https://www.civilsociety.co.uk/news/greenpeace-threatens-high-court-action-over-lobbying-act-s-permanent-threat.html (referenced 25th July 2020)

Sheila McKetchie Foundation. 2018. The Chilling Reality: How the Lobbying Act is Affecting Charity and Voluntary Sector Campaigning in the UK, June. http://smk.org.uk/the-lobbying-act/ (referenced 25th July 2020).

UN General Assembly. 1999. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, A/Res/53/144.

UN Human Rights Council 2017. UN Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on his follow up mission to the United Kingdom of Great Britain and Northern Ireland, /HRC/35/28/ Add.1, June.

UN Human Rights Council. 2011. Special Rapporteur on the Situation of Human Rights Defenders, 2011. Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedom, July 2011

UN Human Rights Council. 2017 Report of the Special Rapporteur on The Rights to Freedom of Peaceful Assembly and of Association on his Follow up Mission to the United Kingdom of Great Britain and Northern Ireland, A/HRC/35/28/ Add. 8th June.

UN Human Rights Council. 2019. UN Special Rapporteur on Extreme Poverty and Human Rights, Visit to the United Kingdom of Great Britain and Northern Ireland. https://undocs.org/A/HRC/41/39/Add.1 (referenced 25th July 2020)

UN Committee on Economic, Social and Cultural Rights. 2016. Concluding Observations of the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland, 24 June. E/C.12/GBR/CO/6

UN Office of the High Commissioner for Human Rights. 2014. Civil Society Space and The UN Human Rights System: A Practical Guide.

UN High Commissioner on Human Rights, 2014. Civil Society Space and the United Nations Human Rights System: A Practical Guide for Civil Society, 3 October. https://www.ohchr.org/Documents/AboutUs/CivilSociety/CS_space_UNHRSystem_Guide.pdf (referenced 4 July 25th 2020).

Walzer, M. 2002 The Concept of Civil Society in M. Walzer (ed), *Toward a Global Civil Society*, pp. 7 –28. New York: Berghahn Books.

Weakley, K., Sector Bodies Criticise Tone of the Charity Commission Election Advice to Trustees. 2019. Civil Society News. 8th November. https://www.civilsociety.co.uk/news/commission-s-tone-risks-deterring-charities-from-campaigning-during-the-election.html (referenced 25th July 2020)

Whitehead, H. Charities Write to Party Leaders Calling for Freedom to Campaign, 19th November 2020. Civil Society News https://www.civilsociety.co.uk/news/commission-s-tone-risks-deterring-charities-from-campaigning-during-the-election.html (25th July 2020)

Wilson, E.A. 2016 Restrictive National Laws Affecting Human Rights Civil Society Organisations: A Legal Analysis. *Journal of Human Rights Practice* 8 (3): 329-357.

Wren, M. 2016. The Refugee Council 'Losing a Contract, Finding a Voice' in Civil Exchange, Independence in Question: The Voluntary Sector in 2016 (London: Baring Foundation, 2016)