



House of Commons  
House of Lords

Joint Committee on  
Human Rights

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# Freedom of Speech in Universities

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**Fourth Report of Session 2017–19**

*Report, together with formal minutes  
relating to the report*

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to be printed 21 March 2018*

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## Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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## Summary

### *First Principles*

Everyone has the right to free speech within the law. Unless it is unlawful, speech should usually be allowed. Free speech within the law should mean just that. This can include the right to say things which, though lawful, others may find disturbing or upsetting.

The right extends further than just the right to make speeches. It extends to all forms of expression. Together, freedom of expression and freedom of association cover the right to form societies with lawful aims, even where those aims are not shared with the majority, and the right to peaceful protest.

Free speech is not an absolute right: it is right that there are limitations to ensure that it is not exercised in a way which causes harm to others. We note the law prohibits speech which, for example, incites murder, violence or terrorism; stirs up racial hatred, or hatred to other groups; causes fear of violence, alarm or distress, constitutes harassment or is defamatory or malicious. It does not prohibit speech which others may find upsetting or offensive.

This right to free speech is a foundation for democracy. It is important in all settings, but especially in universities, where education and learning are advanced through dialogue and debate. It underpins academic freedom. Universities are places where ideas are developed, a diverse range of interesting—and sometimes controversial—topics should be debated. Students are among those particularly affected.

A number of factors are limiting free speech including:

- intolerant attitudes, often incorrectly using the banner of “no platforming” and “safe-space” policies;
- incidents of unacceptable intimidatory behaviour by protestors intent on preventing free speech and debate;
- unnecessary bureaucracy imposed on those organising events;
- fear and confusion over what the Prevent duty entails;
- regulatory complexity;
- unduly complicated and cautious guidance from the Charity Commission;
- concern by student unions not to infringe what they perceive to be restrictions.

The Committee has examined the impact of these factors on free speech in universities and makes recommendations for those involved.

## ***Background***

Parliament has enshrined the importance of freedom of speech in the university context in law - with the Education (No. 2) Act 1986 - giving universities a legal duty to secure freedom of speech for “members, students and employees” of the establishment and for visiting speakers.<sup>1</sup>

Given the importance of freedom of speech in the university context, any incursions on this right are a matter of serious concern. We were prompted to start this inquiry because the new regulatory body for English universities, the Office for Students (OfS) is to be given powers to protect freedom of speech in universities and because of concerns expressed by Parliamentary colleagues, Ministers and the media that student attitudes were undermining free speech in universities. We wanted to find out if free speech was indeed being suppressed at universities and what impact, if any, the Prevent duty had had on freedom of expression in higher education settings. As this report sets out, we wanted a full evidence base, so in addition to our call for evidence, we commissioned research, conducted a student survey and ran a web forum to draw in views and relevant experience.

The governance framework of universities and student unions is complex. While central government has a role in setting the regulatory framework, the new Office for Students, the Charity Commission, individual universities, student unions and student societies all have a part to play in securing free speech, and our inquiry has recommendations for all these actors.<sup>2</sup>

## ***The University setting***

The extent to which students restrict free speech at universities should not be exaggerated. Where it happens, it is a serious problem and it is wrong. But it is not a pervasive problem. The evidence we have taken shows that overall there is support for the principle of freedom of speech among the student population. But even though much of the concern about free speech appears to have come from a small number of incidents which have been widely reported (and those reports are often repeated), any interference with free speech rights in universities is unacceptable and we are concerned that such interference as has been reported could be having a “chilling effect” on the exercise of freedom of speech more widely.

Student societies should not stop other student societies from holding their meetings. The right to protest does not extend to stopping events entirely. Intimidating people exercising their free speech rights is particularly deplorable when meetings are invaded by masked protestors seeking to intimidate. Masked protest, intimidatory filming or physical disruption is unacceptable and must be stopped. Law enforcement agencies should take action when appropriate. Where student groups or bodies are inhibiting free speech rights in this way, universities should take disciplinary action to protect the right to free speech, in line with their statutory duty.

1 Institutions in Scotland and Northern Ireland are not subject to s 43 duty. See Chapter two, para 16

2 In Scotland and Northern Ireland the statutory regime is different as we discuss in Chapter two.

Universities must be places where open and uncensored debate (within the law) can take place so students can think for themselves and develop their own opinions on ideas which may be unpopular, controversial or provocative. However, the concept of safe spaces is either too broad or very vague and therefore we do not find it helpful. University is an environment where a range of opinions should be heard and explored. Minority views should not be barred from student union premises.

Even though it is unintended, regulatory regimes are presenting barriers to securing freedom of speech in universities. Moreover, some University codes on freedom of speech and procedures for inviting external speakers put barriers in the way of events, rather than facilitating them. Codes of practice on freedom of speech, which are a requirement for universities in England and Wales, should facilitate freedom of speech, as was their original purpose, and not restrict what is not against the law. Universities should take their responsibilities to uphold the right to free speech seriously.

### ***The Charity Commission for England and Wales***

The Charity Commission's approach to regulating free speech in student unions is problematic. The Commission's guidance is not easy to use, is in places unduly restrictive, could deter speech which is not unlawful and does not take adequate account of the importance of debate in a university setting.

### ***The role of the Office for Students***

We welcome the OfS' strong support of free speech. We would expect the OfS to intervene if problems emerged at particular institutions. The OfS should provide means by which students can report incidents of intimidation and issues related to free speech. They should ensure that university and student union policies do not inhibit legal free speech and are not unreasonable or overly burdensome. Bureaucracy is not the best way to secure freedom.

### ***The Prevent duty***

The Government rightly states that freedom of speech in universities is essential, and has made it one of the values which the OfS should uphold. But some of those giving evidence to us said that the Prevent duty guidance for higher education institutions inhibits free speech. The fear of being reported for organising or attending an event, combined with the increased levels of bureaucracy following the introduction of the Prevent duty, is reported to be having a "chilling effect" on freedom of speech. The Committee acknowledges the need for a strategy to prevent the development of terrorism both in universities and in wider society, however, we repeat our call for an independent review of the Prevent duty. This review should include consideration of its impact on free speech in universities particularly on Muslim students but also on students of other faiths or no religious faiths.

Universities will have to report to the OfS on their compliance with the Prevent duty. We repeat our previous call for an independent review of the Prevent policy in our report on Counter-Extremism; we consider any such review should include an assessment of the Prevent duty's effectiveness in Higher Education and its impact on freedom of

speech and association. Such a review should also include consideration of whether Prevent duty reports should be published, and on what basis. This would reduce fear and confusion over the Prevent strategy.

### ***Clarity and consistency***

The Government must address the impact of regulatory regimes on free speech. The best way to promote free speech is to support those making decisions and to give them as much clarity as possible about the importance of free speech. We are pleased that the Minister of State for Universities, Science, Research and Innovation, Mr Sam Gyimah MP, has committed to hold a summit with university representatives, the NUS (National Union of Students) and the Charity Commission to discuss how best to promote free speech. The Government should make sure that all those with a potential interest are involved in these discussions.

Committees principally make recommendations to the Government and public organisations. The Government's action in calling together bodies with an interest in this topic may eventually produce clarity around freedom of speech issues in universities. But that will inevitably take time. Clarity is needed now. This Report has recommendations for the Government and many others involved in the university setting. We expect to receive a Government response within two months. We further invite other bodies like the Charity Commission to respond to the recommendations and hope that our finding will prompt an ongoing dialogue within the sector. Given the confusion and complexity about what is and is not permissible, we ourselves have prepared a summary guide to help those organising debates navigate what is and is not within the law.



# 1 Introduction

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## Background

1. Freedom of speech is fundamental to democratic society. It is important we can argue for change, or to support the status quo. It is one of the fundamental rights protected by the European Convention on Human Rights (ECHR). Nonetheless like many rights, freedom of speech is not absolute. Article 10 of the European Convention on Human Rights recognises that free speech must be balanced with other rights:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

2. Many of our witnesses emphasised the importance of free speech. It was perhaps put most eloquently by Peter Tatchell:

“Given that free speech is a very precious human right that, in past centuries, people gave their lives and liberty to defend, my own view is that there have to be really compelling reasons to restrict it. [ ... ] Otherwise, I agree [ ... ] that the best way to challenge bad ideas is with good ideas. If you simply ban someone, the ideas do not go away, and their supporters are not disabused of those ideas. However, if you challenge them in open debate, and give the evidence and counterarguments that will discredit them, you can lower their public estimation and standing. You may also persuade some of their followers that they were wrong to adhere to those ideas. That is the most likely way in which to change opinion and to defeat such bigoted views.<sup>3</sup>

3. One of our witnesses, Alyaa Ebbiary, a PhD student at the School of Oriental and African Studies (SOAS) gave us a striking example of how a confrontation with a protestor at a pro-Palestine event had encouraged her to set up an inter-faith dialogue society:

“When I saw the anger from this young man and the reaction that I got from some of my Jewish peers, it motivated me to set up a Muslim-Jewish dialogue society, which I spent a number of years being active in, and spent a number of years subsequently volunteering and organising interfaith initiatives between Muslims and Jews.

If I had not had that opportunity earlier, I would never have gone through that thought process or those kind of conversations. It really bothers me that there is this excessive scrutiny and curtailment of activism and free speech about Palestine campaigning”.<sup>4</sup>

4. This Report is about the right to speak freely within the law. UK law imposes some restrictions on speech such as prohibitions on harassment, or incitement to hatred. In an ideal world, debate would take place in a respectful and orderly fashion. However, provided speech is legal, the right to speak freely includes saying things which may shock or offend others. Further, freedom of association protects the right to peaceful protest.

## Our inquiry

5. There have been repeated and high-profile claims that freedom of speech in universities is under attack. The media have reported controversies over speakers at universities, or about academics. Parliamentarians and the Government have raised concerns. The new OfS is expected to champion free speech as part of its role.<sup>5</sup>

6. We drew on students’ experience of freedom of speech in universities and in particular on the ability of students, student societies and student unions to invite external speakers and organise events at universities. While the inquiry covered institutions across the United Kingdom, this Report is focused on universities and on students in England. This is because evidence suggested that there were more acute concerns relating to free speech in universities in England than Scotland, Wales and Northern Ireland. The regulatory regime operates differently in each jurisdiction, with different regulators for universities and student unions in the different UK jurisdictions. Moreover, universities in England and Wales have different obligations to secure free speech than do institutions in Scotland and Northern Ireland. We have, where appropriate, suggested that lessons are learned from experience in different UK jurisdictions.

7. We thought it important to establish to what extent there really was a problem and, if so, what were its causes. Our inquiry asked whether free speech was indeed being suppressed in universities and whether the Government’s new proposals to protect free speech were consistent with previous policy initiatives, such as the introduction of the Prevent duty in universities in September 2015. The Committee published an open call for evidence on 21 November 2017 along with a detailed set of questions, which served as the terms of reference for the inquiry.<sup>6</sup>

8. As part of this inquiry, we have conducted eight oral evidence sessions with a total of 34 witnesses. We also received 109 written submissions. All the evidence, both written and oral, can be viewed on our website.<sup>7</sup> We are grateful to everyone who gave written or oral evidence. The quality and range of the submissions we received has aided our

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4 [Q22](#) [Ms Alyaa Ebbiary]

5 See, Department for Education, [Securing student success: risk based regulation for teaching excellence, social mobility and informed choice in higher education Government consultation on behalf of the Office for Students](#), 19 October 2017, p 5

6 Freedom of Speech in Universities - [Terms of Reference](#)

7 <http://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/inquiry/publications/>

inquiry enormously. The Equality and Human Rights Commission (EHRC) were given the opportunity to give oral evidence to us but told us that they were not in a position to do so. We note this with disappointment.

9. While written and oral evidence are invaluable, the Committee wanted the widest evidence base possible. To this end we:

- Hosted a web forum on the Student Room, open to all (see Annex 3);<sup>8</sup>
- Surveyed individual student union officers for their views (see Annex 2); and
- Commissioned research on the detail of free speech policies from the Higher Education Policy Institute (HEPI).

We are grateful to everyone who contributed to this wider evidence gathering process.

### ***Key findings***

10. Our inquiry findings are explored in detail later on in the Report but in summary there are a number of factors which may interfere with freedom of speech at universities.

#### **Box 1: Factors inhibiting freedom of speech**

- intolerant attitudes, often incorrectly using the banner of “no platforming” and “safe-space” policies;
- incidents of unacceptable intimidatory behaviour by protestors intent on preventing free speech and debate;
- unnecessary bureaucracy in organising events;
- fear and confusion over what the Prevent duty entails;
- regulatory complexity;
- unduly complicated and cautious guidance from the Charity Commission;
- concern by student unions not to infringe what they perceive to be restrictions.

11. We also found that many of the incidents in which free speech is restricted often revolve around discussion of key controversial or divisive issues, which can stir up strong emotions. Amongst the things around which there is emotional debate are speech which is thought to incite or support terrorism; pro-life or anti-abortion views; Transgender issues; Islamophobia; Israel/Palestine conflict; right wing vs left wing views; and Humanist/secular groups critiquing religion.

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8 The Student Room, [Freedom of Speech in Universities: MPs and Lords want to hear from you](#)

### ***Structure of this Report***

12. Chapter Two explains the legal context within which universities and student unions operate. Chapter Three looks at the scale of the problem. Chapter Four looks at the range of factors inhibiting freedom of speech. Chapter Five identifies how universities, student unions and students can move forward in a way which gives freedom of speech its due importance.

## 2 The legal and regulatory framework

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### Introduction

13. Many different people and organisations have a responsibility to uphold free speech in universities in England and Wales:

- Parliament and Government set the overall legislative framework governing universities;
- The Government has statutory powers not just in relation to universities, but in relation to matters which may appear unrelated, such as prevention of terrorism;
- The OfS will have direct regulatory powers over universities;
- Universities have their own codes of conduct for free speech and often also regulate other matters on university or student union premises. This can include conditions with which student unions need to comply (often as a condition of their constitutive document or funding grant from the university), and conditions and standards with which students must comply;
- The Charity Commission regulates student unions as charities;
- Student unions typically determine affiliation to the student union, and organise spaces for events;
- Individual clubs and societies organise events; and
- Individual students (and outsiders) may participate or protest at such events.

This chapter gives a high-level view of the legal and regulatory framework within which these bodies work.

### Legal framework relevant to freedom of speech in universities

#### *Competing duties*

14. Universities are subject to a number of sometimes conflicting duties under the law which have the potential to interfere with freedom of speech. In England and Wales, universities have a legal duty, under section 43 of the Education (No.2) Act 1986, to secure free speech within the law:

**Box 2: Section 43 Education (No.2) Act 1986**

- (1) Every individual and body of persons concerned in the government of any establishment to which this section applies shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.
- (2) The duty imposed by subsection (1) above includes (in particular) the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with –
- a) the beliefs or views of that individual or of any member of that body;
  - b) or the policy or objectives of that body.
- (3) The governing body of every such establishment shall, with a view to facilitating the discharge of the duty imposed by subsection (1) above in relation to that establishment, issue and keep up to date a code of practice setting out—
- a) procedures to be followed by members, students and employees of the establishment in connection with the organisation
    - i) of meetings which are to be held on premises of the establishment and which fall within any class of meeting specified in the code;
    - ii) and of other activities which are to take place on those premises and which fall within any class of activity so specified; and
  - b) the conduct required of such persons in connection with any such meeting or activity
- and dealing with such other matters as the governing body consider appropriate.
- (4) Every individual and body of persons concerned in the government of any such establishment shall take such steps as are reasonably practicable (including where appropriate the initiation of disciplinary measures) to secure that the requirements of the code of practice for that establishment, issued under subsection (3) above, are complied with.

15. Of note, the key elements of this duty include:

- the duty to *secure* free speech *within the law*. It does not require universities to allow or facilitate speakers to break the law through inciting violence, inciting racial hatred, or glorifying acts of terrorism.
- “the duty to ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with—(a) the beliefs or views of that individual or of any member of that body; or (b) the policy or objectives of that body.”
- The duty also requires institutions to issue and update a code of practice setting out the procedures to be followed by members, students and employees for the upholding of freedom of speech and take reasonably practicable steps (including the “initiation of disciplinary measures”) to ensure compliance with the code.<sup>9</sup>

16. Institutions in Scotland and Northern Ireland are not subject to the section 43 duty and so are under no statutory obligation to have codes of practice on freedom of speech. It should be added that we found no evidence that the absence of the section 43 duty to secure free speech within the law had had either a beneficial or an adverse effect on freedom of speech in these institutions.

17. Other legislation relevant to freedom of speech in universities applies to all four UK jurisdictions. The most prominent provision is the right to freedom of expression, guaranteed by Article 10 of the European Convention on Human Rights (ECHR). Article 11 of the ECHR provides the right to freedom of assembly and association. The Human Rights Act 1998 incorporates the ECHR into UK law and section 6 of the Human Rights Act makes it unlawful for public authorities to act in a way which is incompatible with a Convention right.<sup>10</sup> This means that, where a university is performing functions of a public nature, then it must respect the rights and freedoms set out in the Convention.

18. The right to free speech is not absolute and can be limited by law. There are numerous criminal and civil law provisions which limit the lawful exercise of free speech rights. Statements that discriminate against, or harass, or incite violence or hatred against other persons and groups are not protected under free speech rights, nor are speech or conduct that glorifies terrorism. A fuller list will be found in the guide for universities and student unions annexed to this Report. However, there is no right not to be offended or insulted. Just because a statement may offend another person does not necessarily make it unlawful.

19. Alongside the duty to promote free speech, universities are subject to a range of other sometimes competing obligations. The Equality Act 2010 (which is applicable in England, Wales and Scotland)<sup>11</sup> prohibits unlawful discrimination in relation to certain ‘protected characteristics,’<sup>12</sup> which are age, disability, gender reassignment, marriage and civil

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9 Human Rights Act 1998, [Section 6](#)

10 Human Rights Act 1998, [Section 6](#)

11 At present, the Equality Act 2010 does not extend to Northern Ireland. However, there is various similar anti-discrimination legislation in Northern Ireland. There is also an ‘equality’ and ‘good relations’ duty in s.75 of the Northern Ireland Act 1998 which requires public authorities to have due regard to the need to promote equality of opportunity between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; between persons with dependants and persons without.

12 Equality Act 2010, Part 2, Chapter 1, [The Protected Characteristics](#)

partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The Public Sector Equality Duty requires universities to “have due regard to the need to—(a)eliminate discrimination, harassment, victimisation;” (b)“advance equality of opportunity;” and (c) “foster good relations between persons who share a relevant protected characteristic and persons who do not share it.”<sup>13</sup> Equality law can operate as a limiting factor on freedom of speech by making certain speech and conduct unlawful, and so universities have to balance their obligation to secure free speech with the duty to promote good relations between different groups with protected characteristics.

20. Universities in England, Wales and Scotland are also subject to section 26(1) of the Counter-Terrorism and Security Act 2015. This provision imposes a duty on higher education bodies when exercising their functions, to “have due regard to the need to prevent people from being drawn into terrorism.”<sup>14</sup> However, it also requires those bodies, when doing this, to have “particular regard” to the duty to secure free speech. This Prevent duty is part of the Government’s wider Prevent strategy which aims to tackle the factors that predispose individuals or groups to respond to terrorist ideologies. The Prevent duty is underpinned by specific statutory guidance for higher education institutions.<sup>15</sup> Therefore, universities must balance their legal duties to ensure free speech with their duty to protect students from being drawn into terrorism. We explore this in more detail later on.

### ***Regulation of universities and student unions***

21. Universities and student unions operate in a complex regulatory framework. University independence and autonomy are important. Each jurisdiction has a dedicated organisation for university oversight and, in some jurisdictions, oversight of funding. In 2019, the OfS will take over from the Higher Education Funding Council for England (HEFCE), while the Scottish Funding Council and the Higher Education Funding Council for Wales remain in place. In Northern Ireland, the Higher Education division of the Department of the Economy is responsible for policy and the administration of funding to support education, research and related activities in the Northern Ireland higher education sector.

22. Both student unions and universities are charities, but while universities in England are exempt charities (charities exempt from registration with the Charity Commission as they have another principal regulator),<sup>16</sup> most student unions are registered charities (registered with and regulated by the Charity Commission). While both are required to comply with charity law and guidance, universities in England are not principally regulated by the Charity Commission (instead HEFCE is principle regulator of English universities).

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13 Equality Act 2010, Part 11, Chapter 1, Section 149, [Public Sector Equality Duty](#)

14 Counter-Terrorism and Security Act 2015, Part 5, Chapter 1, [Section 26 \(1\)](#)

15 HM Government, [Prevent Duty Guidance: for higher education institutions in England and Wales](#), 12 March 2015, and HM Government, [Prevent Duty Guidance: for higher education institutions in Scotland](#), 12 March 2015

16 In Wales, all universities are regulated *directly* by the Charity Commission. In Scotland, the Scottish Charity Regulator regulates all the universities in Scotland as charities. In Northern Ireland, all relevant organisations are required to apply for registration with no exceptions or exemptions and the Charity Commission for Northern Ireland (which was established under the Charities Act (Northern Ireland) 2008) is managing the registration of charities in stages.



23. Student unions are directly regulated by the Charity Commission, the Office of the Scottish Charity Regulator for Scotland, and the Charity Commission for Northern Ireland, although the approach taken by these regulators differs.

24. Universities have duties to protect freedom of speech, and this duty extends to securing freedom of speech on student union premises, even when these premises are off campus or owned by the student union. Universities are also required to have a code to promote free speech.

25. In contrast, student unions themselves assert that they are private bodies and have a right to refuse speakers or groups since they are not subject to the same obligations as public bodies.<sup>17</sup> However, given the obligation on universities to secure free speech on university and student union premises, the student union constitutive documents, Memorandum of Understanding with the university, or conditions of the student union's funding grant from their university, will often require the union to comply with the university's free speech duty. Moreover, student union trustees are subject to duties under charity law which, given the educational objects of student unions, require them to ensure that debates are balanced, well run, ensure free speech and that risks are appropriately managed - in a manner akin to the free speech duty.

### **The role of the Office for Students in promoting freedom of speech**

26. The OfS came into existence on 1 January 2018, acquiring limited responsibilities to enable it to establish its new regulatory framework. It will become operational on 1 April 2018, and take over regulatory responsibility of the sector in 2019. The OfS will oversee a register of higher education providers and will set conditions for registration. These will include a public interest governance condition: a commitment to work with the OfS through provision of relevant information and adhering to basic standards of transparent and autonomous institutional governance.

27. A Department for Education consultation on behalf of the OfS, seeking views on how the OfS will undertake its main functions, set out how it proposed to champion free speech in universities:

- To include freedom of speech in a standard list of “public interest principles” which would form part of the “public interest governance condition” applying to the “Approved categories.”<sup>18</sup> Compliance with the public interest principle

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17 While Section 43 of the Education (No. 2) Act 1986 does not apply directly to students' unions, it applies indirectly as the duty requires institutions to issue and keep updated a code of practice outlining procedures to be followed for meetings that will take place on the institutions premises, including on student union premises.

18 The OfS will oversee a register of higher education providers and will have set conditions for registration. The conditions are varied between three broad categories that are based on the level of access to public funding: Registered basic, Approved and Approved fee cap. Approved providers are providers with designation for student support. See, Universities UK, [Office for Students Regulatory Framework](#), 3 November 2017. The OfS was consulting on the list of principles that will make up this governance condition and freedom of speech was included in the proposed standard list of public interest principles in the consultation document launched in October 2017, see, Department for Education, [Securing student success: risk based regulation for teaching excellence, social mobility and informed choice in higher education Government consultation on behalf of the Office for Students](#), 19 October 2017, p 33

of securing freedom of speech would be monitored and non-compliance could result in “formal sanctions against the provider including monetary penalties, suspension from the register or deregistration.”<sup>19</sup>

- In addition to having codes of practice on freedom of speech, (which has been a requirement under the Education (No.2) Act 1986) higher education institutions would be required to contain provisions and practices to protect freedom of speech in their constitutional documents too.<sup>20</sup>

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19 Department for Education, [Securing student success: risk based regulation for teaching excellence, social mobility and informed choice in higher education, Government consultation on behalf of the Office for Students](#), 19 October 2017, p 33

20 Department for Education, [Securing student success: risk based regulation for teaching excellence, social mobility and informed choice in higher education, Government consultation on behalf of the Office for Students – Guidance on registration conditions](#), 19 October 2017, p 44

### 3 The scale of the problem

28. The Government has repeatedly expressed concerns about the impact of student led activities such as “no platforming” and “safe space” policies on freedom of speech in universities.<sup>21</sup> For example, in December 2017, the then Minister of State for Universities, Science, Research and Innovation, Joseph Johnson MP explicitly criticised student led activities like ‘no platforming’ and ‘safe space’ policies which he argued were being used to “stifle” discussion and debate.<sup>22</sup> He cited student protests against events featuring “prominent gay rights and feminist campaigners such as Peter Tatchell and Julie Bindel, and more recently the proposal by some students at Oxford’s Balliol College to deny the Christian Union a space at a Fresher’s Fayre” as examples of where groups have sought to “shut down debate altogether [rather] than to confront dissenting ideas or uncomfortable arguments.”<sup>23</sup>

29. The media has also given prominence to claims that ‘no platforming’<sup>24</sup> and ‘safe space’<sup>25</sup> policies, are suppressing freedom of speech in universities.<sup>26</sup> There is a perception that current generation of students are unwilling to hear views which are different to their own.

30. Similar problems arise when assessing the online magazine, Spiked’s, Free Speech University Rankings (FSUR) project, which was launched in 2015, which is widely reported by the media. Spiked claim that censorship in universities is a “chronic problem” and that restrictions on free speech are increasing each year.<sup>27</sup>

31. Spiked’s research methodology has been contentious. Some of the policies examined include free speech and external speaker policies; bullying and harassment policies; equal opportunities policies; no platform and safe space policies. Critics claim the rankings mark universities and student unions down for having a zero-tolerance approach to harassment and bullying, take actions and policies out of context,<sup>28</sup> and merely replicate points made in previous reports - taking down those earlier reports so the duplication is less evident. During oral evidence, Professor Adam Tickell, Vice-Chancellor at the University of Sussex,

21 [Universities told they must protect freedom of speech](#), The Times 21 March 2017; Gov.UK, [Jo Johnson calls for free speech to be protected on campus](#), 19 October 2017; and Gov.UK, [Free speech in the liberal university](#), 26 December 2017

22 Gov.UK, [Free speech in the liberal university](#), 26 December 2017

23 Gov.UK, [Free speech in the liberal university](#), 26 December 2017

24 Individual student unions will democratically decide if they wish to have a no platform policy each year. According the NUS, the purpose of a ‘no platform’ policy is to prevent individuals or groups known to hold racist or fascist views from speaking at student union events and to ensure that student union officers do not share a public platform with such individuals or groups. See, [NUS’ No Platform Policy: Key information](#), February 2017

25 ‘Safe space’ policies are guidelines produced by students’ unions that aim to encourage an environment on campus free from harassment and fear. They seek to restrict the expression of certain views or words that can make some groups feel unsafe. Debates take place within specific guidelines to ensure that people do not feel threatened because of their gender, ethnicity or sexual orientation. Not all students’ unions have safe space policies.

26 [Is free speech in British universities under threat?](#), The Guardian, 24 January 2016; [A ban on Germaine Greer would be a threat to the universities’ unique role](#), The Guardian, 13 November 2015; [No platform: my exclusion proves this is an anti-feminist crusade](#), The Guardian, 9 October 2015; [Boris, Tatchell, Greer: were they actually no-platformed?](#), The Guardian, 5 May 2016

27 Spiked’s 2018 Free Speech University Rankings stated that ‘55% of universities actively censor speech, 39% stifle speech through excessive regulation, and just 6% are truly free, open places.’ See, Spiked, [Free Speech University Rankings 2018](#)

28 See Dr Carl Thompson ([FSU0011](#)). Also, see [Q39](#), [Professor Adam Tickell, University of Sussex]

critiqued Spiked for including “things that are not relevant to the discussions around free speech” in their analysis and whipping up “moral panic” to suggest “that universities are trying to inhibit very legitimate debate.”<sup>29</sup>

32. Professor Dennis Hayes helped construct Spiked’s Free Speech University Rankings. He told us that he accepted free speech should be within the law,<sup>30</sup> but in our view the rankings could mark universities down for complying with the law. For example, in the 2018 results, the University of Leeds and Newcastle University received red rankings for statements in their protocol on freedom of speech and Transgender policies respectively which could equally be read as merely setting out what was needed to stay within the law (see below):

**Box 3: University of Leeds protocol on freedom of speech**

“Similarly, the University [of Leeds] would not seek to prevent or inhibit spoken or written criticism of the state of Israel; it would not however allow criticism of Israel to be expressed in a form which was or might reasonably be taken to be anti-Semitic, just as it would not allow, to take another example, the expression of views intended to stir up religious hatred against Muslims.”

Source: University of Leeds, [Freedom of Expression Protocol](#)

**Box 4: Newcastle University Transgender Policy**

“Transphobic propaganda, in the form of written materials, graffiti, music or speeches, will also not be tolerated. The [Newcastle] University undertakes to remove any such propaganda whenever it appears on the premises.”

Source: Newcastle University, [Transgender Policy](#)<sup>31</sup>

33. It is for this reason we undertook our student union survey and launched our student forum to establish if students did indeed feel free speech is being undermined. The information we gathered from these showed that although there were real free speech issues, there was also a widespread view that free speech was not overly inhibited and that it was valued by students.

34. This was confirmed in written and oral evidence. Sir Timothy O’ Shea, Vice-Chancellor and Principal, University of Edinburgh, told us “[w]e currently have about four or five speaker-led events a day, so about 1,300 a year” and Professor Adam Tickell, Vice-Chancellor, University of Sussex, assured us of the importance he and other Vice-Chancellors gave to the duty to ensure free speech.<sup>32</sup> The Guild of Students at the University of Birmingham told us that in the year 2016–17, out of 779 external speaker requests, only three were rejected and this was due to the “requests arriving too late to process.”<sup>33</sup> Even where things go wrong, such as the protests at Mr Jacob Rees-Mogg MP’s speech at the University of the West of England on 2 February 2018, the difficulties can be caused by

29 Dr Carl Thompson ([FSU0011](#))

30 [Q4](#) [Professor Denis Hayes, University of Derby]

31 See, University of Leeds, [Freedom of Expression Protocol](#)

32 [Q36](#) [Professor Sir Timothy O’Shea, University of Edinburgh, Professor Adam Tickell, University of Sussex]

33 Ellie Keiller, on behalf of University of Birmingham Guild of Students ([FSU0077](#))

outsiders, rather than students or the university itself.<sup>34</sup> Jonathan Wallcroft, President of the Politics and International Relations Society at the University of West of England, responsible for arranging that event, told us:

“I myself have certainly never experienced any form of censorship [ ... ] we were able to invite Mr Jacob Rees-Mogg MP without any meaningful opposition from the Student Union [ ... ] we had a speaker from the Israeli embassy coming the week before. When you add those two things up together and add the fact that the Student Union was incredibly supportive and gave us everything that we needed for them, I find it hard to see evidence for creeping censorship, at least at our university”.<sup>35</sup>

35. The press accounts of widespread suppression of free speech are clearly out of kilter with reality. During our inquiry, we have heard first hand from all the key players in the university setting, including students, student society and student union representatives, vice-chancellors and university administration staff. A large amount of evidence suggests that the narrative that “censorious students” have created a “free speech crisis” in universities has been exaggerated.<sup>36</sup> In the survey we sent out to student unions, 25 out of 33 student union officers who responded told us that the restriction of free speech in universities was not a problem at their university,<sup>37</sup> while Student Union Presidents, Patrick Kilduff and Frida Gustafsson, told us that they had never banned or no platformed a speaker, outside of the six organisations listed on their student union’s official ‘no platform’ policy (which is replicated from the official NUS No Platform policy).<sup>38</sup> However, as the Minister for Universities, told us “just as important is what is hard to measure: the large number of events which do not happen at all, either because organisers are worried about obstruction or because the overzealous enforcement of rules makes them seem more trouble than they are worth [ ... ] some of this is quite difficult to gather evidence for.”<sup>39</sup>

36. Two of the incidents which are most commonly cited (including by the previous Universities Minister<sup>40</sup>) as evidence of students restricting free speech by “no platforming” speakers are student protests at Germaine Greer’s appearance at the University of Cardiff in 2015, and the refusal of a NUS Officer to share a platform with Peter Tatchell at Canterbury Christ Church University in 2016. But in both these cases the speaker’s freedom of speech was not curtailed as they were not stopped from giving their talks. On the contrary, as Professor Colin Riordan, Vice-Chancellor of the University of Cardiff, said, the Germaine Greer incident should be held “up as an example of us valuing these things and protecting academic freedom.”<sup>41</sup> These are actually examples where students manifested their right to freedom of expression through peaceful protest or refusing to share a platform with someone.

34 BBC News, [Scuffle at Rees-Mogg student event at UWE Bristol](#), 3 February 2018; [Q79](#) ( Mr Jacob Rees-Mogg MP)

35 [Q86](#) [Jonathan Wallcroft, Vice-President, Politics and International Relations Society, University of the West of England, Bristol]

36 See [Q48](#) [Amatey Doku, National Union of Students]; Dr Carl Thomson ([FSU0011](#)); Universities UK ([FSU0010](#)); Northumbria Students ([FSU0013](#)); [Q19](#) [Ben Ryan, Theos Think Tank]; Warwick Students’ Union ([FSU0094](#)); Professor Alison Scott-Baumann with Simon Perfect ([FSU0075](#)); [Q37](#) [Frida Gustafsson, President, University of Sussex Student Union]; Dr Petra Boynton ([FSU0036](#)); London South Bank University ([FSU0027](#)); Sheffield Hallam University ([FSU0054](#)); Trinity Saint David Students’ Union ([FSU0031](#)); The Union of Brunel students ([FSU0032](#))

37 See Annex 2 for full results

38 See, [Q41](#) [Patrick Kilduff, University of Edinburgh, and, Frida Gustafsson, University of Sussex]

39 [Q68](#) (Mr Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation)

40 Gov.UK, [Free speech in the liberal university](#), 26 December 2017

41 [Q12](#) [Professor Colin Riordan]

37. **Any inhibition on lawful free speech is serious, and there have been such incursions, but we did not find the wholesale censorship of debate in universities which media coverage has suggested. There are real problems which act as disincentives for students to put on challenging events and whilst most student union officers who responded to our survey (comprising 33 responses in all) say they are confident that they and their companions can speak freely, such disincentives could be having a wider ‘chilling effect’, which is hard to measure. A much broader survey of students’ opinion would be needed to assess levels of confidence amongst the student body as a whole.**

## 4 Factors inhibiting freedom of speech

38. Although there is no wholesale censorship of debate at universities, there have been some instances where student led activities or student attitudes towards certain groups have impinged on others' rights to freedom of expression or association (which are discussed in detail below). Apart from this, there are also other significant barriers in the current system.

39. Our student union survey results were largely reflective of the wider evidence we received on the specific factors that inhibit freedom of speech at universities. While the majority of student unions felt confident in inviting external speakers, others pointed to the following barriers:

- intolerant attitudes, often incorrectly using the banner of “no platforming” and “safe space” policies;
- incidents of unacceptable intimidatory behaviour by protestors intent on preventing free speech and debate;
- unnecessary bureaucracy in organising events;
- fear and confusion over what the Prevent duty entails;
- regulatory complexity; and
- unduly complicated and cautious guidance from the Charity Commission.

These are discussed in detail below.

### Student activity

#### *No platforming policies*

##### **Box 5: No platforming policies**

Individual student unions will democratically decide if they wish to have a no platform policy each year. According to the NUS, the purpose of a ‘no platform’ policy is to prevent individuals or groups known to hold racist or fascist views from speaking at student union events and to ensure that student union officers do not share a public platform with such individuals or groups.

Source: See, [NUS' No Platform Policy: Key information](#), February 2017

40. Accusations that individuals or groups have been “no platformed” are common. Ministerial announcements have suggested that student activity such as “no platforming” and “safe space” policies undermine freedom of speech at universities. However, there is considerable confusion around these terms and they are unhelpful in determining if freedom of speech has been interfered with. The NUS’ official “No Platform” policy is a “specific” and “narrow” policy listing only six organisations: the Al-Muhajiroun; British National Party (BNP); English Defence League (EDL); Hizb-ut-Tahir; Muslim Public Affairs Committee; and National Action. The inclusion of the above organisations in the official policy is generally non-contentious.



**Box 6: Case studies: No platforming****Case study A: University of Sussex, November 2017**

The Liberate to Debate society at the University of Sussex invited Mr Bill Etheridge, UKIP MEP, to speak at an event in November 2017. The Student Union required that his views should be challenged in a debate which would be chaired by an independent chair, given that he had made controversial statements in the past. Mr Etheridge refused to adhere to the conditions and withdrew from the event, claiming that he had been ‘no platformed.’

Frida Gustafsson’s (President of the Student Union at Sussex) account of the incident, given to the Committee, differed significantly from media reporting which stated that the society who had invited Mr Etheridge complained that the student union had “effectively no platformed” Mr Etheridge through imposing a “prohibitive” list of restrictions, which included having his speech approved by a panel in advance.<sup>42</sup>

**Case Study B: University of Leeds, October 2017**

The Liverpool Guild of Students told us that Peter Hitchens was invited by the Politics society in October 2017, and in line with the university’s code of practice on freedom of speech, he was asked to submit an outline of his speech. Peter Hitchens said he could not comply with the conditions and therefore did not speak at the event.<sup>43</sup>

41. The term “no platforming” is applied to a range of student actions other than the core NUS definition. It has been used to describe:

- Internal decisions within student bodies to ban external speakers/groups from speaking at universities;
- Internal decisions to withdraw invitations from speakers due to views which the organisers did not share;
- When the invited speaker withdraws as a result of refusal to adhere to conditions that the student union body or university imposes on the event;
- Individuals, students or student officers refusing to share a platform with external speakers;<sup>44</sup> and
- Disinviting speakers due to pressure from other students who oppose the speaker’s presence in the university.<sup>45</sup>

Not all the scenarios described above unduly interfere with freedom of expression. **Student groups are not obliged to invite a particular speaker just because that person wants to speak at the university, or to continue with an invitation if they freely decide they no longer wish to hear from a particular person. Speakers are at liberty to decline to share a platform with those they oppose. Speakers can also decline to attend events if they**

42 [Q37](#) [Frida Gustafsson, University of Sussex], and, [Sussex University free speech society told to submit guest’s speech for approval in case it violates ‘safe space’ policy](#), The Telegraph, 20 October 2017

43 Liverpool Guild of Students ([FSU0067](#))

44 [NUS ‘no platform’ policy goes ‘too far’ and threatens free speech, Peter Tatchell warns](#), The Independent, 25 April 2016

45 [Q31](#) [Alexandra Tate, President, Reproductive and Sexual Health Society, King’s College London]; [Barred academic Heather Brunskell-Evans warns of cowardice over trans issues](#), The Times, 23 November 2017



do not wish to comply with conditions (including reasonable conditions such as lawful speech or being part of a balanced panel). None of these is an interference on free speech rights. But some of the activities are interferences with the right to freedom of speech. The imposition of unreasonable conditions is an interference on free speech rights. We do not, for example, consider it a reasonable condition that, if a speaker gives an assurance that their speech will be lawful, they be required to submit a copy or outline of their speech in advance.

42. In our view, freedom of expression is unduly interfered with:

- when protests become so disruptive that they prevent the speakers from speaking or intimidate those attending;
- if student groups are unable to invite speakers purely because other groups protest and oppose their appearance; and
- if students are deterred from inviting speakers by complicated processes and bureaucratic procedures.

It is clear that, although not widespread, all these problems do occur and they should not be tolerated.

### *Intolerance towards some groups and issues & disruptive protests*

43. Our evidence suggests that incidents where freedom of expression has been restricted usually involve groups who are perceived as minorities, or as having views which some could consider to be offensive, but which are not necessarily unlawful; these could include pro- or anti-abortion views, issues of sexuality or gender, and matters concerning faith or atheism.

44. In some cases, there have been unacceptable incidents where freedom of speech has been restricted by student activities. Incidents which several witnesses or written submissions referred to include:

- Disruption at University College London (UCL)<sup>46</sup> and King's College London (KCL)<sup>47</sup> in 2016 where anti-Israeli protestors disrupted events organised by the Friends of Israel societies;
- Disruption at pro-Palestinian events held at the London School of Economics (LSE) in March 2017 and the School of Oriental and African Studies (SOAS) in November 2017;<sup>48</sup> and

46 Baroness Deech ([FSU0003](#)); The UK Lawyers for Israel ([FSU0033](#)); The Board of Deputies of British Jews ([FSU0035](#)); The Academic Friends of Israel ([FSU0071](#)); The Union of Jewish Students (UJS) ([FSU0080](#)); [Q48](#) [Wes Streeting MP]

47 The UK Lawyers for Israel ([FSU0033](#)); The Board of Deputies of British Jews ([FSU0035](#)); The Union of Jewish Students (UJS) ([FSU0080](#)); and The Academic Friends of Israel ([FSU0071](#)).

48 According to the written submission from Free Speech on Israel, two further events at the University of East London and Middlesex University that Richard Falk was due to speak at were cancelled. However, other reports have suggested that the events were cancelled for different reasons. UEL reportedly cancelled the event because procedures, including security paperwork, had not been adequately followed, while Middlesex University cancelled because of safety concerns, see [UK Universities cancel talks by co-author of UN report accusing Israeli of apartheid regime, over security concerns](#), The Independent, 24 March 2017; Free Speech on Israel ([FSU0030](#)); and the Centre for Palestine Studies ([FSU0090](#)). See also [Q42](#), in which Baroness Amos said that two or three events in the last year had been disrupted by pro-Israel protestors, although it was not clear whether these events were disrupted by students or members of the public.

- Disruption at a talk by a spokesperson from the Council of Ex-Muslims of Britain, Maryam Namazie, at Goldsmiths University in December 2015, which was significantly disrupted by members of the university's Islamic society.<sup>49</sup>

45. An event called "Abortion in Ireland" organised by the Oxford Students for Life society in November 2017 was disrupted by a protest organised by the Oxford Student Union Women's Campaign. The protest was held inside the room and prevented the speakers from being heard for around 40 minutes of the event. Police were called and the event organisers were asked to move rooms twice before the event could proceed. Despite the disruptive nature of the protest, the Student Union published two statements in support of the protest the next day.<sup>50</sup>

46. This reaction by the University of Oxford's student organisation contrasts with the condemnation issued by the Student Union at KCL following an event that was violently disrupted and cancelled on 5 March 2018.<sup>51</sup> A written submission from KCL describes the incident (see box below):

**Box 7: KCL Libertarian Society Event, 5 March 2018**

The KCL Libertarian Society, a student society ratified by KCLSU [King's College London Student Union], invited speakers Carl Benjamin and Dr Yaron Brook, Chairman of the Board of Directors of the Ayn Rand Institute, to debate 'Rand's philosophy, 'Objectivism' on Monday 5 March at King's Strand campus.

[ ... ] the university and Students' Union undertook their separate comprehensive risk assessments and [ ... ] assessed this planned event as 'high risk' due to the reported controversial opinions of the contributors and potential for public protest.

King's followed due process and informed KCLSU that additional conditions needed to be put in place in order for the event to go ahead. These included recording the speeches with our 'lecture capture' facility, enhanced security, limiting attendees to King's and University of London students, and the presence of safe space marshals [ ... ] A designated area was also identified for safe and peaceful protest.

The debate had been underway for around 30 minutes when a group of approximately 16–20 hooded and masked protesters stormed the front entrance of the Strand Campus building, jumped over the security barriers, ignited smoke bombs and forced their way into the Safra lecture theatre. In this process they knocked a security guard unconscious and he was taken to hospital. A number of other staff and students were injured during the violent protest [ ... ].

Once they had gained entrance to the lecture theatre the protesters climbed onto the stage to interrupt proceedings, grabbing the microphone and dropping threatening notes around the room. Some media reports have suggested that the university closed the event down due to the protest. In fact the smoke bombs triggered the building's fire detection systems, resulting in an evacuation of the whole building.

Source: Written submission from KCL ([FSU00111](#))

49 Humanists UK and Humanist Students ([FSU0019](#)); Faith to Faithless ([FSU0020](#)); The Council of Ex Muslims of Britain ([FSU0021](#)); The National Secular Society ([FSU0022](#)); and the Index on Censorship ([FSU0043](#))

50 Oxford Students for Life ([FSU0018](#)); Mr Michael Wee ([FSU0042](#)); and The Alliance of Pro-Life Students ([FSU0063](#))

51 King's College London Students' Union, [Libertarian society event](#), 6 March 2018

47. It is commendable that both the Student Union and University issued a statement the next day condemning the behaviour of protestors.<sup>52</sup> It is not clear how many of those involved in the violent protest were students but we are pleased to hear that KCL has committed to taking measures in accordance with the student disciplinary process if KCL students are found to be involved in violent protest. It should also be added that it is equally concerning if protestors were members of the public as universities need to be places for learning and debate. They should not be misused by members of the public.

48. We found the use of certain tactics in recent incidents such as the wearing of masks and hoodies or breaking into meetings, such as in the KCL incident, or intimidating filming of event attendees, as happened in the UCL event, totally unacceptable. Such tactics show that protestors are setting out to intimidate others with a view to restricting free speech.

49. The people behind the disruption at KCL are still unidentified, but some media reports have suggested that protestors belonged to a left-wing group and were protesting at the appearance of two “right-wing” speakers who had allegedly made inflammatory comments in the past. But the actions of such protestors are both paradoxical and very concerning, as is their desire to keep allegedly divisive speakers off university premises, they are creating an unsafe and intimidatory atmosphere for students at the university. While the incidents differed, we note the following points of concern:

- Attempts, sometimes successful, not just to protest, but to close down events completely, and deter similar activities;
- Intimidatory protests including activities such as the use of violence, the wearing of masks to disguise protestors’ identities; and
- In some events, protestors were from outside of the student community.

50. While some level of peaceful protest should be allowed, the levels of disruption in the above incidents are unacceptable and contrary to the university’s obligation to secure freedom of speech within the law under the 1986 Act. They could also interfere with (the speakers’ and attendees’) Article 10 rights under the ECHR to “receive and impart information and ideas.” **Students and student union representatives have the right to freedom of association and expression, which are protected by Article 10 and 11 of the ECHR, and can cover forms of peaceful protest. However, it is unacceptable for protestors to deliberately conceal their identities, break in with clear intention to intimidate those exercising their rights to attend meetings or to seek to stop events. Universities have a statutory duty to initiate disciplinary measures if individual students or student groups seek to stop legal speech, or breach the institution’s code of conduct on freedom of speech. The police should take appropriate action against individuals committing criminal acts in the course of protests.**

51. It is important to acknowledge that some groups can face significant prejudice and harassment in everyday life. Our transgender witnesses were very clear that the real risk is around the distress which could be caused by intemperate speech. Helen Belcher told us people should be able to explore and discuss ideas but:

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52 King’s College London Students’ Union, [Libertarian society event](#), 6 March 2018, and King’s College London, [Statement regarding Libertarian Society event](#), 6 March 2018

“[ ... ] there is the concept of respect. If you can do that respectfully, and sensitively to the audience, that is fine, but if you are simply going to turn around and demand that certain people should not exist, that they should not be permitted certain rights, or that rights should be taken away, it becomes slightly harder.

[ ... ] It then becomes very difficult to exist, in many ways. When your identity is being challenged at a very fundamental level and you are being told that you should not have certain rights, that in itself becomes quite threatening. Those environments become unsafe; they become a threat.”<sup>53</sup>

52. Others told us that discussion of transgender issues were shut down by student activists who extend the original purpose of “no platforming” policies, (which was to prevent fascists from speaking at universities), to include individuals and feminists who take a critical view of trans politics.<sup>54</sup> Greg Jackson on behalf of Citizen GO told us that “critical discussion of LGBT (Lesbian, gay, bisexual, transgender) issues is [ ... ] perceived as an attack on people who identify as LGBT [ ... ] students are routinely silenced/intimidated into silence by an [ ... ] authoritarian ideology frequently found in students’ unions.”<sup>55</sup> We heard evidence of attempts by students to no platform leading feminists and LGBT activists with a lengthy pedigree in campaigning for LGBT rights simply because they had defended the idea of women-only space or because they were alleged to have been transphobic because of misunderstandings about what had been said by them on a previous occasion or because they had engaged in critical debate about issues around feminism and trans politics.<sup>56</sup>

53. But the NUS and student unions argued that freedom of speech rights need to be balanced with freedom from harm, in that student unions need to promote a safe environment for students which is free from prejudice, discrimination, physical harm and verbal abuse.<sup>57</sup> The Student Unions at the Universities of Kent, Warwick and Surrey argued that it is necessary to limit speakers who “cause harm through speech” to protect marginalised groups, such as trans people, who suffer from a significant amount of discrimination in society at large.<sup>58</sup> We are concerned that such an approach is detrimental to free speech and could prevent certain debates and viewpoints being heard.

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53 [Q31](#) [Helen Belcher, Director, Trans Media Watch]

54 Index on Censorship ([FSU0043](#)) which states that “no platforming has been extended to other speakers who unions find offensive [...] The student-led practice of no-platforming and its extension beyond fascist and racist groups and speakers is one of the highly mediated reasons as to how free speech is being suppressed on campus.” See, the Universities and Colleges Christian Fellowship (UCCF) ([FSU0039](#)). See also an open letter signed by Peter Tatchell, Julie Bindel and Germain Greer in, [We cannot allow censorship and silencing of individuals](#), The Guardian, 15 February 2015

55 Greg Jackson on behalf of CitizenGO ([FSU0069](#))

56 [Q35](#) [Jane Fae, Peter Tatchell and Helen Belcher]

57 York University Student Union ([FSU0044](#)); the University of Surrey Students’ Union ([FSU0026](#)); Warwick Students’ Union ([FSU0094](#)); and the University of Kent’s Student Union ([FSU0040](#))

58 See, Warwick Students’ Union ([FSU0094](#)) which states “In the instance of speakers with problematic viewpoints (e.g. racist organisations, proponents of eugenics or Trans-Exclusionary Radical Feminists, who argue that Trans women do not have the right to be recognised or even exist as women), there exists a significant risk to marginalised groups, and both SUs and Universities have a responsibility to mitigate against this,” and written evidence from the University of Kent’s Student Union ([FSU0040](#)) which states “Trans women are subject to disproportionate violence and are at a high risk of dying by suicide. Around 40% of trans youth have attempted suicide. For these reasons, it is important to protect these students from words and people who attack their self-worth.”

54. **There are, quite properly, legal restrictions on speech. Where speech leads to unlawful harassment of individuals or groups protected by the Equality Act 2010, then this is contrary to the institution’s duty to have due regard to the need to eliminate discrimination, and would be unlawful. Mutual respect and tolerance of different viewpoints is required to hold the open debates that democracy needs. Nonetheless the right to free speech includes the right to say things which, though lawful, others may find offensive. Unless it is unlawful, speech should normally be allowed.**

### *Safe spaces*

#### **Box 8: Safe space policies**

‘Safe space’ policies are guidelines produced by student unions that aim to encourage an environment on campus free from harassment and fear. They seek to restrict the expression of certain views or words that can make some groups feel unsafe. Debates take place within specific guidelines to ensure that people do not feel threatened because of their gender, ethnicity or sexual orientation. Not all student unions have safe space policies.

55. Safe spaces aim to encourage an environment free from harassment and fear by restricting the expression of certain views or words that can make some groups feel unsafe.<sup>59</sup> Not all student unions have safe space policies and those that do will operate differently in different contexts. Written evidence from the University of Cambridge states that at Cambridge, safe space policies include women, LGBT and BME (Black and minority ethnic) and disabled student networks or campaign groups and “the existence of these groups and campaigns plays an important role in aiding the retention and supporting the progression of under-represented groups.”<sup>60</sup>

56. While the intention behind safe spaces is understandable and whilst there must be opportunities for genuinely sensitive and confidential discussions in university settings, we received evidence which showed that safe space policies, when extended too far, can restrict the expression of groups with unpopular but legal views, or can restrict their related rights to freedom of association.<sup>61</sup> Pro-life and humanist and secular groups appear to have been particularly affected by the student unions’ desire to build inclusive campuses free from harassment and fear. We were told about instances where these groups are faced with difficulties getting representation at their university’s freshers’ fayre or are subject to greater scrutiny from the students’ union during freshers’ week or have been banned entirely by the student union.<sup>62</sup> Not being able to affiliate with the student union

59 [Q15](#) [Ben Ryan (Theos Think Tank)]

60 The University of Cambridge ([FSU0059](#))

61 [Q31](#) [Alexandra Tate, President of the Reproductive and Sexual Health Society Kings College London]; Baroness Ruth Deech ([FSU0003](#)); Dr Kevin Vaughan ([FSU0004](#)); Prebendary Peter Bannister ([FSU0008](#))

62 See, written evidence from Miss Josephine Jackson, student at the University of Oxford in 2016 ([FSU0016](#)) which refers to a motion which Oxford University Student Union made in May 2014. The motion read: “OUSU resolve Never to platform any group or organisation which provides directional advice around abortion or explicitly stands against women’s right to choose.”; See Life ([FSU0058](#)) which discusses additional scrutiny by student union officers of Life Matters stalls at the freshers fayres of Brunel, Liverpool, and Bolton universities in 2017 and at Kings College London in 2018. See also, The Alliance of Pro-Life Students ([FSU0063](#)) and The Christian Action Research & Education (CARE) ([FSU0045](#)); Miss Rebecca Short, and Alliance of Pro-Life Students ([FSU0076](#)) which all mention the student union at Strathclyde University barring a group called ‘Strathclyde Life Action’ from forming a pro-life society. See also, The Alliance of Pro-Life Students ([FSU0063](#)) which mentions that in November 2017, the Protection of Unborn People Society at Glasgow University were denied affiliation with the student union because their aims did “did not align” with the ethos of the student union.



is problematic for societies as this means that the group is not able to access some of the university's resources and organise events in the same way as affiliated societies. Humanist and secular societies spoke about an incident in 2014 when student union representatives at the London School of Economics, "tore down display material" put up by the Atheist Secular and Humanist society and further compelled them to leave the fayre.<sup>63</sup>

57. They also face problems in arranging for external speakers. The Alliance of Pro-Life Students said that "pro-life societies are often given undue burden to host events" and are "subject to mediations to which other societies are not,"<sup>64</sup> while humanist groups said that student unions and universities "repeatedly shut down expressive conduct deemed by them to be wrong, offensive, or harmful, particularly with regards to criticism of religious beliefs."<sup>65</sup>

58. Pro-life and humanist groups told us that student unions were making arbitrary decisions about the views to which students should be exposed.<sup>66</sup> The Alliance of Pro-Life Students said that "many student unions do not have very clear, or very coherent, democratic policies in place, which means that voting pro-choice, or no platforming, or safe space policies into official union policy is surprisingly easy, given the restrictions they place on freedom of speech. If unions had better guidelines for democratic policies, and their union officials faced actual sanctions for disregarding freedom of speech, the union, and therefore the university environments, would become both more democratic and more open to diverse viewpoints."<sup>67</sup> Andrew Copson from Humanists UK said that in "almost every case" in which material produced by their society was banned or censored by a student union, was down to "uneven application of the rules that the student union thought it was applying at the time."<sup>68</sup>

59. While we were preparing this report, we learned that Bristol Student Union is considering a motion to "Prevent Future Trans-Exclusionary Radical Feminist (TERF) Groups from Holding Events at the University". This is an example of the regulatory complexity in this area. The student union at the University of Bristol confirmed that whilst student bodies can, and do, adopt motions, these can only be implemented by the student union charity trustees to the extent that they are compatible with the law, including charity law. The University of Bristol itself is obliged to secure freedom of speech on university premises, and to take relevant action if free speech is being unduly curtailed.

**60. Whilst there must be opportunities for genuinely sensitive and confidential discussions in university settings, and whilst the original intention behind safe space policies may have been to ensure that minority or vulnerable groups can feel secure, in practice the concept of safe spaces has proved problematic, often marginalising the views of minority groups. They need to co-exist with and respect free speech. They cannot cover the whole of the university or university life without impinging on rights to free speech under Article 10. When that happens, people are moving from the need**

63 Humanists UK and Humanist Students ([FSU0019](#))

64 The Alliance of Pro-Life Students ([FSU0063](#)) which states that the KCL Life Ethics Society has to go through additional measures to gain approval for events and that "two union officers [are] present at every event to ensure no safe space violation occurs."

65 Humanists UK and Humanist Students ([FSU0019](#))

66 Miss Rebecca Short, Alliance of Pro-Life Students ([FSU0076](#)); Margaret Akers ([FSU0065](#)); Humanists UK and Humanist Students ([FSU0019](#)) which states that misinterpretation and misapplication of the PSED results in student unions censoring criticism or ridicule of a religion or belief, or of its adherents.

67 The Alliance of Pro-Life Students ([FSU0063](#))

68 [Q16](#) [Andrew Copson]

to have a “safe space” to seeking to prevent the free speech of those whose views they disagree with. Minority groups or individuals holding unpopular opinions which are within the law should not be shut down nor be subject to undue additional scrutiny by student unions or universities.

## Regulatory barriers

61. Other than the student led activity we found there are other significant barriers in the current system, whether barriers inherent in the actual system, barriers through over-reaching guidance, or barriers caused by a misperception of what is required. There is a variety of reasons for this:

- Government policy, both in the regulatory structure in place and, more particularly, on matters such as the implementation of the Prevent duty;
- The way in which the Charity Commission for England and Wales exercises its role;
- The codes of practice on freedom of speech policies of individual institutions.

These are discussed in detail below.

## Prevent duty

62. While the Government has been concerned about the perceived decline of freedom of speech in universities, the introduction of the Prevent duty in higher education settings has made exercising freedom of speech rights more problematic.

### Box 9: The Prevent Duty

The Prevent duty is part of the Government’s wider Prevent strategy which aims to tackle the factors that predispose individuals or groups to respond to terrorist ideologies. The Prevent duty requires that specified authorities, including higher education bodies in England, Wales and Scotland, have ‘due regard to the need to prevent people from being drawn into terrorism.’<sup>69</sup> The Prevent duty is underpinned by specific statutory guidance for higher education institutions.<sup>70</sup>

## Prevent duty guidance

63. The Prevent duty guidance for higher education institutions states:

“[ ... ] when deciding whether or not to host a particular speaker, RHEBs [relevant higher education bodies] should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these circumstances the event should not be allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated

69 The Counterterrorism and Security Act 2015 states that ‘A specified authority must, in the exercise of its functions, have due regard to the need to prevent people from being drawn into terrorism.’ Schedule 6 of the Act lists ‘specified authorities’, and includes schools, most further and higher education bodies, NHS trusts and foundation trusts, local authorities, prisons, probation service providers, and the police.

70 HM Government, [Prevent Duty Guidance: for higher education institutions in England and Wales](#), 12 March 2015, HM Government, [Prevent Duty Guidance: for higher education institutions in Scotland](#), 12 March 2015

without cancellation of the event [ ... ]. Where RHEBs are in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed.”<sup>71</sup>

64. This appears to counter the institution’s duty to secure freedom of speech by requiring it not to proceed if there is *any* doubt about the ability to *fully* mitigate any risk associated with hosting “extremist” speakers. As Helen Mountfield QC told us, this encourages universities to have an “overanxious approach to stopping speech for fear that it might be an indicator of a view”<sup>72</sup> even where such speech is not unlawful.

65. Universities UK told us that the Government’s Prevent policy has created “a grey area in relation to free speech which did not previously exist,”<sup>73</sup> while student unions said that a “lack of clarity regarding which views might be considered extremist, and the lengthy bureaucracy required to record and investigate events—particularly those which involve external speakers—have resulted in both students and staff self-censoring.”<sup>74</sup>

66. Several witnesses expressed concerns about potential lack of clarity around the use of the term “extremism” (in the Prevent duty guidance for specified authorities). The Government has defined “extremism” as “vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs.”<sup>75</sup> In our report on Counter-Extremism, we raised concerns about the lack of consensus on the definition of what constitutes “extremism,” and the likelihood of this causing particular problems in the university setting due to the importance of freedom of speech.<sup>76</sup>

67. Other terminology in the Prevent duty guidance which is problematic for securing freedom of speech is the inclusion of the term “non-violent extremism” which is seen as subjective and open to interpretation.<sup>77</sup> Some groups expressed concerns that these terms were so broad that they captured those with unpopular opinions or views that were different from the mainstream. For example, written submissions from organisations like Faith to Faithless and Christian Action Research and Education said that the current definitions were being misapplied to them instead of applying to groups or individuals that could draw people into terrorism.<sup>78</sup>

71 HM Government, [Prevent Duty Guidance: for higher education institutions in England and Wales](#), 12 March 2015

72 [Q26](#) [Helen Mountfield QC]. Universities UK ([FSU0010](#)) and [Legal opinion for the National Union of Students](#), Christopher McCall, Maitland Chambers, and Raj Desai, Matrix Chambers, para 127

73 Universities UK ([FSU0010](#))

74 Edinburgh University Students’ Association ([FSU0061](#)). Also, see other evidence which criticised the broad definition of extremism: written evidence from the University of Sheffield Students’ Union ([FSU0041](#)); The University of Huddersfield Students’ Union ([FSU0073](#)); The Union of Brunel Students ([FSU0032](#)); Dr Kevin Vaughan ([FSU0004](#)); Ian Cram Professor of Comparative Constitutional Law, Leeds University ([FSU0005](#))

75 HM Government, [Counter-Extremism Strategy](#), October 2015, p 9. The same definition is adopted in the Prevent duty guidance for specified authorities in England and Wales, and in the separate guidance for specified authorities in Scotland.

76 Joint Committee on Human Rights, Second Report of Session 2016–17, [Counter-Extremism](#), HL Paper 39/HC 105, p 30

77 Universities UK ([FSU0010](#)). Also, Professor Steven Greer, whose recent research suggested that the Prevent duty was compatible with human rights law, accepted that the inclusion of the term non-violent extremism in the guidance was problematic, see, [Counter-Terrorist Law in British Universities: A Review of the “Prevent” Debate](#), Public Law, Vol. 2018, No. January, 01.01.2018, p 84–105, January 2017, p 85

78 The Christian Action Research & Education (CARE) ([FSU0045](#)); Faith to Faithless ([FSU0020](#))



68. The recent judgment in *Salman Butt v. Secretary of State for the Home Department* has brought some clarity.<sup>79</sup> First, it has been made clear that the guidance is restricted to views which actively risk drawing others into terrorism and that: “If there is some non-violent extremism, however intrinsically undesirable, which does not create a risk that others will be drawn into terrorism, the guidance does not apply to it.” Second, it has also made clear that despite the references to the need to “fully mitigate” risks or cancel the event within the guidance, universities in fact have to balance their duties under the Prevent guidance with their duty to secure freedom of speech.

**69. We note the clarity brought by the judgment in *Salman Butt v Secretary of State for the Home Department*, which affirms the legality of the Prevent duty guidance for Higher Education, clarifies that the type of speech to which the guidance applies is that which risks drawing people into terrorism and explains how the Prevent duty has to be balanced against the statutory duty to secure freedom of speech. It is unfortunate that the Guidance is not clear on its face without users also having to separately know that they need to refer to the case law. We recommend that the guidance is brought up to date to reflect that judgment and that the Government review its definition of extremism in all official documents, in light of the judgment.**

#### *Effect of Prevent duty on free speech*

70. The Government told us it is not aware of any events being cancelled following the introduction of the Prevent duty and this was a key indicator to show that the duty had not inhibited freedom of speech.<sup>80</sup> According to HEFCE’s monitoring of the Prevent duty, institutions are adequately balancing the Prevent duty with the duty to ensure freedom of speech. For the year 2015–16, HEFCE found that only a small number of events and external speakers were referred to the highest level of approval required by the university’s processes.<sup>81</sup> Professor Stephen Greer of Bristol University told us “[t]he Prevent duty is not about cancelling events at all, but about evaluating and managing risk and threats to health and safety.”<sup>82</sup>

71. However, we received a large amount of evidence in which it was suggested that it is difficult to measure the impact of Prevent on freedom of speech in universities and whether it is having a “chilling effect.”<sup>83</sup> We were told that students are dissuaded from setting up events both because of the increased levels of bureaucracy and out of fear of being referred under Prevent for mistakenly inviting ‘extremist’ speakers.<sup>84</sup> Northumbria

79 See *R (Salman Butt) v Secretary of State for the Home Department* [2017] EWHC 1930 (Admin), [para 30](#)

80 See Department for Education and the Home Office ([FSU0023](#)) which states that another key indicator of whether the duty has impacted freedom of speech in universities includes that no higher education institution came forward in a judicial review into the lawfulness of the Prevent duty, to express concerns about difficulties in securing freedom of speech because of the duty. See also, [Q55](#) (Professor Steven Greer, University of Bristol).

81 HEFCE, [Analysis of Prevent annual reports from higher education providers for activity in 2015–16](#), 2017, p 30, states that in the year 2015–16, 147 events and 190 speakers were referred to the highest levels of approval required by the provider’s procedure. HEFCE’s submission to us states that “while providers are able to assure themselves that policies are being implemented in a way that is compatible with freedom of speech, it is more difficult to rule out the possibility that potential events or external speakers may have been deterred by the existence of these policies. However, we have no evidence that this is the case,” see written evidence from the Higher Education Funding Council for England ([FSU0055](#)).

82 [Q55](#) [Professor Steven Greer]

83 Professor Alison Scott-Baumann with Simon Perfect ([FSU0075](#))

84 Northumbria Students’ Union ([FSU0013](#)); The University of Edinburgh’s Student Association ([FSU0061](#)); Heriot-Watt University Student Union Executive Committee ([FSU0024](#)); and the University of Sussex Islamic society ([FSU0083](#)).

Student Union told us “ [ ... ] since the advent of Prevent [ ... ] there is an increased bureaucratic process required to vet speakers to satisfy all parties [ ... ] the level of scrutiny the Union must bring has served to dissuade student groups from the effort of inviting speakers or they have thought to invite ‘safer’ speakers.” Paul Bowen QC told the Committee: “students themselves felt constrained from even inviting certain speakers because they were afraid of being labelled as extremist themselves by inviting someone who might be seen as extremist.”<sup>85</sup>

72. The Prevent duty may have a wider effect than simply deterring student unions from inviting individual speakers. Written submissions from the Student Union at the University of Oxford and the NUS Black Students’ Campaign state that students, particularly Muslim students, have been dissuaded from becoming involved in student activism out of fear of being reported under the Prevent duty for expressing opinions on certain issues.<sup>86</sup> Frida Gustafsson told us that some students were even afraid of going to the campus prayer room “because they have been asked in interviews how many times a day they pray—as if that has anything to do with how likely you are to fall for extremism.”<sup>87</sup> When asked about the impact of the Prevent duty in universities, Patrick Kilduff, President of the Student Association at the University of Edinburgh, said:

“That is the trouble: we can tell you that we have had 5,462 events in the past year, but I cannot tell you all the events that we have not had. I can only tell you anecdotally that we have a number of students from BME backgrounds, Jewish backgrounds and especially Muslim backgrounds who come to us with concerns about hosting events or taking part in certain things because there are such grey areas around the policy, its implementation, our duty to enforce it and what the ramifications could be in the university and in civil society.”<sup>88</sup>

### *Lack of transparency*

73. There is a reason for Prevent. As the Minister for Security said:

“We know that there are and have been terrorist radicalisers and recruiters, and terrorists active on campus, who have recruited young men and women into terrorism. We know that from some convictions. I can give an example of someone who was head of Society X; one is currently serving time in prison for a terrorist plot to kill police and soldiers. He was head of one society at the university and engaged busily in more than just espousing his beliefs, so we know that it is a recruiting ground. We have intelligence to suggest that young minds are targeted in schools and in other education”.<sup>89</sup>

85 Paul Bowen QC: [Informal meeting](#), 6 December 2017

86 The Oxford Students Union ([FSU0029](#)); NUS Black Students Campaign (BSC) ([FSU0066](#))

87 [Q44](#) [Frida Gustafsson, University of Sussex]

88 [Q44](#) [Patrick Kilduff, Student Association at the University of Edinburgh]

89 [Q74](#) [Rt Hon Ben Wallace MP, Minister of State for Security and Economic Crime, Home Office]

74. Professor Steven Greer told us “terrorist organisations target student societies, and target students because they are students.”<sup>90</sup> The Government told us that Prevent is about safeguarding vulnerable people rather than pursuing terrorist threats.<sup>91</sup> But the Prevent programme will be counterproductive if it provokes mistrust.

75. In the Committee’s 2016 report on Counter-Extremism, the Committee found that “it is very easy for dangerous myths to be spread about Prevent” and recommended that the “only way for these to be dispelled is for there to be rigorous and transparent reporting about the operation of the Prevent duty.”<sup>92</sup> We welcome the fact that the Government has now published figures about individuals referred to and supported through the Prevent Programme in the period between April 2015 to March 2016.<sup>93</sup> Nonetheless in the Higher Education sector, Prevent continues to operate with limited transparency.

76. HEFCE receives returns from universities on their implementation of the Prevent duty. While HEFCE publishes a high-level report about providers’ compliance with the duty, returns from individual institutions are not published and we were told by the Minister of State for Security and Economic Crime, Rt Hon Ben Wallace MP, that the reports are not even seen by the Home Office. The Information Commissioner has upheld a decision not to release them on national security grounds.

77. In oral evidence Sir Michael Barber told us that while he did not expect to make immediate changes:

“[ ... ] as a general point we want to come up with things in a spirit of transparency. Some of the information in the Prevent submissions that come in might be quite sensitive and relate to individuals, to people on the Channel programme or to student welfare referrals and so on. There may be some bits that you would not want to make public. There are also potential reputational issues. I think that we will talk again about what could or might be published from those, rather than necessarily adhering to not publishing them at all. We have not made a decision on that. The OfS will look into if whether some parts of the reports could be published.”<sup>94</sup>

### *Review of the Prevent duty*

**78. *The Committee strongly endorses the need for Prevent as a strategy for preventing the development of terrorism. However, the Committee said in 2016 that rigorous and transparent reporting is needed to dispel myths about Prevent and called for an independent review of the Prevent policy in its report on Counter Extremism. We repeat that recommendation; we consider any such review should include an assessment of the Prevent duty’s effectiveness in higher education, and its impact on freedom of speech and association. Such a review should also include consideration of whether Prevent duty reports should be published, and on what basis.***

90 [Q56](#) [Professor Steven Greer] and [Q74](#) [Rt Hon Ben Wallace MP]

91 Supplementary written evidence from the Department for Education ([FSU0105](#))

92 Joint Committee on Human Rights, Second Report of Session 2016–17, [Counter-Extremism](#), HL Paper 39/HC 105, para 50

93 Home Office, [Individuals referred to and supported through the Prevent Programme](#), April 2015 to March 2016, 9 November 2017

94 [Q67](#) [Sir Michael Barber]

### *Charity Commission's regulation of student unions*

79. The involvement of two regulators in England<sup>95</sup> (the Higher Education Funding Council for England for universities and the Charity Commission for student unions) as well as the sometimes-competing differences in legal duties applicable to universities and student unions make the regulatory environment within which universities operate complex. As we have seen, the positive duty to secure freedom of speech within the law which bites on universities does not apply to student unions in the same way. Student unions are expected to adhere to Charity Commission guidance. If the Commission takes a heavy-handed approach, there is a risk that universities and student unions will be pulled in opposite directions.

### *Guidance and approach*

80. The Charity Commission's regulation of student unions and its impact on the freedom of speech of student union officers emerged as a significant issue over the course of this inquiry.<sup>96</sup> The Commission's guidance relating to political activities, campaigning and inviting external speakers is particularly problematic. Much of this advice is generic, but the Charity Commission's Operational Guidance on student unions causes problems. This states that a student union "should not comment publicly on issues which do not affect the welfare of students as students."<sup>97</sup> It lists commenting on the treatment of political prisoners in a foreign country, planning proposals for new roads or motorways which have no direct effect on the university campus or the students and campaigns to outlaw the killing of whales as such issues.<sup>98</sup> Whilst we understand from a legal opinion given to the NUS that it is possible to take the view that this guidance is intended to be solely directed to public comment by trustees or other organs of the union with the power to bind the union to action,<sup>99</sup> there is confusion around what student unions feel they can comment on.<sup>100</sup>

95 For Scotland, Northern Ireland and Wales, see Chapter two.

96 See the University of Surrey Students' Union ([FSU0026](#)) which says that the Charity Commission and the Prevent duty conflict most with the duty to secure freedom of speech, and, Jim Dickinson, Chief of Staff, UEA Students' Union ([FSU0002](#)) which refers to "extensive guidance on student unions and universities to manage the risks associated with external speakers." See also, [Q13](#) [Alyaa Ebbiary]; Peter Baran, General Manager SOAS Students' Union ([FSU0048](#)); See [Q21](#) [Ben Ryan Theos Think Tank]; [Q45](#) [Frida Gustafsson, University of Sussex]; Simon Perfect and Professor Alison Scott-Baumann, SOAS ([FSU0074](#))

97 Charity Commission for England and Wales, *Operational Guidance 48: Students' unions - B3 2, Political activities and campaigning*, Commenting on public issues, [para. 2.2](#)

98 Charity Commission for England and Wales, *Operational Guidance OG48 B3, 2. Political Activities and Campaigning, 2.2. Commenting on Public Issues*, 2001

99 [Legal opinion for the National Union of Students](#), Christopher McCall, Maitland Chambers, and Raj Desai, Matrix Chambers, p 11

100 See [Q21](#) [Andrew Copson, Humanists UK and Ben Ryan Theos Think Tank]; and [Q29](#) where Helen Mountfield QC said that, "The Charity Commission has guidance for student unions that says that offices of student unions should not comment publicly on issues that do not affect the welfare of students. Again, I do not think that is right [...] the main charitable object of most student unions is to promote education and the interests of students. It depends on the precise deeds setting them up, but most would also say that they promote or provide a platform for education and debate of controversial ideas. The Charity Commission's view is that that expression of opinion goes beyond the student union's charitable objects and I think that rather depends on the way in which the opinion is presented. I think it goes too far and may suppress speech that is actually lawful and within the student union's charitable objects;" and [Q48](#) [Wes Streeting MP]; and further supplementary written evidence from Simon Perfect, and Professor Alison Scott-Baumann ([FSU0099](#)) which said "some officers wanted to comment on 'political' issues (such as government austerity measures), which they felt their students cared about, but refrained from doing so to adhere to the charity rules."

81. Research conducted by Simon Perfect and Professor Alison Scott Baumann which interviewed 26 people with insight into student unions including Chief Executive Officers, found that some student union officers felt caught in a bind as they are elected by students to represent them on the issues students are passionate about, but as charity trustees they cannot make public statements on issues of politics that do not affect students ‘as students’.<sup>101</sup> Commenting on the Commission’s approach to regulation of student unions, Professor Adam Tickell, Vice-Chancellor at the University of Sussex, said that:

“For me, some of the expectations of the Charity Commission miss a really important point, which is that many students get involved in politics in student unions because it is part of their political formation. If you inhibit people’s political formation, it is to the detriment of our democracy.”<sup>102</sup>

82. The Charity Commission’s guidance issued in 2013, “Protecting charities from harm,” also encourages unions to take a risk averse approach when hosting events involving “controversial”<sup>103</sup> external speakers:

“Under charity law, all charities must work for the public benefit and must act to avoid damage to the charity’s reputation, assets and associated individuals. All charities, including higher education institutions, debating societies and student unions can be challenged on whether they have given due consideration to the public benefit and associated risks when they, or one of their affiliated societies, invite controversial or extremist speakers to address students.”<sup>104</sup>

There are some parallels to the Prevent duty guidance for higher education institutions, in that it cautions student unions to manage risks associated with giving a “platform to speakers who condone terrorism or other illegal activity, or who express extremist views.”<sup>105</sup> But, in contrast to the Prevent duty, it does not “give enough weight or express recognition to the specific context of universities and the s.43 statutory duty on universities” to secure free speech within the law on the university’s premises (including the extended scope of s.43 to student union premises).<sup>106</sup> Gary Attle from Mills and Reeve LLP said that the Commission’s guidance:

“[ ... ] contrasts with the way in which the Counter-Terrorism & Security Act 2015 includes an express ‘counterweight’ to the requirement to have ‘due regard’ to the statutory Prevent duty by requiring relevant bodies to have ‘particular regard’ to the s.43 statutory duty to secure freedom of speech in universities.”<sup>107</sup>

101 Professor Alison Scott-Baumann, SOAS ([FSU0075](#))

102 [Q45](#) [Professor Adam Tickell, Vice-Chancellor, University of Sussex]

103 See, Charity Commission for England and Wales, [Compliance toolkit: Protecting Charities from harm. Protecting Charities from Harm, Chapter 5: Protecting Charities from abuse for extremist purposes, 2013](#), which states that “The trustees must be able to show that an activity is in furtherance of the charity’s purposes. Even if this can be shown, expressing or promoting extreme, partisan or controversial views on a particular issue as part of that activity may compromise the charity’s integrity, purposes or public trust and confidence in it. It may pose or result in risks to the charity’s operations and other activities, or safety of its staff and volunteers...”

104 Charity Commission for England and Wales, [Compliance Toolkit: Protecting Charities from Harm, Chapter 5: Protecting Charities from abuse for extremist purposes](#), p 25

105 See, Charity Commission for England and Wales, [Compliance toolkit: Protecting Charities from harm. Protecting Charities from Harm, Chapter 5: Protecting Charities from abuse for extremist purposes, 2013](#), p 16

106 Supplementary evidence from Gary Attle, Mills and Reeve LLP ([FSU0104](#))

107 Supplementary evidence from Gary Attle, Mills and Reeve LLP ([FSU0104](#))



83. Witnesses were concerned about the Charity Commission’s approach to regulating student unions like other charities. Frida Gustafsson, President of the Student Union at the University of Sussex, said:

“[ ... ] we are not like any other charities out there. For example, taking a risk-based approach might be useful in making sure that our platform is not misused by political groups—but its [the Charity Commission’s] idea of risk is controversial debates, which I would say are the very foundation of our existence. It should be helping us and enabling us to do that well and enabling everyone’s free speech and right to feel not discriminated against or harassed, rather than limiting us in doing that.”<sup>108</sup>

Mr Jacob Rees Mogg MP told us that as a trustee of the Oxford Union, he was more concerned about the Charity Commission “saying that it is against the charitable objectives to invite somebody with controversial views” than students objecting to controversial speakers.<sup>109</sup> Mr Rees-Mogg further disagreed with the Commission’s requirement for student unions to “have appropriate policies and procedures in place and ensure they take reasonable steps to protect their charity”<sup>110</sup> when organising events which are “controversial.” Mr Rees-Mogg said that not only is developing such policies time consuming but that in his view: “it is a matter of routine law that, if we invite people who break the law, we should certainly get into trouble, but if we invite people, whatever their views, who do not break the law, I have never really thought that it was the business of the Charity Commission. But we are worried that, for our charitable status, we have to go along with the requirements that it makes.”<sup>111</sup>

84. In oral evidence, Patrick Kilduff, President of the Student Association at the University of Edinburgh, told us that the Office of the Scottish Charity Regulator (OSCR) had not imparted any specific guidance on “what student unions can or cannot do with speakers” adding that this was to their benefit.<sup>112</sup> According to the NUS, the Charity Commission for England and Wales has been perceived to take a more restrictive approach in their regulation of student unions in respect of political activities and campaigning in comparison to the other regulators in the UK, the OSCR and Charity Commission for Northern Ireland (CCNI).<sup>113</sup>

**85. Concerns on the part of student unions about Charity Commission powers, and about whether they risked ‘ultra vires actions’ (which appeared to be prompted by the Charity Commission’s guidance) have more impact, and misunderstandings are more widespread, than we had anticipated. The Charity Commission is under a legal obligation to regulate charities, and does so through guidance, but its current approach does not adequately reflect the important role student unions play in educating students through activism and debate. Moreover, the generic guidance on protecting a charity’s reputation does not place due weight on the fact that inhibiting**

108 [Q45](#) [Frida Gustafsson, University of Sussex]

109 See, [Q84](#) [Mr Jacob Rees-Mogg MP], “I think that the students like pushing the boundaries of freedom of speech but that other places try to stop it.”

110 Charity Commission for England and Wales, [Compliance toolkit: Protecting Charities from harm. Protecting Charities from Harm, Chapter 5: Protecting Charities from abuse for extremist purposes, 2013](#), p 11

111 [Q84](#) [Mr Jacob Rees-Mogg MP]

112 [Q45](#) [Patrick Kilduff, President, Student Association at the University of Edinburgh]

113 Supplementary evidence from the National Union of Students ([FSU0107](#))

**lawful free speech can do as much damage to a student union’s reputation as hosting a controversial speaker. We welcome the fact that the Charity Commission has told us it will reassess its approach. We make further recommendations about this below.**

86. There were also concerns about the Charity Commission’s role in dealing with complaints against student unions who host controversial speakers. The Charity Commission told us that over the last two financial years they had investigated only seven cases at six student unions.<sup>114</sup> In some instances the investigations were prompted due to the student union allegedly hosting speakers with “controversial” views which could be unlawful under the Equality Act. *We understand that the Charity Commission may be impelled to act if other regulators or universities themselves do not. We also accept that in some cases a Charity Commission inquiry could be more appropriate than, for example, a police investigation. Nonetheless, the Charity Commission should be careful to ensure its actions are proportionate, are understood by student unions, and do not unintentionally inhibit lawful free speech.*

### **Bureaucracy**

87. Some universities’ codes of practice on freedom of speech appear to inhibit free speech within the law rather than enhance it. While many policies are excellent, some are unclear, difficult to navigate, or impose bureaucratic hurdles which could deter students from holding events and inviting external speakers. Ben Ryan from Theos Think Tank told us that clubs and societies felt that “burdens placed upon them to book speakers, comply with the rules or work with student unions exceed what they should be, and that this has caused a chilling effect on their ability to operate as healthy societies within a university.”<sup>115</sup>

88. Again, we wanted to make sure our findings were evidence-based rather than anecdotal. We commissioned research from HEPI who analysed a sample of policies from UK higher education institutions to determine whether they assist free speech or are likely to frustrate it.<sup>116</sup> HEPI’s analysis shows that codes of practice across the higher education sector vary in format, style and contents. Length of the policies range from three pages to forty-seven pages, while the timescales required by the universities to assess whether an event should go ahead as planned or not range from five days to one month.<sup>117</sup> The analysis further revealed that while some codes of practice and associated procedures relating to external speakers were very accessible and made it easy for event organisers to arrange

114 [Q61](#) [Michelle Russell, Charity Commission for England and Wales]

115 See [Q13](#) [Ben Ryan from Theos Think Tank]. Yusuf Hassan from FOSIS said “As an Islamic society president you have to do the amount of bureaucracy required of a part-time job just to sustain the society. As an Islamic society, you have to fill in an excessive number of forms.”

116 HEPI analysed 20 higher education institution’s codes of practice on freedom of speech. The vast majority of these were in England and Wales as it is in these jurisdictions that the requirement to have a code applies. The University of Edinburgh has a policy on speakers and events, and so it was included in the sample. It should also be noted that most universities have chosen to entitle their free speech policies as a ‘code of practice’, but some institutions have different names. See, Higher Education Policy Institute, [An analysis of UK university free speech policies prepared for the Joint Committee for Human Rights](#), Dr Diana Beech, Director of Policy and Advocacy, Higher Education Policy Institute, 9 February 2018

117 HEPI’s analysis states that longer policy documents are not necessarily more arduous or complicated, but tend to contain additional material of assistance to event organisers, including flowcharts, relevant legislation and sample application forms, while the inclusion of process flowcharts can help event organisers to visualise what is required of them in a step-by-step way, See, Higher Education Policy Institute, [An analysis of UK university free speech policies prepared for the Joint Committee for Human Rights](#), Dr Diana Beech, Director of Policy and Advocacy, Higher Education Policy Institute, 9 February 2018, p 35

events, the majority left it up to the reader to find the related policies, codes, templates or forms required to arrange an event.<sup>118</sup> Without proper listing of related procedures, and active internet links it is often difficult for potential event organisers to find the documents they need swiftly and easily.<sup>119</sup>

89. It is also clear that universities have different views on the reasons for their codes of practice. Our research from HEPI explored this in detail:

Some institutions have chosen to explain the purpose of their free speech documents in the main body of the text. Of those that have done so, some see it as positively promoting not just free but also respectable speech, while others see it as a necessary compromise between two sets of competing duties. The universities clearly using their codes of practice to bolster their commitment to free speech are:

- Canterbury Christ Church University, which sets out the purpose of its code as being “to provide means of ensuring debate and challenge are not only permitted but promoted”; and
- the University of Cambridge, which uses its statement on free speech as a weapon against extremist views. It states: “Debate, discussion and critical enquiry are, in themselves, powerful tools in preventing people from being drawn into terrorism. The University has drawn up this Statement with these principles in mind”.

Other universities have nevertheless assumed a more resigned tone and have chosen to include in their codes of practice an acknowledgement of the dilemma facing them, having obligations to protect freedom of speech on the one hand, yet to prevent against the promotion of extremist views on the other. These universities explicitly refer to their need to balance these competing duties. For example:

- the University of Wolverhampton’s code of practice states that it has been approved “to balance, where it is reasonably practicable, its obligations to secure academic freedom of speech with its duties to ensure the law is observed”;
- the University of Edinburgh’s code admits “the University must balance its obligation to secure free speech against its duty to ensure that the law is observed”; and
- the University of Sussex’s code of practice explains “there is a delicate balance to be maintained when some of these duties appear to be at odds with others, or where issues overlap”.

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118 Higher Education Policy Institute, [An analysis of UK university free speech policies prepared for the Joint Committee for Human Rights](#), Dr Diana Beech, Director of Policy and Advocacy, Higher Education Policy Institute, 9 February 2018, p 20

119 Higher Education Policy Institute, [An analysis of UK university free speech policies prepared for the Joint Committee for Human Rights](#), Dr Diana Beech, Director of Policy and Advocacy, Higher Education Policy Institute, 9 February 2018, p 19



Such admissions of compromise and balance serve to warn readers of the complexity of the policies that follow and act almost as a disclaimer for the processes and procedures the universities have opted to implement.<sup>120</sup>

90. Liam Kelly, a student from the University of Leeds, made clear the confusion which can arise if a policy is not clear. He noted that his institution’s “Protocol on Freedom of Expression” states that the university will tolerate a wide range of views, including those that are unpopular, controversial and provocative, providing that the event will not give “rise to an environment in which people will experience—or could reasonably fear—harassment, intimidation, verbal abuse or violence [ ... ]”.<sup>121</sup> He considered that the lack of guidance from the university on what constitutes “harassment” was problematic as discussion of controversial ideas could lead to students fearing harassment which in turn suppressed legitimate freedom of expression.<sup>122</sup>

**91. Universities must strike a balance to ensure they respect both their legal duty to protect free speech and their other legal duties to ensure that speech is lawful, to comply with equalities legislation and to safeguard students. It is clearly easier to achieve this if debate is carried out in a respectful and open way. But the right to free speech goes beyond this, and universities need to give it proper emphasis. Indeed, unless it is clearly understood that those exercising their rights to free speech within the law will not be shut down, there will be no incentive for their opponents to engage them in the debate and therefore to bring the challenge that is needed to develop mutual understanding and maybe even to change attitudes.**

92. Some level of process is needed for inviting speakers to universities. Leaving aside the desire to ensure that institutions are not facilitating speakers with illegal views, universities and student unions have to consider whether speakers may give rise to protests and so require additional security.

**93. It is reasonable for there to be some basic processes in place so that student unions and universities know about external speakers. Codes of practice on freedom of speech should facilitate freedom of speech, as was their original purpose, and not unduly restrict it. Universities should not surround requests for external speaker meetings with undue bureaucracy. Nor should unreasonable conditions be imposed by universities or student unions on external speakers, such as a requirement to submit their speeches in advance, if they give an assurance these will be lawful.**

94. We heard that in some cases where there is strong opposition to certain speakers, arranging additional security can be burdensome for some institutions. We were told SOAS spent £6,000 on security for a speech by the Israeli ambassador to Britain, Mark Regev, but that the university considered it important to ensure the event could take place.<sup>123</sup> But security should not be a barrier. Joanne Midgley of the University of the West of England told us that for a campus university:

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120 Higher Education Policy Institute, [An analysis of UK university free speech policies prepared for the Joint Committee for Human Rights](#), Dr Diana Beech, Director of Policy and Advocacy, Higher Education Policy Institute, 9 February 2018, p 15

121 Liam Kelly, Student of Law, University of Leeds ([FSU0050](#))

122 Liam Kelly, Student of Law, University of Leeds ([FSU0050](#))

123 [Q55](#) [Professor Alison Scott-Baumann, SOAS]

“[ ... ] we have security on site 24 hours a day, seven days a week. More importantly, it is a critical part of the university experience for our students to be exposed to views that differ from theirs and to have the opportunity to discuss and debate them. So certainly, on the basis of the cost of security, we will not be seeking to reduce the number of external speakers whom we bring on site.”<sup>124</sup>

**95. We welcome the fact that many universities are prepared to fund the security necessary to ensure controversial speakers can be heard in safety. Where feasible, if security is needed to ensure a legal event can proceed safely, it should be provided so the event can go ahead. Such security should be adequate according to the risks envisaged. Effective action should be taken against protestors who themselves go beyond the law. The more it is accepted that the right to protest is vital, but does not extend to intimidation or attempts to close events down, the less burdensome this will become.**

## 5 The way forward

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96. This inquiry began as an attempt to find out if the Government was right to be concerned about freedom of speech in universities, and, if so, whether its approach to securing free speech was the correct one. We have discovered there are inhibitions on free speech, which come from a number of sources. In April this year, the OfS will begin to take responsibility for this in universities in England.

97. The Government expects OfS to take an interventionist approach to monitoring freedom of speech,<sup>125</sup> while Sir Michael Barber told us that the OfS would like maximum freedom of speech within the law but it will not be “interfering endlessly on this” adding that he did not expect to use the range of powers that the OfS will have at its disposal. It is important that the Government and the OfS talk to each other about the OfS’ approach to promoting freedom of speech, especially given that our inquiry has revealed the following things:

- the level of students restricting each other’s free speech is not a universal problem but whilst most student union officers who responded to our survey say that they are confident that they and their companions can speak freely, we have ascertained that, as outlined in this report, there have been, and continue to be, unacceptable incidents, and such disincentives could be having a wider “chilling effect” on free speech which is hard to measure. A much broader survey of students’ opinion would be needed to assess levels of confidence amongst the student body as a whole;
- some groups have expressed concerns about the OfS’ role in monitoring freedom of speech in respect of the impact this could have on institutional autonomy. Universities UK and London South Bank University have expressed concerns around the OfS becoming a regulator of free speech, arguing that it would compromise the autonomy of universities. Sir Timothy O’Shea told us that the OfS’ proposals appear to be a move towards “increased bureaucratic intervention and a possible decrease in university autonomy” neither of which he said are productive.

98. *We welcome the OfS’ strong support of free speech. We would expect the OfS to intervene if problems emerged at particular institutions. They should ensure that university policies do not inhibit legal free speech and are not overly burdensome. To help facilitate this, the OfS should have an accessible means of feedback for students to report incidents of intimidation and issues related to free speech, on which the OfS could act as an arbiter between the students, student unions and universities. The OfS should also visit universities that have faced issues regarding freedom of speech, and ensure universities and student unions are respecting this right. The OfS should report annually on free speech in universities, including naming when universities have been non-compliant with their responsibility to secure free speech, under the Education Act 1986.*

99. Until recently, the Government’s approach has been strong on rhetoric, but short on clarity. There are welcome signs that this is changing. We noted the conflicting guidance from Government itself in terms of higher education bodies’ duties to secure free speech

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125 [Q72](#) [Mr Sam Gyimah MP]

and, under the Prevent duty, to mitigate risks of nonviolent extremism; we also noted the conflict between the Charity Commission approach and the free speech duty. In addition, there is guidance for student unions from the NUS, and the various policies set out by individual universities. This plethora of material is likely to confuse both university administrators and student unions.<sup>126</sup> We put our concerns to the Universities Minister who agreed that more clarity was needed:

“The Committee is right to point this out. You have the 1986 Act; a new regulator, the Office for Students; the Charity Commission; the autonomy of universities; and within universities you have the NUS, but you also have clubs and societies. I am holding this summit to thrash out not only where the responsibilities lie but to make sure that they do not cut across each other and in so doing achieve the opposite of what all these guidelines are meant to achieve, which is to promote free speech.”<sup>127</sup>

We also noted his view of the Charity Commission guidance where he welcomes the commitment to clarify its guidance but noted:

“I think it needs to go further and facilitate the promotion of free speech. It should be giving student unions the permission to host debates about controversial issues and expose students to a wide range of viewpoints. That should be the core purpose”.<sup>128</sup>

**100. It is welcome that the Government is taking a broad look at the policy context for freedom of speech, and that the Minister plans to hold a summit with key bodies to work out where responsibilities lie and how all bodies can work together to promote freedom of speech. The Government should ensure that all bodies with an interest in this area, such as the EHRC, are included in this summit to ensure a joined-up approach across the different bodies. Moreover, although we understand that this is a complex area, the Government should consider whether there is any case for the OfS to take over the regulation of student unions rather than the Charity Commission.**

**101. This dialogue, and intervention to ensure that the Government itself and associated regulatory bodies are working coherently, is long overdue. The Government should ensure that all relevant organisations are included in this process. Both the Prevent duty guidance for higher education institutions and the Charity Commission guidance to student unions should be reviewed. The Government should take the lead in encouraging all the bodies involved in this field to produce coherent, consistent and accessible guidance and material by January 2019 at the latest, paying full attention to the extent of universities’ legal responsibilities to secure free speech.**

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126 [Q29](#) (Aileen McColgan): “but a university administrator sitting in his or her office trying to work out how to keep all these balls in the air is not well served by the guidance. Having a single piece of guidance which would pull together freedom of expression implications, the public-sector equality duty, the Prevent duty and give some practical guidance would be massively helpful.”

127 [Q73](#) (Mr Sam Gyimah MP)

128 [Q73](#) (Mr Sam Gyimah MP)

**102. The OfS will not take up its full regulatory role until 2019. In the meantime, clear guidance on the importance of free speech and in the legal restrictions upon it is needed. We have ourselves published guidance to assist student bodies and societies, universities (and the Charity Commission) which need to decide where the boundaries lie, and we have annexed it to this report.**

## Conclusions and recommendations

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### The scale of the problem

1. Any inhibition on lawful free speech is serious, and there have been such incursions, but we did not find the wholesale censorship of debate in universities which media coverage has suggested. There are real problems which act as disincentives for students to put on challenging events and whilst most student union officers who responded to our survey (comprising 33 responses in all) say they are confident that they and their companions can speak freely, such disincentives could be having a wider 'chilling effect', which is hard to measure. A much broader survey of students' opinion would be needed to assess levels of confidence amongst the student body as a whole. (Paragraph 37)

### No platforming policies

2. Student groups are not obliged to invite a particular speaker just because that person wants to speak at the university, or to continue with an invitation if they freely decide they no longer wish to hear from a particular person. Speakers are at liberty to decline to share a platform with those they oppose. Speakers can also decline to attend events if they do not wish to comply with conditions (including reasonable conditions such as lawful speech or being part of a balanced panel). None of these is an interference on free speech rights. However, the imposition of unreasonable conditions is an interference on free speech rights. We do not, for example, consider it a reasonable condition that, if a speaker gives an assurance that their speech will be lawful, they be required to submit a copy or outline of their speech in advance. (Paragraph 41)
3. In our view, freedom of expression is unduly interfered with:
  - when protests become so disruptive that they prevent the speakers from speaking or intimidate those attending;
  - if student groups are unable to invite speakers purely because other groups protest and oppose their appearance; and
  - if students are deterred from inviting speakers by complicated processes and bureaucratic procedures.

It is clear that, although not widespread, all these problems do occur and they should not be tolerated. (Paragraph 42)

### Intolerance towards some groups and issues & disruptive protests

4. Students and student union representatives have the right to freedom of association and expression, which are protected by Article 10 and 11 of the ECHR, and can cover forms of peaceful protest. However, it is unacceptable for protestors to deliberately conceal their identities, break in with clear intention to intimidate those exercising their rights to attend meetings or to seek to stop events. Universities have a statutory

duty to initiate disciplinary measures if individual students or student groups seek to stop legal speech, or breach the institution's code of conduct on freedom of speech. The police should take appropriate action against individuals committing criminal acts in the course of protests. (Paragraph 50)

5. There are, quite properly, legal restrictions on speech. Where speech leads to unlawful harassment of individuals or groups protected by the Equality Act 2010, then this is contrary to the institution's duty to have due regard to the need to eliminate discrimination, and would be unlawful. Mutual respect and tolerance of different viewpoints is required to hold the open debates that democracy needs. Nonetheless the right to free speech includes the right to say things which, though lawful, others may find offensive. Unless it is unlawful, speech should normally be allowed. (Paragraph 54)

### Safe spaces

6. Whilst there must be opportunities for genuinely sensitive and confidential discussions in university settings, and whilst the original intention behind safe space policies may have been to ensure that minority or vulnerable groups can feel secure, in practice the concept of safe spaces has proved problematic, often marginalising the views of minority groups. They need to co-exist with and respect free speech. They cannot cover the whole of the university or university life without impinging on rights to free speech under Article 10. When that happens, people are moving from the need to have a "safe space" to seeking to prevent the free speech of those whose views they disagree with. Minority groups or individuals holding unpopular opinions which are within the law should not be shut down nor be subject to undue additional scrutiny by student unions or universities. (Paragraph 60)

### Prevent duty

7. We note the clarity brought by the judgment in *Salman Butt v Secretary of State for the Home Department*, which affirms the legality of the Prevent duty guidance for Higher Education, clarifies that the type of speech to which the guidance applies is that which risks drawing people into terrorism and explains how the Prevent duty has to be balanced against the statutory duty to secure freedom of speech. It is unfortunate that the Guidance is not clear on its face without users also having to separately know that they need to refer to the case law. We recommend that the guidance is brought up to date to reflect that judgment and that the Government review its definition of extremism in all official documents, in light of the judgment. (Paragraph 69)
8. The Committee strongly endorses the need for Prevent as a strategy for preventing the development of terrorism. However, the Committee said in 2016 that rigorous and transparent reporting is needed to dispel myths about Prevent and called for an independent review of the Prevent policy in its report on Counter Extremism. We repeat that recommendation; we consider any such review should include an assessment of the Prevent duty's effectiveness in higher education, and its



impact on freedom of speech and association. Such a review should also include consideration of whether Prevent duty reports should be published, and on what basis. (Paragraph 78)

### Charity Commission's regulation of student unions

9. Concerns on the part of student unions about Charity Commission powers, and about whether they risked 'ultra vires actions' (which appeared to be prompted by the Charity Commission's guidance) have more impact, and misunderstandings are more widespread, than we had anticipated. The Charity Commission is under a legal obligation to regulate charities, and does so through guidance, but its current approach does not adequately reflect the important role student unions play in educating students through activism and debate. Moreover, the generic guidance on protecting a charity's reputation does not place due weight on the fact that inhibiting lawful free speech can do as much damage to a student union's reputation as hosting a controversial speaker. We welcome the fact that the Charity Commission has told us it will reassess its approach. We make further recommendations about this below. (Paragraph 85)
10. We understand that the Charity Commission may be impelled to act if other regulators or universities themselves do not. We also accept that in some cases a Charity Commission inquiry could be more appropriate than, for example, a police investigation. Nonetheless, the Charity Commission should be careful to ensure its actions are proportionate, are understood by student unions, and do not unintentionally inhibit lawful free speech. (Paragraph 86)

### Bureaucracy

11. Universities must strike a balance to ensure they respect both their legal duty to protect free speech and their other legal duties to ensure that speech is lawful, to comply with equalities legislation and to safeguard students. It is clearly easier to achieve this if debate is carried out in a respectful and open way. But the right to free speech goes beyond this, and universities need to give it proper emphasis. Indeed, unless it is clearly understood that those exercising their rights to free speech within the law will not be shut down, there will be no incentive for their opponents to engage them in the debate and challenge needed to bring mutual understanding and maybe even to change attitudes. (Paragraph 91)
12. It is reasonable for there to be some basic processes in place so that student unions and universities know about external speakers. Codes of practice on freedom of speech should facilitate freedom of speech, as was their original purpose, and not unduly restrict it. Universities should not surround requests for external speaker meetings with undue bureaucracy. Nor should unreasonable conditions be imposed by universities or student unions on external speakers, such as a requirement to submit their speeches in advance, if they give an assurance these will be lawful. (Paragraph 93)
13. We welcome the fact that many universities are prepared to fund the security necessary to ensure controversial speakers can be heard in safety. Where feasible, if



security is needed to ensure a legal event can proceed safely, it should be provided so the event can go ahead. Such security should be adequate according to the risks envisaged. Effective action should be taken against protestors who themselves go beyond the law. The more it is accepted that the right to protest is vital, but does not extend to intimidation or attempts to close events down, the less burdensome this will become. (Paragraph 95)

### The way forward

14. We welcome the OfS' strong support of free speech. We would expect the OfS to intervene if problems emerged at particular institutions. They should ensure that university policies do not inhibit legal free speech and are not overly burdensome. To help facilitate this, the OfS should have an accessible means of feedback for students to report incidents of intimidation and issues related to free speech, on which the OfS could act as an arbiter between the students, student unions and universities. The OfS should also visit universities that have faced issues regarding freedom of speech, and ensure universities and student unions are respecting this right. The OfS should report annually on free speech in universities, including naming when universities have been non-compliant with their responsibility to secure free speech, under the Education Act 1986. (Paragraph 98)
15. It is welcome that the Government is taking a broad look at the policy context for freedom of speech, and that the Minister plans to hold a summit with key bodies to work out where responsibilities lie and how all bodies can work together to promote freedom of speech. The Government should ensure that all bodies with an interest in this area, such as the EHRC, are included in this summit to ensure a joined-up approach across the different bodies. Moreover, although we understand that this is a complex area, the Government should consider whether there is any case for the OfS to take over the regulation of student unions rather than the Charity Commission. (Paragraph 100)
16. This dialogue, and intervention to ensure that the Government itself and associated regulatory bodies are working coherently, is long overdue. The Government should ensure that all relevant organisations are included in this process. Both the Prevent duty guidance for higher education institutions and the Charity Commission guidance to student unions should be reviewed. The Government should take the lead in encouraging all the bodies involved in this field to produce coherent, consistent and accessible guidance and material by January 2019 at the latest, paying full attention to the extent of universities' legal responsibilities to secure free speech. (Paragraph 101)
17. The OfS will not take up its full regulatory role until 2019. In the meantime, clear guidance on the importance of free speech and in the legal restrictions upon it is needed. We have ourselves published guidance to assist student bodies and societies, universities (and the Charity Commission) which need to decide where the boundaries lie, and we have annexed it to this report. (Paragraph 102)

# Annex 1: Free speech: guidance for universities and students organising events

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Everyone has the right to free speech within the law. This can include the right to say things which, though lawful, others may find disturbing, upsetting or offensive.

This right is a foundation for democracy. It is important in all settings, but especially in universities, where education and learning are advanced through dialogue and debate. It underpins academic freedom. This right extends to all forms of expression.

Below we set out five principles on upholding freedom of speech in universities:

- 1) Everyone has the right to free speech within the law.
- 2) Universities should seek to expose their members and students to the widest possible range of views—whilst ensuring that they act within the law.<sup>129</sup>
- 3) If a speaker breaks the law, it is the speaker who is culpable. However, if those organising an event invite speakers who they might reasonably have suspected would use their platform to break the law (i.e. because they have done so previously) they may fall foul of the law themselves.<sup>130</sup>
- 4) Protest is itself a legitimate expression of freedom of speech. However, protest must not shut down debate. Protesters who attempt to prevent viewpoints being heard infringe upon the rights of others. Student Unions, Universities and law enforcement must hold such people to account—and ensure that sufficient resources are in place to prevent protesters from blocking debate.
- 5) Students should not be deterred from organising events due to over bureaucratic procedures. Where free speech is inhibited, there should be recourse available to challenge that inhibition.

The guidance is designed for universities and students in England and Wales. Different laws apply to universities in Scotland and Northern Ireland, but nonetheless we hope that they find this useful.

## Human Rights & the Right to Free Speech

- 1) Article 9 of the European Convention on Human Rights, which is incorporated into UK law through the Human Rights Act 1998, says that “Everyone has the right to freedom of thought, conscience and religion”.
- 2) Article 10 of the of the ECHR sets out the right to freedom of speech. This right includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and can extend to the right to say things which may shock or disturb the listener.

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<sup>129</sup> See detailed guidance below.

<sup>130</sup> See detailed guidance below.

- 3) Article 11 of the ECHR sets out the right to freedom of assembly and association. Together the rights to freedom of speech and association cover the right to peaceful protest.
- 4) In addition to these Convention rights:
- Section 43 of the Education (No 2) Act 1986 imposes an obligation on university governing bodies to take reasonably practicable steps to ensure that freedom of speech within the law is secured, both on university and student union premises; and
  - Section 202(2)(a) of the Education Reform Act 1988 requires university Commissioners to have regard to the need to ensure academic freedom.
- 5) The right to free speech can be limited by law, as necessary in a democratic society,<sup>131</sup> but any such limitations must be proportionate. In a democracy it is important that people respect others' views even when they differ from their own, but unless an event would give rise to a breach of the law, universities and other organisations should respect the right to free speech.

### Limitations on Free Speech in UK Law

- 6) The following are prohibited by law:
- a) **Threat to kill:**
- A person who without lawful excuse makes a threat to kill that person or a third person, intending that the other person would fear it would be carried out.<sup>132</sup>
- b) **Fear or provocation of violence:**
- Use towards another person of threatening, abusive or insulting words or behaviour, or distributing or displaying to another person any writing, sign or other visible representation which is threatening, abusive or insulting, with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.<sup>133</sup>

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131 Article 10 allows restrictions to be placed on freedom of expression for the following purposes:

- i. in the interests of national security, territorial integrity or public safety;
- ii. for the prevention of disorder or crime;
- iv. to protect health or morals;
- v. for the protection of the reputation or rights of others;
- vi. for preventing the disclosure of information received in confidence; or
- vii. for maintaining the authority and impartiality of the judiciary.

Any restrictions must also be clearly set out in law, necessary in a democratic society, and proportionate to the legitimate aim.

132 Offences Against the Person Act 1861, [Section 16](#)

133 Public Order Act 1986, [Section 4](#)

- c) **Acts intended or likely to stir up hatred on grounds of race;<sup>134</sup> religion;<sup>135</sup> or sexual orientation;<sup>136</sup>**
- “Racial hatred” means “hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.”<sup>137</sup>
  - “Religious hatred” means “hatred against a group of persons defined by reference to religious belief or lack of religious belief.”<sup>138</sup>
  - “Hatred on the grounds of sexual orientation” means “hatred against a group of persons defined by reference to sexual orientation (whether towards persons of the same sex, the opposite sex or both).”<sup>139</sup>
  - These offences involve threatening, abusive or insulting words or conduct, or the display of any written material which is threatening, abusive or insulting, and an intention to stir up hatred, or a likelihood of doing so having regard to the circumstances.
  - The following acts are offences if intended or likely to stir up hatred:
    - Use of words or behaviour or display of written material;<sup>140</sup>
    - Publishing or distributing written material;<sup>141</sup>
    - Public performance of a play;<sup>142</sup>
    - Distributing, showing or playing a recording;<sup>143</sup>
    - Broadcasting or including programme in cable programme service;<sup>144</sup>
    - Possession of racially inflammatory material.<sup>145</sup>
- d) **Encouraging or assisting the commission of an offence;<sup>146</sup>**
- Intentionally encouraging or assisting an offence;<sup>147</sup>
  - Encouraging or assisting an offence believing it will be committed;<sup>148</sup> and
  - Encouraging or assisting offences believing one or more will be committed.<sup>149</sup>

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134 Public Order Act 1986, [Sections 18–23](#)

135 Public Order Act 1986, [Sections 29B–29F](#)

136 Public Order Act 1986, [Sections 29B–29F](#)

137 Public Order Act 1986, [Sections 17](#)

138 Public Order Act 1986, [Section 29A](#)

139 Public Order Act 1986, [Section 29AB](#)

140 Public Order Act 1986, [Sections 18](#) and [29B](#)

141 Public Order Act 1986, [Sections 19](#) and [29C](#)

142 Public Order Act 1986, [Section 20](#) and [29D](#)

143 Public Order Act 1986, [Section 21](#) and [29E](#)

144 Public Order Act 1986, [Section 22](#) and [29F](#)

145 Public Order Act 1986, [Section 23](#) and [29G](#)

146 Replaces the common law offence of incitement for all offences committed after 1 October 2008

147 Serious Crime Act 2007, [Section 44](#)

148 Serious Crime Act 2007, [Section 45](#)

149 Serious Crime Act 2007, [Section 46](#)

e) **Terrorism-related offences:**

- Incitement to commit acts of terrorism overseas;<sup>150</sup>
- Inviting support for a proscribed organisation;<sup>151</sup>
- Encouragement of terrorism,<sup>152</sup> including the unlawful glorification of the commission or preparation of terrorism, whether in the past, the future, or in general;<sup>153</sup>
- Dissemination of terrorist publications;<sup>154</sup> and
- Encouragement and dissemination of terrorist publications via the internet.<sup>155</sup>

f) **Intentional harassment, alarm or distress:**

- Intentionally causing a person harassment, alarm, or distress by threatening, abusive or insulting words or behaviour, or disorderly behaviour, or the display of any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.<sup>156</sup>

g) **Harassment, alarm or distress (without intent):**

- Using threatening or abusive words or behaviour, or disorderly behaviour, or displaying any writing, sign or other visible representation which is threatening or abusive, within the hearing or sight of a person likely to be caused harassment, alarm or distress.<sup>157</sup>

h) **Defamation:**

- Publication that has caused or is likely to cause serious harm to the reputation of the claimant.<sup>158</sup>

i) **Endeavour to break up a Public Meeting:**

- Acting in a disorderly manner for the purpose of preventing a public meeting.<sup>159</sup>

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150 Terrorism Act 2000, [Section 59](#)

151 Terrorism Act 2000, [Section 12](#)

152 Terrorism Act 2006, [Section 1](#)

153 Terrorism Act 2006, [Section 1](#); Terrorism Act 2006, [Section 21](#): This includes activities which are carried out in a manner that associates the organisation with any statements containing glorification. A "statement" includes communication without words consisting of sounds or images or both (Terrorism Act 2000, [Section 3\(5C\)](#)). "Glorification" is defined as "any form of praise or celebration" (Terrorism Act 2000, [Section 3\(5C\) Terrorism Act 2000](#)).

154 Terrorism Act 2006, [Section 2](#). For the purposes of this section, a publication is a 'terrorist publication' if "it is likely to be understood, by some or all of the persons to whom it is or may become available [...] as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism".

155 Terrorism Act 2006, [Section 3](#)

156 Public Order Act 1986, [Section 4A](#)

157 Public Order Act 1986, [Section 5](#)

158 Defamation Act 2013, [Section 1](#)

159 Public Meeting Act 1908, [Section 1](#)

## Communications

7) Laws can also impact on advertising of events and other communications around events or topics for debate (such as blogs, web forums, web chats and emailing). Responsible promotion of a forthcoming event should not cause problems, but the following need to be borne in mind:

a) **Malicious communications:**

- Sending a letter, electronic communication or article of any description which conveys a message with intent to cause anxiety or distress that is:
  - Indecent or grossly offensive; or
  - Conveys a threat with intention to cause distress or anxiety to the recipient; or
  - Conveys information which is false and known or believed to be false by the sender; or

Any article or electronic communication which is, in whole or in part, of an indecent or grossly offensive nature.<sup>160</sup>

b) **Improper use of public electronic communications network:**

- Using a public electronic communications network to send (or cause to be sent) a grossly offensive, indecent, obscene or menacing message;<sup>161</sup>
- Using a public electronic communications network to send (or cause to be sent), for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that the sender knows to be false or persistently makes use of a public electronic communications network.<sup>162</sup>

c) **Harassment:**<sup>163</sup>

- A course of unwanted conduct (at least two incidents) which amounts to harassment of another which the defendant knows or ought to know amounts to harassment.<sup>164</sup>
- Harassment includes alarming the person or causing the person distress.<sup>165</sup>

## Equality duties on universities

8) Section 149 of the Equality Act 2010 creates a public-sector equality duty (PSED) on universities and other bodies undertaking public functions, which harmonises the

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160 Malicious Communications Act 1998, [Section 1](#) – England and Wales only. In Scotland – Offensive Behaviour at Football Matches and Threatening Communications (Scotland) Act 2012, [Section 6](#)

161 Communications Act 2003, [Section 127\(1\)](#)

162 Communications Act 2003, [Section 127\(2\)](#)

163 Protection from Harassment Act 1997 – partially applies in Scotland, but operates differently. Does not apply in Northern Ireland.

164 Protection from Harassment Act 1997, [Section 2](#)

165 Protection from Harassment Act 1997, [Section 7\(2\)](#)

equality duties across the protected characteristics. The protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In summary, universities are subject to the equality duty and “must, in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not; and
- Foster good relations between people who share a protected characteristic and those who do not.”<sup>166</sup>

Having “due regard to the need to advance equality of opportunity” involves:

- “Removing or minimising disadvantages suffered by people due to their protected characteristics;
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people;
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.”<sup>167</sup>

These duties should not in themselves be a barrier to free speech. As stated in a report by Universities UK, “tolerance and respect for opposing viewpoints, and the right to hold and express those opinions, are central to the preservation of the right to freedom of speech and entirely compatible with the fostering of good relations.”<sup>168</sup>

## Prevent guidance

9) The Prevent duty Guidance for higher education institutions made under s.29 of the Counter-terrorism and Security Act 2015 states at paragraph 11:

“[ ... ] when deciding whether or not to host a particular speaker, RHEBs [relevant higher education bodies] should consider carefully whether the views being expressed, or likely to be expressed, constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups. In these circumstances the event should not be allowed to proceed except where RHEBs are entirely convinced that such risk can be fully mitigated without cancellation of the event. This includes ensuring that, where any event is being allowed to proceed, speakers with extremist views that could draw people into terrorism are challenged with opposing views as part of that same event, rather than in a separate forum. Where RHEBs are in any doubt that the risk cannot be fully mitigated they should exercise caution and not allow the event to proceed.”<sup>169</sup>

166 Equality Act 2010, [Section 149\(1\)](#)

167 Equality Act 2010, [Section 149\(3\)](#)

168 Universities UK, [Freedom of speech on campus: rights and responsibilities in UK universities](#), February 2011, p 14

169 HM Government, [Prevent Duty Guidance: for Higher Education Institutions in England and Wales](#), 12 March 2015, para 11



Paragraph 19 further states:

“RHEBs will be expected to carry out a risk assessment for their institution which assesses where and how their students might be at risk of being drawn into terrorism. This includes not just violent extremism but also non-violent extremism, which can create an atmosphere conducive to terrorism and can popularise views which terrorists exploit.”

In applying the guidance, those responsible for organising events need to balance the Prevent duty with the right to free speech and academic freedom, to which academic institutions have to pay particular regard. Therefore, under the Education Act universities have to “secure” free speech in universities and student union premises. Under the Prevent Guidance, those organising debates need to balance the duties - paying “due regard” to the Prevent duty, but “particular regard” to the right to free speech. This is a judgment call, properly left to universities and student unions (given the importance of their autonomy) which will need to be balanced depending on the information available.

The case law indicates that the guidance applies to extremist views which risk drawing people into terrorism and “if there is some non-violent extremism, however intrinsically undesirable, which does not create a risk that others will be drawn into terrorism, the guidance does not apply to it.” The judgment also indicates the use of the words “entirely convinced that such risk can be fully mitigated,” could be interpreted as mitigation as far as reasonably practicable or mitigation so that there was no significant risk.<sup>170</sup>

## Role of student unions as Charity Trustees

When facilitating discussion, arranging events or engaging in political activities, student union trustees need to consider both the criminal and civil law implications of an event or speech (which are outlined above in points 7–10) as well as their charity law duties.

There are legal restrictions on the ability of charity trustees to use funds to support causes which are not within their charitable objectives—in the case of Student Unions, these are the welfare of students as students. However, it is permissible to use funds to facilitate debates, motions or speaker events on political issues (as distinct from campaigning) that do not affect students as students.<sup>171</sup>

There are core duties on charity trustees (and therefore on student union trustees), some of which can be relevant to Free Speech:

- The Duty to manage a Charity’s asset’s responsibly. “Assets” is understood to include the good name and reputation of the Charity.
- The Duty to act in the best interests of the Charity. This requires trustees not to pursue personal priorities or views and instead to focus on the purposes of the Charity. There has been some confusion around whether this means student unions can comment on issues that do not affect students as students. Legal advice given to the NUS states that “expressions of view by the union’s

170 See R (Salman Butt) v Secretary of State for the Home Department [2017] EWHC 1930, [para 58](#)

171 Charity Commission for England and Wales, Operational Guidance 48: Students’ unions - B3 2, Political activities and campaigning, [paras 15–16](#)



membership on issues not affecting students as students are permissible under charity law” since “enabling such expressions of view are part and parcel of the unions’ role of providing a forum for students to debate issues.”<sup>172</sup>

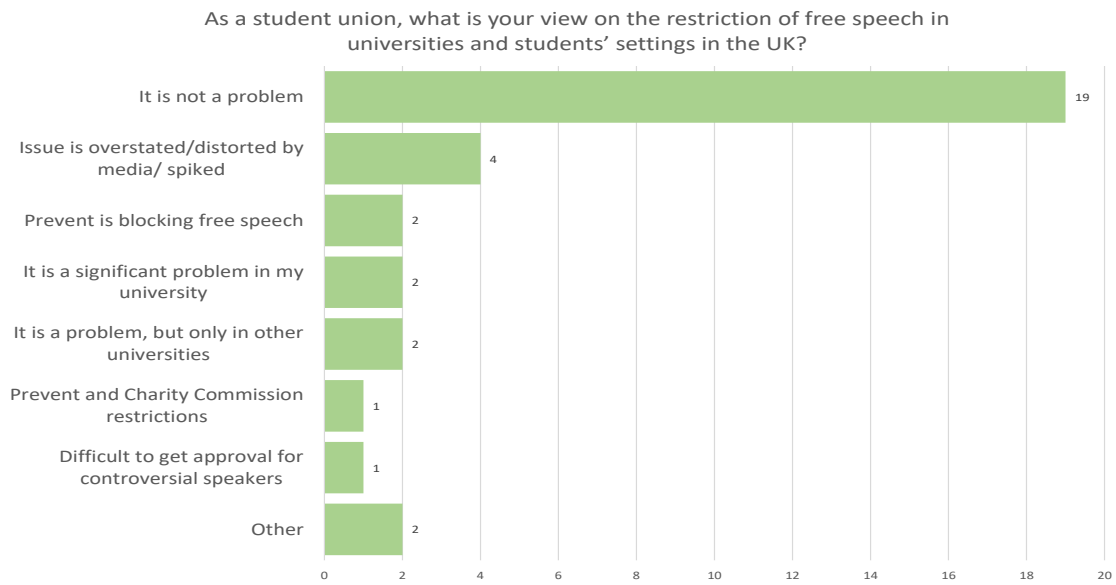
- The Duty to act with reasonable care and skill. This is a general trustee duty and includes a general duty to act lawfully and to be aware of all other obligations when undertaking their trustee duties (e.g. human rights obligations, Equality Act, Education Act duties, defamation, data protection).

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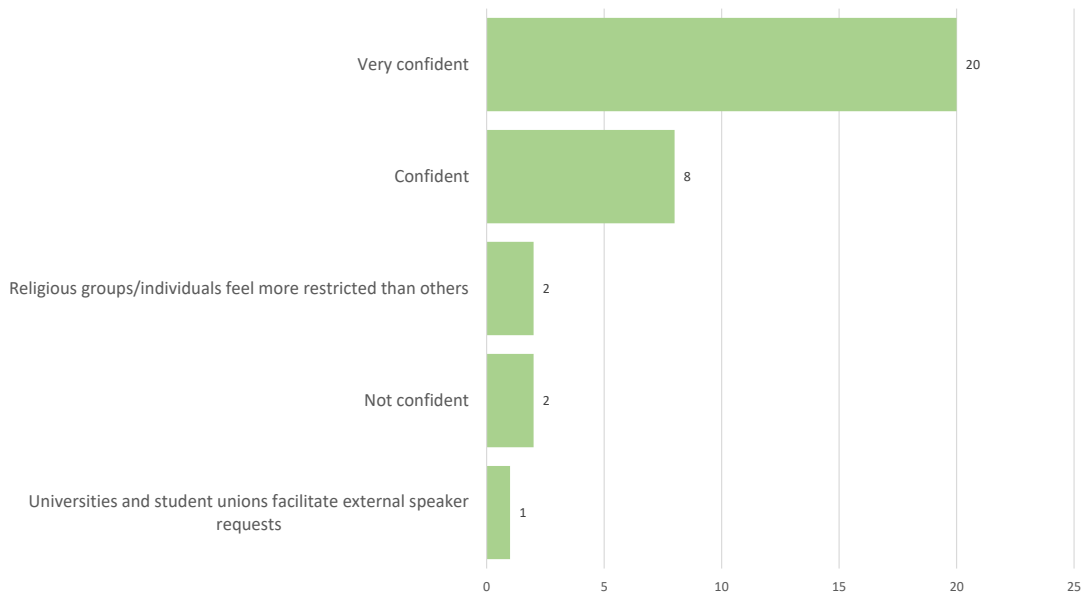
172 [Legal opinion for the National Union of Students](#) Christopher McCall, Maitland Chambers, and Raj Desai, Matrix Chambers, p 9

## Annex 2: Student union officer survey results

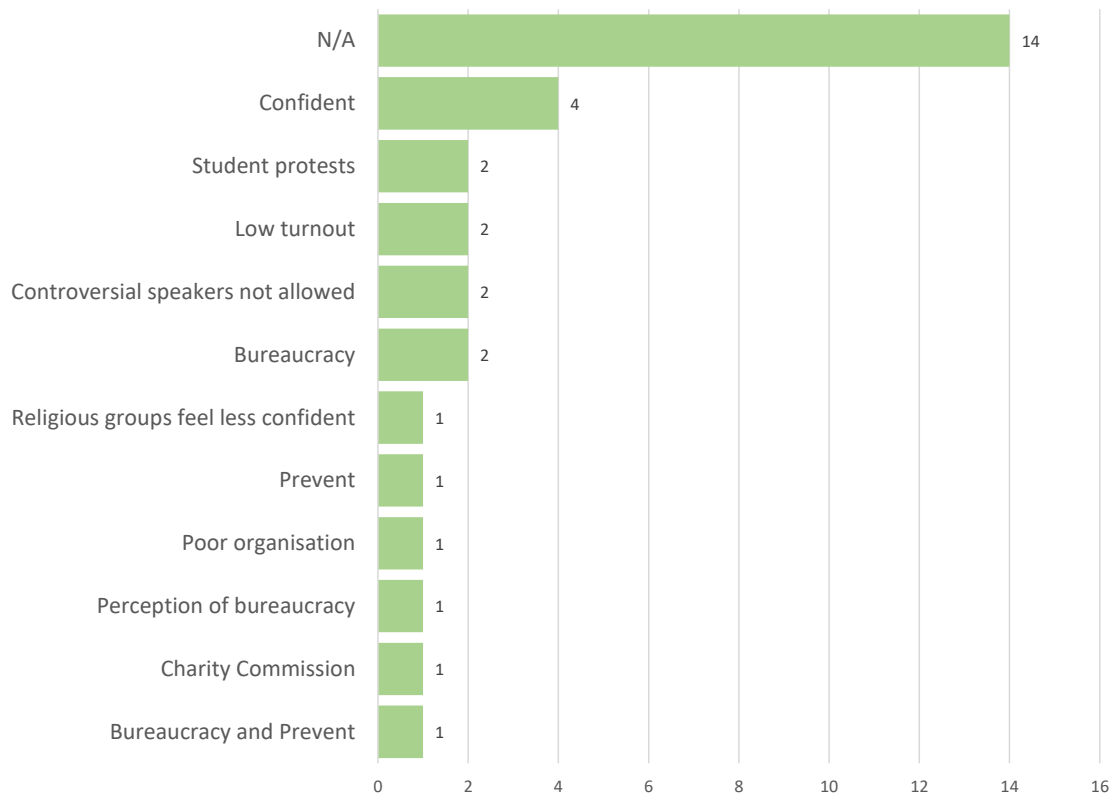
These responses were received from a limited number—33—of student union officers on the state of freedom of speech in universities. A wider survey would be needed to assess the level of confidence in freedom of speech at universities amongst the student body as a whole. The responses received from student union officers to the survey are shown below:



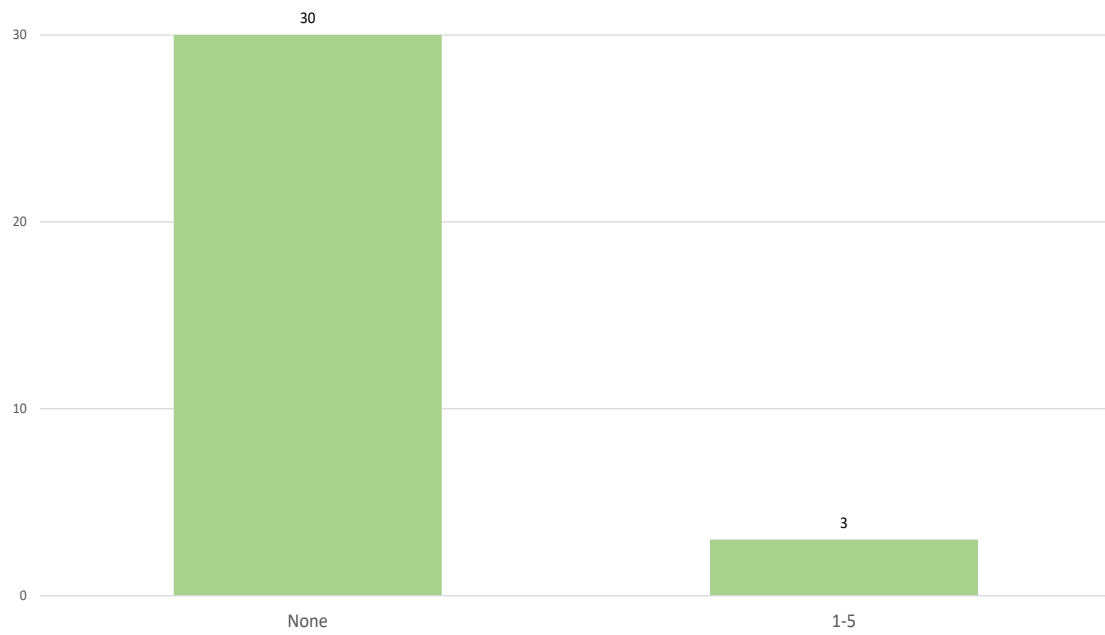
In your opinion, how confident do students of your university feel they will be able to invite external speakers to university events?



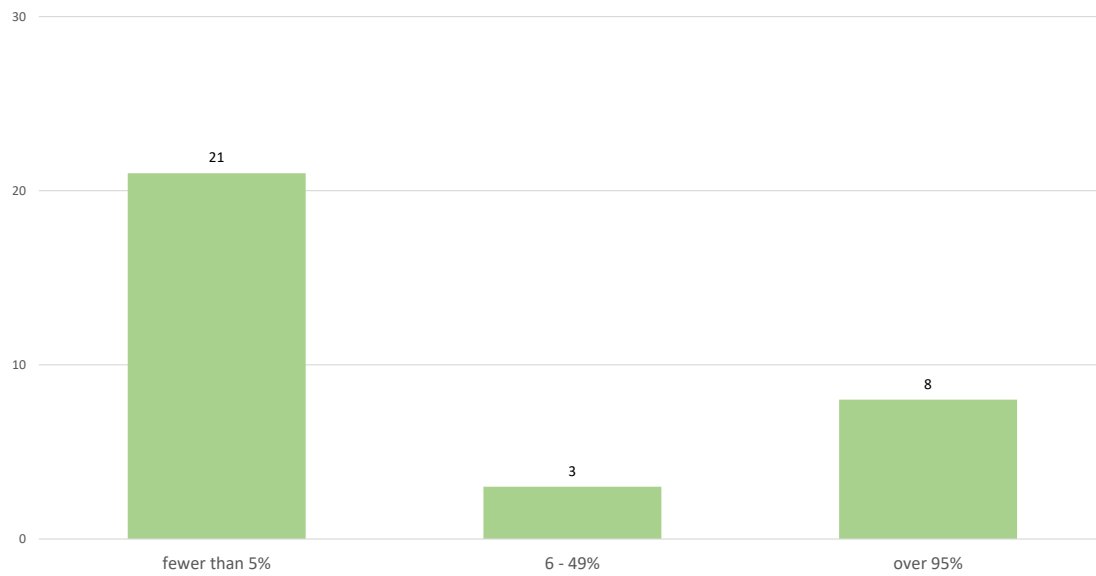
If event organisers are not confident in inviting external speakers, is this because:



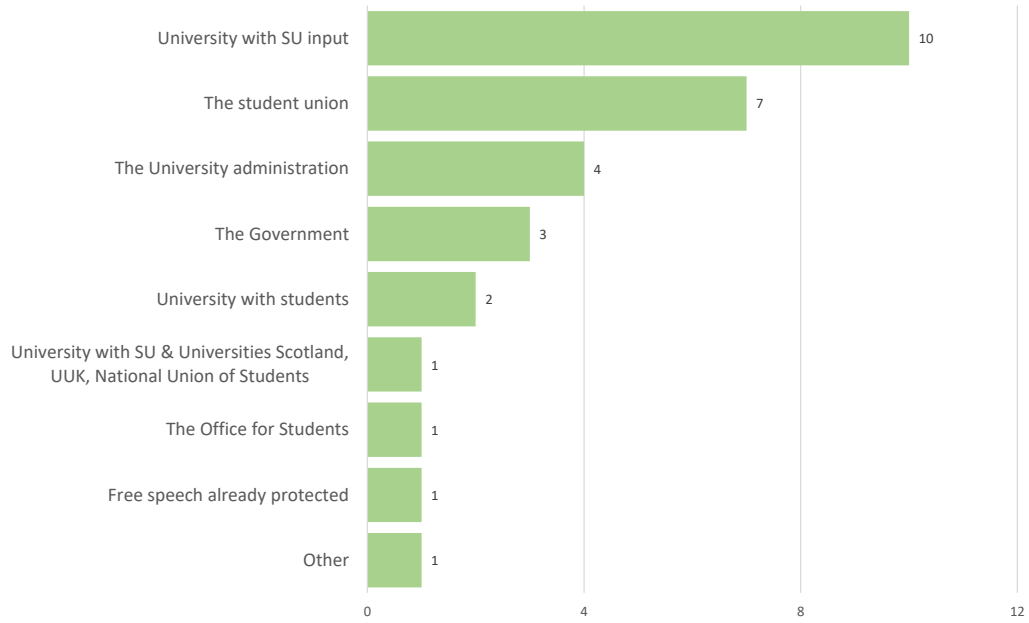
In the last year, how many events have been cancelled at your university because the invited speaker was too controversial?



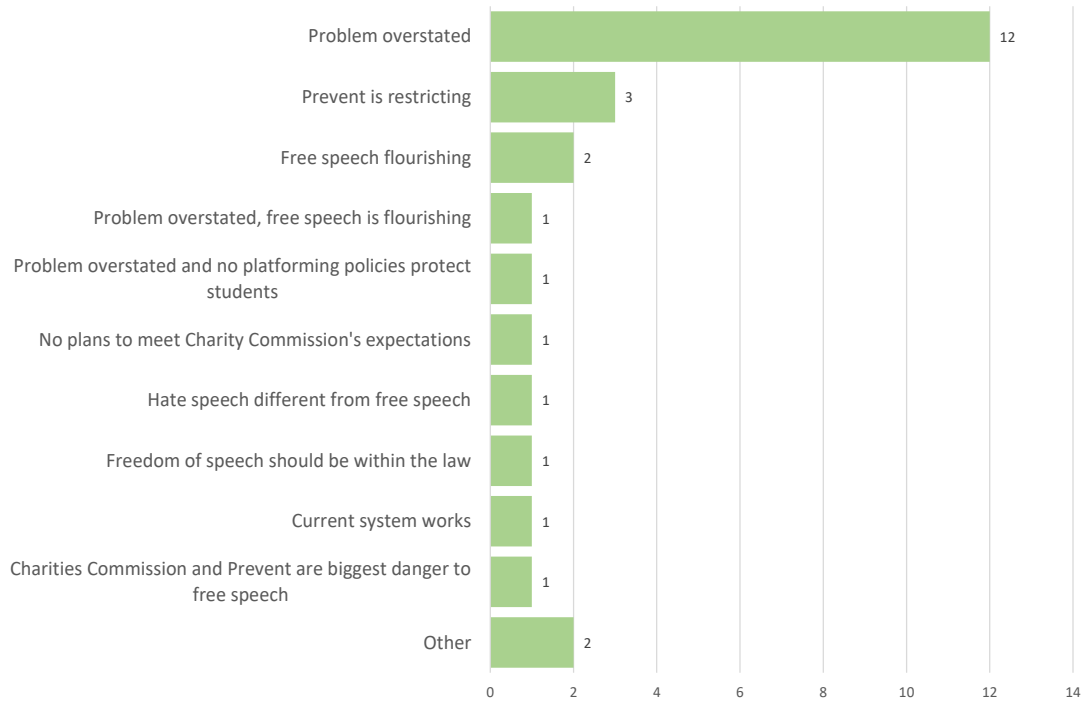
What percentage of external speaker events does the student union have to refer to University authorities for approval?



In your opinion, who should determine the free speech policy at your university?



Please feel free to share any other comments that you have with regards to free speech at your university



## Annex 3: Student web forum results

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These responses were received from a limited number—35—of contributors. A wider survey would be needed to assess the level of confidence in freedom of speech at universities amongst the student body as a whole. The forum was open for four weeks. Most were standalone comments, including some with a great deal of detail, whereas some contributors commented on each other's posts to challenge their perspectives.

Regarding free speech in general, there was almost unanimous agreement that it is of huge importance. Most contributors said that any lawful speech should be allowed because: it is fundamental freedom; it helps to expand our understanding of each other; and it helps to expose and undermine extreme views. One contributor said that free speech should be an absolute right, suggesting that there should be no legal bounds.

Specifically, regarding free speech at universities, many contributors commented on the role of free speech in helping students to develop and learn. Some noted that hearing opposing views, including in teaching sessions and at student events, is an important part of the university educational experience and helps to prepare students for the harsher world beyond university. Some stated that shielding students from unpleasant views will leave them weak or ignorant. However, some contributors challenged the notion that all free speech is necessary and helpful for students: some questioned why university groups should have to host speakers whose views are unwanted in wider society; and one supported inhibiting certain unpleasant views on the grounds that some listeners accept them despite contrary evidence.

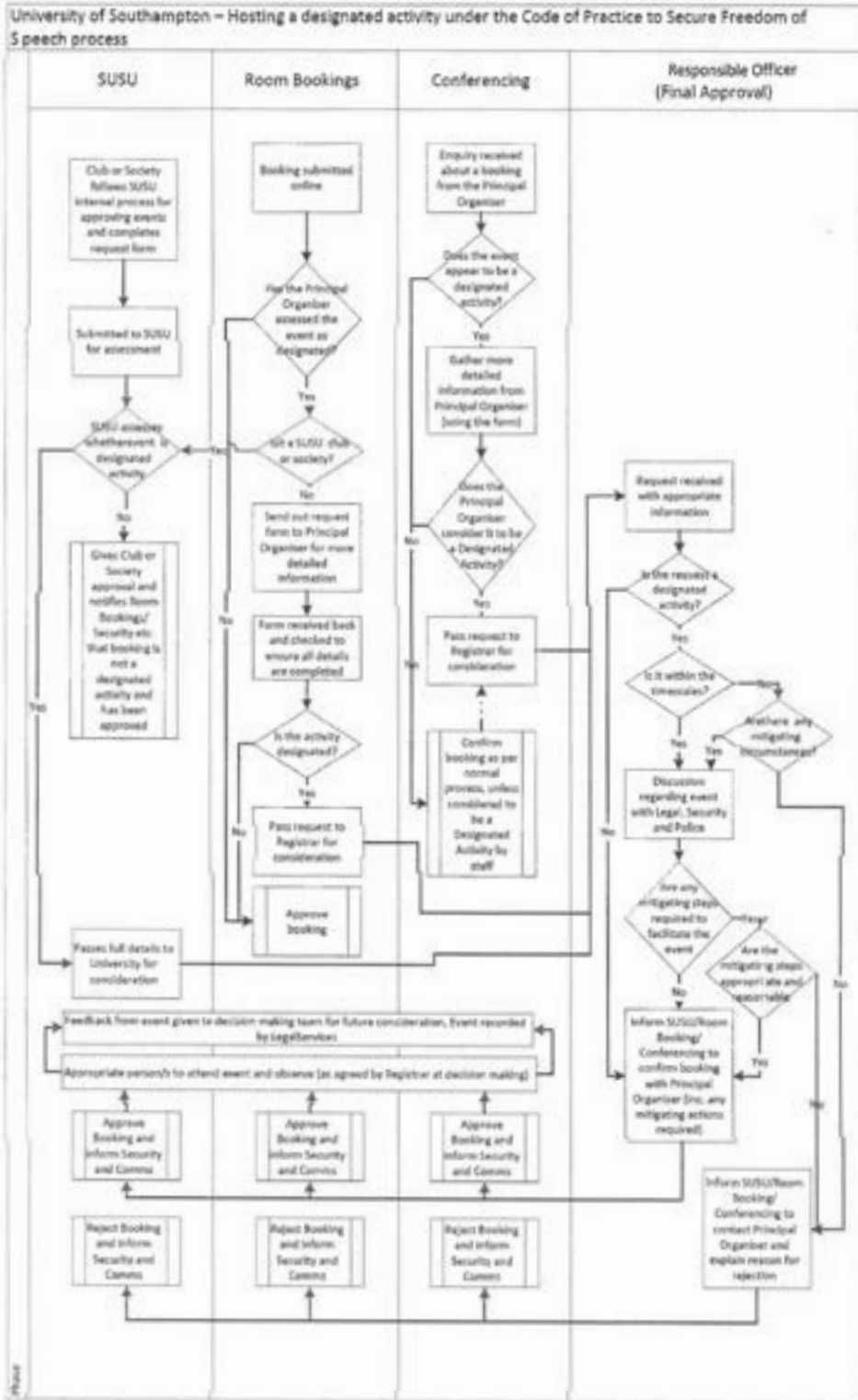
Contributors also commented on potentially negative impacts of free speech, and gave a wide range of views about whether free speech should be traded off against other rights and considerations. Contributors touched on two types of issue: when speech might directly affect the people that it comments on; and when speech might lead listeners to adopt particular views against others.

Some suggested that free speech should be bounded naturally by people acting in a civil and considerate manner. Some went further, saying that free speech should be inhibited if it causes offense or harm especially to people who are particularly sensitive to certain criticisms. One contributor discussed the merits of “safe spaces” for the specific purpose of helping students who had experienced trauma, as opposed to wider applications.

For others, free speech is paramount and should never be inhibited by someone else's desire to not be offended (which some viewed as too weak a reason) nor by the aim of avoiding harassment (which some viewed as too subjective a measure). Indeed, one contributor posed the question of whether it is discriminatory to inhibit someone's freedom of speech.

# Appendix: Codes of practice on freedom of speech

As mentioned in the report, some institutions have over-complicated procedures around hosting events with external speakers. The flow diagram below from the University of Southampton shows this:





# Declaration of Lords' Interests<sup>1</sup>

## Baroness Hamwee

- No relevant interests to declare

## Baroness Lawrence of Clarendon

- Chancellor of De Montfort University
- Child at University

## Baroness Prosser

- No relevant interests to declare

## Lord Woolf

- Grandchild at University
- Income from time to time for speeches, lectures, writing articles and contributing to books (including editing) on legal subjects
- Arbitrator, Mediator, legal consultant and expert (practising from Blackstone Chambers)
- Chief Justice (previously Consultant and President) of the Astana International Financial Centre (AIFC) Court
- Visit to Astana, Kazakhstan, 24–29 June 2017, to attend the Astana International Financial Centre (AIFC) for the furtherance of the establishment of a Court and a Dispute Resolution Centre in Astana; five nights' accommodation and return flights provided by the government of Kazakhstan
- Visit to Astana, Kazakhstan, 2–7 September 2017, to attend the Astana International Financial Centre (AIFC); fares and accommodation paid for by the government of Kazakhstan
- Visit to Astana, Kazakhstan, 2–7 December 2017, to be sworn in as Chief Justice of the Astana International Financial Centre (AIFC) Court and for the swearing in of judges; costs met by the AIFC
- Bencher, Gray's Inn
- Previous Chancellor of Open University of Israel
- Chairman of the Council, UCL

## Lord Trimble

- Lecturer in Law at Queen's University Belfast between 1968 and 1990

## Baroness O'Cathain

- No relevant interests to declare

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173 A full list of Members' interests can be found in the Register of Lords' Interests: <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

# Formal minutes

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**Wednesday 21 March 2018**

Members present:

Ms Harriet Harman MP, in the Chair

|                  |                                |
|------------------|--------------------------------|
| Fiona Bruce MP   | Baroness Hamwee                |
| Ms Karen Buck MP | Baroness Lawrence of Clarendon |
| Alex Burghart MP | Baroness O’Cathain             |
| Joanna Cherry MP | Lord Trimble                   |
| Jeremy Lefroy MP | Lord Woolf                     |

Draft Report (*Freedom of Speech in Universities*), proposed by the Chair, brought up and read.

*Ordered*, That the Chair’s draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 102 read and agreed to.

Summary read agreed to.

Annexes read agreed to.

A Paper was appended to the Report.

*Resolved*, That the Report be the Fourth Report of the Committee.

*Ordered*, That the Chair make the Report to the House of Commons and that the Report be made to the House of Lords.

*Ordered*, That embargoed copies of the Report be made available (House of Commons Standing Order No. 134).

[Adjourned till Wednesday 28 March 2018 at 3.00pm]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

### Wednesday 15 November 2017

*Question number*

**Dr Joanna Williams**, Senior Lecturer, Unit for the Enhancement of Learning and Teaching, University of Kent; **Professor Dennis Hayes**, Professor of Education, University of Derby; **Mr Tom Slater**, Deputy Editor, Spiked; **Professor Colin Riordan**, President and Vice-Chancellor, Cardiff University

[Q1–12](#)

### Wednesday 29 November 2017

**Mr Liron Velleman**, Union of Jewish Students; **Mr Ben Ryan**, Theos; **Mr Andrew Copson**, Humanists UK; **Mr Yusuf Hassan**, Federation of Student Islamic Societies; **Ms Charlotte Moore**; **Ms Alyaa Ebbiary**

[Q13–25](#)

### Wednesday 6 December 2017

**Mr Gary Attle**, Mills and Reeve LLP; **Mr Paul Bowen QC**, Brick Court Chambers; **Ms Helen Mountfield QC**, Matrix Chambers; **Ms Aileen McColgan**, Matrix Chambers

[Q26–29](#)

### Wednesday 13 December 2017

**Linda Bellos OBE**; **Alexandra Tate**, President, Reproductive and Sexual Health Society, King's College; **Jane Fae**; **Helen Belcher**, Director, Trans Media Watch; **Peter Tatchell**

[Q30–35](#)

### Wednesday 10 January 2018

**Professor Sir Timothy O'Shea**, Vice-Chancellor and Principal, University of Edinburgh; **Patrick Kilduff**, President, Edinburgh University Students' Association; **Professor Adam Tickell**, Vice-Chancellor, University of Sussex; **Frida Gustafsson**, President, Students' Union, University of Sussex; **Baroness Amos CH**, Director, SOAS, University of London

[Q36–47](#)

### Wednesday 17 January 2018

**Mr Amatey Doku**, Vice-President, National Union of Students; **Mr Wes Streeting MP**

[Q48–53](#)

**Baroness Deech**; **Professor Jonathan Rosenhead**, Emeritus Professor of Operational Research, London School of Economics; **Professor Alison Scott-Baumann**, School of Oriental and African Studies; **Professor Steven Greer**, Professor of Human Rights, University of Bristol

[Q54–57](#)

**Wednesday 24 January 2018**

**Aarti Thakor**, Head of Legal Compliance, Charity Commission for England and Wales; **Michelle Russell**, Director of Investigations, Monitoring and Enforcement, Charity Commission for England and Wales; **Sir Michael Barber**, Chair, Office for Students

[Q58–67](#)**Wednesday 7 February 2018**

**Rt Hon Ben Wallace MP**, Minister of State for Security and Economic Crime, Home Office; **Mr Mr Sam Gyimah MP**, Minister of State for Universities, Science, Research and Innovation

[Q68–78](#)

**Mr Jacob Rees-Mogg MP**; **Joanne Midgley**, Pro Vice-Chancellor—Student Experience, University of the West England, Bristol (via audio link); **Jonathan Wallcroft**, Vice-President, Politics and International Relations Society, University of the West of England, Bristol (via audio link); **Brandon Gage**, Politics and International Relations Society, University of the West of England, Bristol (via audio link); **Francesca Smith**, Politics and International Relations Society, University of the West of England, Bristol (via audio link)

[Q79–87](#)

## Published written evidence

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The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

FSU numbers are generated by the evidence processing system and so may not be complete.

- 1 Academic Friends of Israel ([FSU0071](#))
- 2 Alliance of Pro-Life Students ([FSU0063](#))
- 3 Anonymous ([FSU0079](#))
- 4 Antisemitism Policy Trust ([FSU0006](#))
- 5 Baroness Ruth Deech ([FSU0003](#), [FSU0102](#))
- 6 Board of Deputies of British Jews ([FSU0035](#))
- 7 Cambridge University Students' Union ([FSU0072](#))
- 8 CARE ([FSU0045](#))
- 9 Centre for Palestine Studies, SOAS, London University ([FSU0090](#))
- 10 Charity Commission for England and Wales ([FSU0093](#), [FSU0098](#), [FSU0109](#))
- 11 Christian Concern ([FSU0037](#))
- 12 CitizenGO ([FSU0069](#))
- 13 Cllr Anwen Muston ([FSU0051](#))
- 14 Colin Wilson ([FSU0070](#))
- 15 David Randall ([FSU0009](#))
- 16 Department for Education ([FSU0105](#))
- 17 Department for Education and the Home Office ([FSU0023](#))
- 18 Dr Carl Thompson ([FSU0011](#))
- 19 Dr Kevin Vaughan ([FSU0004](#))
- 20 Dr Kristin Aune (Coventry University) and Dr Mathew Guest (Durham University) ([FSU0046](#))
- 21 Dr Nigel Paterson ([FSU0007](#))
- 22 Dr Petra Boynton ([FSU0036](#))
- 23 Dr Priyamvada Gopal ([FSU0087](#))
- 24 Edinburgh University Students' Association ([FSU0061](#))
- 25 Equality and Human Rights Commission ([FSU0096](#))
- 26 Faith to Faithless ([FSU0020](#))
- 27 Free Speech on Israel ([FSU0030](#))
- 28 Gary Attle, Mills & Reeve LLP ([FSU0104](#))
- 29 Guild of Students, University of Birmingham ([FSU0077](#))
- 30 Helen Belcher ([FSU0068](#))
- 31 Helen Mountfield QC ([FSU0110](#))
- 32 Heriot-Watt University Student Union ([FSU0024](#))
- 33 Higher Education Funding Council for England ([FSU0055](#))

- 34 Higher Education Funding Council for Wales (HEFCW) ([FSU0095](#))
- 35 Humanists UK and Humanist Students ([FSU0019](#))
- 36 Index on Censorship ([FSU0043](#))
- 37 Jane Fae ([FSU0086](#))
- 38 Kent Union ([FSU0040](#))
- 39 King's College London ([FSU0111](#))
- 40 King's College London Student Union ([FSU0114](#))
- 41 LGBT-Labour ([FSU0038](#))
- 42 Libertarian Society, King's College London ([FSU0112](#))
- 43 Liberty ([FSU0085](#))
- 44 Life ([FSU0058](#))
- 45 Liverpool Guild of Students ([FSU0067](#))
- 46 London South Bank University ([FSU0027](#))
- 47 Michael Toze ([FSU0017](#))
- 48 Miss Josephine Jackson ([FSU0016](#))
- 49 Miss Rebecca Short ([FSU0076](#))
- 50 Mr Jamie Grace ([FSU0001](#))
- 51 Mr Liam Kelly ([FSU0050](#))
- 52 Mr Michael Wee ([FSU0042](#))
- 53 Mr Mitchell Foyle-York ([FSU0092](#))
- 54 Mr Muhammad Hassan ([FSU0025](#))
- 55 Mr Peter Baran ([FSU0048](#))
- 56 Mr Simon Creasey ([FSU0081](#))
- 57 Mr Sylvan Moir ([FSU0053](#))
- 58 Mrs Ann Farmer ([FSU0049](#))
- 59 Mrs Margaret Akers ([FSU0065](#))
- 60 Muslim Council of Britain ([FSU0088](#))
- 61 National Secular Society ([FSU0022](#))
- 62 National Union of Students ([FSU0060](#), [FSU0107](#))
- 63 Northumbria Students' Union ([FSU0013](#))
- 64 NUS Black Students Campaign ([FSU0066](#))
- 65 Oxford Students for Life ([FSU0018](#))
- 66 Oxford University Students' Union ([FSU0029](#))
- 67 Palestine Solidarity Campaign ([FSU0078](#))
- 68 Paul Bowen Q.C. ([FSU0056](#))
- 69 Prebendary Peter Bannister ([FSU0008](#))
- 70 Professor Alison Scott-Baumann ([FSU0075](#))
- 71 Professor Alison Scott-Baumann and Simon Perfect ([FSU0074](#), [FSU0099](#))

- 72 Professor Ian Cram ([FSU0005](#))
- 73 Professor Jonathan Rosenhead ([FSU0103](#))
- 74 Professor Rebecca Gould ([FSU0082](#))
- 75 Professor Steven Greer ([FSU0100](#))
- 76 Rev. Richard Hill ([FSU0015](#))
- 77 Scottish Charity Regulator ([FSU0108](#))
- 78 Sheffield Hallam University ([FSU0054](#))
- 79 Sheffield Students' Union ([FSU0041](#))
- 80 SOAS Preventing Prevent ([FSU0091](#))
- 81 Stephen Stacey ([FSU0064](#))
- 82 Student Rights ([FSU0014](#))
- 83 The Charity Commission for Northern Ireland ([FSU0106](#))
- 84 The Council of Ex Muslims of Britain ([FSU0021](#))
- 85 The Office for Students ([FSU0057](#))
- 86 Trinity Saint David Students' Union ([FSU0031](#))
- 87 UEA Students' Union ([FSU0002](#))
- 88 UK Lawyers for Israel ([FSU0033](#))
- 89 UK Lawyers for Israel ([FSU0101](#))
- 90 Union of Brunel Students ([FSU0032](#))
- 91 Union of Jewish Students ([FSU0080](#))
- 92 Universities and Colleges Christian Fellowship (UCCF) ([FSU0039](#))
- 93 Universities UK ([FSU0010](#))
- 94 University and College Union ([FSU0084](#))
- 95 University of Bristol Students' Union ([FSU0113](#))
- 96 University of Cambridge ([FSU0059](#))
- 97 University of Edinburgh ([FSU0034](#))
- 98 University of Huddersfield Students' Union ([FSU0073](#))
- 99 University of Surrey Students' Union ([FSU0026](#))
- 100 University of Sussex Islamic Society ([FSU0083](#))
- 101 Warwick Students' Union ([FSU0094](#))
- 102 York University Students' Union ([FSU0044](#))



# List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2017–19

|                       |  |                       |
|-----------------------|--|-----------------------|
| First Report          | Legislative Scrutiny: The EU (Withdrawal) Bill: A Right by Right Analysis  | HC 774<br>HL Paper 70 |
| Second Report         | Proposal for a Draft Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018   | HC 645<br>HL Paper 86 |
| Third Report          | Legislative Scrutiny: The Sanctions and Anti-Money Laundering Bill   | HC 568<br>HL 87       |
| First Special Report  | Human Rights and Business 2017: Promoting responsibility and ensuring accountability: Government Response to the Committee's Sixth Report of Session 2016–17 | HC 686                |
| Second Special Report | Mental Health and Deaths in Prison: Interim Report: Government Response to the Committee's Seventh Report of Session 2016–17                                 | HC 753                |