

Beyond the powers?

Students union activity and “ultra vires”

A charity can only do what it has the powers to do. This briefing explains.

Charitable Purposes

All Charities have a **charitable purpose**. This defines the reason they exist and allows for the charity to have a clear mission to help its beneficiaries. It also is a useful indicator for the public and funders who can be aware of what the charity’s activities are and how it is of benefit. In a Constitution or Memorandum and Articles, a charitable purpose is written down as the organisation’s objects.

Charities can engage in a number of activities, including campaigning, trading, holding debates, running workshops and supporting societies but these are all things that contribute to the purpose, rather than a purpose itself.

Charities cannot engage in activities that do not support their charitable purposes. This is because it is the expectation of beneficiaries to that organisation and funders of that organisation (including the general public in most cases) that the charity will be working on that purpose. As such they do not have power to work on these other purposes.

In summary, **charitable purposes are designed to help charities** have focus and for **funders and the public to have trust in them**.

A charity set up to protect children cannot do work on helping the elderly as it is the expectation of those funding the charity that

money and resources will be spent on protecting children.

Another charity set up to protect the environment could not pay to send volunteers to protest against a rise in tuition fees for students in Higher Education as it is not an environmental aim.

Working outside your powers is sometimes known as **ultra-vires**, which is Latin for “beyond the powers”. This term is not in common use in most charities, but students’ unions have used it for some years.

Students’ unions may only do activities that support their charitable purpose and are in line with legislation that applies to them. Legislation here includes the 1994 Education Act, the 2006 Charities Act and the students’ union’s own governing documents.

Students' Unions and the advancement of Education

The Charity Commission for England and Wales and the National Union of Students recognise **students' union as charitable organisations for the advancement of Education**.¹ This means that the work that students' do and the way they use their finances and other resources must support Education.

The beneficiaries of students unions, those that resources can be spent on, are the students who are studying at the partner college or university. Their beneficiaries are defined because they study, not that they live in a certain area or are of a certain age.

So the key concept to remember here is that Students' unions are there to advance the Education of their students as students. This could involve...

- activities that enhance their personal development directly
- those that improve their welfare or wellbeing as students, or
- those that advance the education of students as a whole.

In the NUS Model Governing Documents for England and Wales, NUS and the Charity Commission agreed the following text for students' unions:

3. The Union's objects are the advancement of education of Students at [***name of institution***] for the public benefit by:

3.1 promoting the interests and welfare of Students at [***name of institution***] during their course of study and representing, supporting and advising Students;

3.2 being the recognised representative channel between Students and [***name***]

¹

<http://www.charitycommission.gov.uk/Library/publicbenefit/pdfs/pbeductext.pdf> section C7

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of institution] and any other external bodies; and

3.3 providing social, cultural, sporting and recreational activities and forums for discussions and debate for the personal development of its Students

NUS believes that these objects cover all work that students' unions undertake within the boundaries of the 1994 Education Act. That's a lot! For example:

3.1 would include all course representation work as well as campaigns and awareness projects that improves students' lives as students – such as library opening hours, access to grants and lobbying for a safe environment within which to study and live.
3.2 Would include work representing student views to the institution, local government and other authorities as well as to national bodies – most notably NUS. Such work gives a voice to students who otherwise do not have one and the change made through it supports their education.

3.3 This clause covers all the work with sports clubs and societies and volunteering as well as the provision of cultural activities such as one world fairs and groups that promote diversity. It also recognises the role of student councils, forums, committees and other opportunities for student involvement and how they develop students. All of these opportunities aid personal development, which is educational.

Key Concept:

You will see from 3.3 above that case law regards the provision of opportunities for discussion and debate as educational and within unions' objects. Practically, this means that discussion on a non educational or student issue like war or party politics is within the objects. However direct expenditure on such causes would not be.

This creates a potentially paradoxical grey area where *participation in activity* can be seen as educational and with charity objects, but its effects would be ultra vires. For example, canvassing voters on the doorstep for a political society might be seen as education, especially if someone from the party is showing students "how it's done". However in this case the effect (to promote one party over another to the general public) would be directly outside the objects of the union. So- if the union had paid for a bus to take those students canvassing it would be hard to justify the expenditure- on balance our advice is that courts would view that as ultra vires expenditure.

The key test is the degree to which participation or effects are prominent and what ordinary people would perceive the real purpose of the funding applied to be.

Think about what students get excited and engaged about. Is it sports and volunteering? Campaigning on education? Debating? Being a voice to others? All of these things can be done by students' unions for their charitable purpose. We will discuss some myths and misperceptions about particular types of activities that students unions undertake and whether they shouldn't be undertaken. It is worth asking yourself some simple questions though about your activities.

- 1) Does this affect students as students?

- 2) Does it support their education?
- 3) Does it offer them development opportunities?

Who does this cover?

Students' unions have developed to support different types of students and student groups. But it is important to remember that they are all part of the students' union. What this means is that legislation about what you can and can't do applies to all societies, volunteer groups and so on. A fundraiser or activist operating in the students' unions name and within their groups should work within them in the same way as the union president.

Degree and type of activities

One of the things you need to consider however is a sense of scale. In the North London Polytechnic case (more of which is included later) the judge spoke of a sense of *degree* about different activities. It may be permissible for a society to educate students about an issue and hold a collection for a cause in a way that cannot be done by the student officers.

There is also a need to ensure that union work does not stray aside from their beneficiaries. Motions on the minimum wage for workers in the institution or students' union itself or for "greening" the organisations may be within the purpose of the organisation in their support for the educational environment where calling on others to do the same may not be.

Debating

Students' unions, as educational organisations, support a variety of forums for debate and discussion – student council, election hustings, liberation forums and society seminars. This is educational activity and so should be supported; indeed it is one of the model objects set out by NUS and the Charities Commission. The outcomes of the debate cannot lead to action or payment that is not in line with the charitable purpose, even if this is a Student Council mandate. If it's ultra vires the action or payment is not valid.

Campaigning

Students' unions and NUS have a proud history of campaigning and activism, and they should have a bright and positive future as well. NUS has a briefing on how to campaign as a charity available online. This is a response to the Charity Commission's guidance on campaigning as a charity (CC9)², and you should refer to that for full advice. The main things to consider however are

- 1) Does the objective of the campaign advance the education of your students? Campaigning for better contact time, higher quality student housing or a flexible lifelong learning system does. A campaign for better facilities for pensioners in their homes clearly doesn't.
- 2) It may be that a society is set up that hopes to achieve specific change – such as against climate change. The union can fund the personal development of students within this society – such as they gain materials that educate them or learn organisation skills – but not the campaigns themselves. So you could pay for a speaker from 'Plane Stupid' but not a plot of land to stop airport expansion.

² <http://www.charity-commission.gov.uk/publications/cc9.asp#1>

- 3) Sabbatical officers should involve students at all levels in the campaign – the demand, the design and the delivery to offer those development opportunities. Students should be the ones lobbying, writing to people in positions of power and organising publicity rather than officers.
- 4) Students' unions and their representatives can **support political policies** that support their objects, but **not those that don't or a party as a whole**. So you could support the housing policy of one party (if the policy improves your students' housing) and the education policy of another, but you cannot support a party as a whole.
- 5) However the establishment and funding of party political clubs and societies is usually considered to be within the educational objects, so long as the expenditure is not directly on the cause itself or merely a "front".
- 6) During election time students' unions should be careful not to be biased towards one party or another. You should, of course, **encourage students to vote**, but not tell them *how* to vote.

Students' Unions and Elections

NUS suggestion for election time posters is that you encourage students to vote, and then compare key issues of the parties that students can vote for. So, you may compare the parties' policies on education funding; diversity; housing or youth engagement. This will inform students about issues, give them a perspective on something that they are passionate about but will not favour one party or another.

Representation

Representing students is the key work of students' unions, and officers and students' unions should make sure that they are continually representing student views to create change for their beneficiaries. When officers go into meetings they should make sure that they have a view of student opinion on key issues. Student officers should also consider how they use their positional power as elected leaders to offer support to external groups, particularly political groups and parties. As individuals they can offer support, but they should be wary of supporting groups as a representative of students.

external body an "affiliation", nor can you "get round" the law by pretending a society exists that doesn't in practice. But if a women's group affiliates to a National Abortion Campaign at a reasonable cost, that would be permissible.

"It is clear, for example, that if a college is to function properly, there is a need for the normal range of clubs and societies so as to enable each student to further the development of his (sic) abilities, mental and physical.

Equally it is likely that the college will gain from the fact that the students hold meetings to debate matters of common concern, and publish some form of campus newspaper. Reasonable expenditure on such purposes is, in the view of the Attorney General, plainly permissible for a student union."

For example, signing a letter about student housing in the local paper as Fibchester President would be fine, as supporting student welfare and housing is an aim of the organisation that has given you positional power as President. If a motion is proposed calling on the President to sign a "Stop the War" letter, whilst the act of the debate is within the objects, signing it as "union President" is ultra vires and so technically the President is legally required to refuse (see the "paradox" section earlier).

Affiliation

Students unions can affiliate to organisations that have similar aims to themselves - most notably the National Union of Students, but also similar groups of unions such as in a collegiate system or a network based on a regional or institution mission group. The '94 Act requires students unions to report to their membership on an annual basis.

Similarly Societies may affiliate to a group that has the same aims as it - for example Fibchester's Conservative Society may affiliate to the Conservative party. Students' unions, including their clubs and societies, certainly may not donate funds or resources to an external organisation if they receive nothing in return. The question is again one of proportion and reasonableness; you can't "get round" the donations law by calling a payment to an

Societies and other groups

As well as the Charity Commission, the Attorney General has offered useful guidance confirming that students unions can run clubs and societies to further their charitable objectives.

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To reiterate – students’ unions fund the development of students through clubs, societies, and volunteer groups. Any end product of the group should be incidental. In other words, if a rugby club develops students but they don’t win any games this is still a successful group by the development definition. If a RAG group develops students by them learning about organising events and raising money in a lawful and appropriate manner, this is a success however much the society raise.

“The carrying on of political activities or the pursuit of political objectives cannot, in the ordinary way, be a charitable purpose.

But I can see nothing the matter with an educational charity, in the furtherance of its educational purposes, encouraging students to develop their political awareness or to acquire knowledge of, and to debate, and to form views on political issues.

If the form of the encouragement includes provision of facilities for a students Labour Club, or Conservative Club, or any other political Club, I can see nothing in that which is necessarily inconsistent with the furtherance of educational purposes.

Here, too, the question is, perhaps, one of degree. But the proposition that an educational charity, be it a school, polytechnic or university, cannot consistently with its charitable status promote and encourage the development of political ideas among its students has only to be stated to be seen to be untenable...”

Students’ unions should make sure that all societies are funded fairly (indeed this is a requirement of the ’94 Act), so there should be measures to make sure that societies are funded proportionally. To give an extreme example, a “Stop Climate Chaos” society with the same number of members as a “Deny Global Warming” society should not get significantly more support in terms of finance or resource. It would be reasonable to fund them significantly differently if the one society had significantly more members than the other, but the union should state that this is how they fund societies.

³ From the Polytechnic of North London case 1985

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Although talking explicitly about societies connected to political parties here the principal also applies to political ideas based around a single subject – such as People and Planet or Amnesty International.

Societies should run events for their students – so publicity for them should be focussed on campus, through student used media such as an online portal or union website and message boards in departments rather than external

“There is, of course, no objection whatsoever to students joining together to collect their own monies for a particular purpose for which Union funds cannot be used.”

venues and media.

Collections and RAG

The Attorney General has stated:

This was confirmed by the judge in the Polytechnic of North London case. This means that money raised for a cause by the students themselves (rather than the union) may be used for any cause. So if the students in a society ask for donations from an audience hearing an

environmental speaker for their group that is fine. They could not give a donation from their allocated grant from the union however. This is essentially how RAG operates.

When a donation is made in any form it must be clear where the money is going to.

Benefit events

Benefit events are slightly more complicated, especially where unions run events as an income stream for their charitable purpose.

- A students union cannot use an event that would normally raise money for its key

⁴ ibid

objects to raise money for another purpose. So the proceeds from the Wednesday night disco that usually raises money for the union's core activities cannot be used for a 'Love Music Hate racism' society.

- Occasionally, you could charge an optional donation as an extra cost for entry to an exciting night – so a £3 comedy night becomes £4 including an optional donation.
- It should be students, not the students' union, which organises events and activities that fundraise for causes outside the charitable objectives.
- Students unions and their societies should not underwrite losses from events and activities aimed at raising money for purposes other than those in their object.
- With all activities in this brief the question is one of proportion. If unions are constantly running benefit events that could fundraise for their core purpose for others, they may have to consider why they aren't maximising their income.

Frequently Asked Questions

Issues should be dealt with on case by case basis, and you should contact NUS if you have any queries. Some common questions however are below.

1. **Can a union fund students to attend marches on issues outside of their core charitable objects?**

Proportionality and degree matters here, and as such it is hard to generalise. Broadly whilst a union can pay for students to attend debates, workshops and other educational sessions that may be happening around the same time, it is hard to see how a union could justify expenditure on attending a march.

2. **Is it true that national or international issues like climate change or human rights have a long term impact on the welfare of students and so are within the charitable objects?**

They have an impact on students as citizens, but not students as students. These things are unlikely to directly affect their studies. The key thing however is that "issues" don't fall within or outside of objects, but expenditure on activities or campaigns about them do. This means that whilst SU's can provide space for debate on these matters, they cannot spend disproportionate resources campaigning on these issues under the guise of personal development, as the development of a few individuals is not proportionate. Whilst they can spend some resources on educating students on issues through debate and campaigns on campus, they cannot spend resources on campaigning to change the law, if it doesn't relate to the charitable purposes of education at an institution or furthering their educational or welfare needs.

3. **Our union wants to fund a People and Planet society. What can we give them and what can they spend it on?**

You should have an allocation process for funding all sports clubs and societies as noted in the 1994 Education Act, and so should follow this for this society as much as any other.

They can spend this money on educational materials, speakers and their expenses, stationery, rent of property and training. If the students in the society raise their own money through collections they can use this for donations to environmental causes or to go on marches.

The Union can handle all the cash for the society but it must be clear what money is membership money and what is grants from the union.

4. **Can our union be an environmental charity and have this in their objects?**

The Charity Commission have said that students' unions are educational charities and when we discussed whether they could also be environmental they responded that any objects must be considered case by case. NUS believes that in the year of registration that students' unions should be wary of having complicated or misleading objects and would not advise this.

5. **Why are students unions allowed to spend resources on community work if this exceeds the boundaries of education?**

An activity doesn't have to be necessarily be in and of itself educational- in fact in the broader definitions of educational purposes, community relations in student areas are a key determinant of the student experience and student welfare and so

“count”. However if a community action group wanted to spend union funds on a deprived and separate part of the community, such direct expenditure would be outside of the objects. So it really all depends on what a union means by “community work”

6. Given students are going to be considerably affected by climate change, is it not important that we represent their interests as students unions to government through campaigns, lobbying and attending demonstrations?

Sadly, that’s not how things work. It is rare that climate change will directly affect students as students (you would not impress a judge with an argument that global warming might cause a fire in your library, for example). That said there are issues like university environmental policies that obviously “count” and of course you can run and govern your own organisation in accordance with policies and values that your members determine (so your union can sign up to 10:10). Again, the issues of proportion and degree matter here and you should contact NUS with specific questions.

7. To what extent are SU's facilitators of the personal development objective, i.e- they provide a space for societies, sports and cultural interaction, of which political campaigning is just one element, or are they allowed to take a more active role in leading that personal development?

NUS gets many questions like this, and it is difficult to answer this question without understanding the specific example that the question doubtless points to. On the one hand it is certainly possible for a union to run a “society chairs” political campaigning skills programme as long as all could take part; but you can’t get round the

law by pretending that a “briefing day on canvassing on the doorstep for the labour party” is actually about skills development. (Yet) again, the issues of proportion and degree matter here and you should contact NUS with specific questions.

8. Would it be beneficial for students unions to divide certain activities, i.e are students unions allowed to provide resources and training to support students to become better campaigners, i.e- give them skills training, but not fund activities that are broader than seeking change in students education or welfare, and go beyond simply educating people but instead seek change. Should SU's separate the skills from the issue?

This may well be a helpful method for avoiding legal problems; anything that better delineates between educational support/resources and political activity is helpful both for you as unions/trustees but also in ensuring that students and societies understand the boundaries and restrictions. As with other questions unions are advised to contact NUS with specific plans and questions.