

## **Taking the debate forward:**

**A new code to secure and  
champion freedom of speech  
and political diversity on  
campus**



**February 2021**

## Radical proposals will secure and champion campus free speech

Students' unions in the UK are central to the student experience of UK higher education. Yet concern has been expressed about their role in matters of political diversity and freedom of expression.

There have been stories about bans on costumes, rules for democratic meetings, events featuring external speakers and so-called "trigger warnings". Some suggest that some students' unions have been involved in the "banning" or "no platforming" of speakers whose opinions their student leaders do not agree with.

Free speech within the law is an important principle. Universities and their students' unions should work to widen debate and challenge, rather than to narrow it.

More often than not, students' unions, guilds and associations and their clubs and societies are an important facilitator of freedom of speech and debate on campus. A survey of 61 university students' unions in December 2020 found that in 2019-20, just 6 events from almost 10,000 involving an external speaker (0.06%) were cancelled – mainly for failing to follow basic administrative processes. But there is nonetheless a concern that there is a "chilling effect".

Following a detailed consultation with student leaders and students' unions, this report therefore recommends the creation of a **code** for students' unions which establishes and reinforces important principles on campus of **political diversity and freedom of expression**. We also set out a clear roadmap for regulation of students' union activity in this space with clarity for those that wish to raise a complaint or concern.

### The code will:

- Substantially adopt widely used **principles** within the [free speech policy statement](#)<sup>1</sup> produced by the Committee on Freedom of Expression at the University of Chicago.

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<sup>1</sup> <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>

- Set a goal of increasing the **volume and diversity** of debates and student political groups on campus, with all universities pledging to work with their SU to use networks and influence to set targets for expanding opportunities to meet and debate with important figures.
- Propose that the National Union of Students, Universities UK and other sector bodies work together to identify how they might collaborate to **streamline and support** the process of attracting, contacting, risk assessing and researching external speakers, developing an online speakers' pool in the process.
- Set out basic standards that ensure that all **students are informed** of how they might obtain funding or support for a student group of any political stripe.
- Formally **adopt** the requirements of the Education Act 1986 (Freedom of Speech) into students' union activities.
- Require an annual review of **external events and speaker policies**, fed into the university, to gather feedback from users to ensure that processes are kept as rapid in execution and as simple to understand as possible.
- Establish that in principle no event should be cancelled due to a society or SU not feeling able to meet **security costs**.
- Set out with clarity the way in which students' unions should practice compliance with **charity law requirements** which **prohibit political campaigning and expenditure**.

## **We also propose that:**

- That Universities UK leads work in conjunction with NUS and SUs and other higher education representative bodies that specifically addresses the issue of **protest and harassment** (including in online spaces) to ensure that it is clear how students, external speakers and stakeholders might **raise concerns** about the conduct of campaigners.
- Clarify the way in which the higher education **regulator** and **ombudsperson** will oversee these issues.

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*Research and policy development carried out on behalf of the group by  
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# WONKHE

## Foreword

**S**tudents' unions in the UK have come to be central to the character and output of UK higher education. A students' union (sometimes called a guild, and usually in Scotland an association) exists in almost every university, and variations of student representation and social activity exist in many other providers and colleges.

The combination of social and recreational activity, educational and welfare advice, coupled with individual and collective advocacy and volunteering means that students' unions on the whole are more sophisticated and more effective in the UK than any comparable system in the world.

### **Media and public interest**

Within this sub-sector there are then a range of contemporary issues that are the subject of frequent debate and commentary in the media. Specifically, in recent years considerable concern has been expressed about their role in matters of political diversity and freedom of expression. Students' unions stand accused of restricting freedom of speech, imposing their views on students and promoting a political "monoculture" on campus.

Stories have included ones about bans on costumes, the rules for democratic meetings, events featuring external speakers and so-called "trigger warnings". Some concern the funding and support for different types of student group. Some suggest that some students' unions have been involved in (both directly and indirectly) the "banning" or "no platforming" of speakers whose opinions their student leaders do not agree with. The picture of one of student intolerance toward debate - but there is reason to be optimistic.

Research<sup>2</sup> from King's College London last year found that 81 per cent of students think that freedom of expression is more important than ever, with 86 per cent specifically concerned that social media is enabling people to express intolerant views which prevents people from engaging freely. It also found that most students consider freedom of expression to be more threatened in the UK overall than in their own university. On average, just 12 per cent of students hear about such incidents [in their university] very or fairly often.

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<sup>2</sup> <https://www.kcl.ac.uk/policy-institute/assets/freedom-of-expression-in-uk-universities.pdf>

## **Facilitators of free speech**

As such we do not believe that the accusations levelled at students or their unions to be accurate or supported by evidence. In truth, more often than not, our students' unions, guilds and associations and their clubs and societies are an important facilitator of freedom of speech and debate on campus. It is also important for us to understand the student perspectives and context that surround this agenda. Thanks partly to work from students' unions, students from marginalised backgrounds and their allies have been becoming more confident and more empowered in recent years in speaking up against the injustices that face them.

As a consequence they have been intervening much more than in the past to challenge people, cultures and structures that they deem to be discriminatory or challenge their own existence. One student's problem with "decolonisation" and "re-writing history" is another student's own free speech. Action in this area should seek to build on the successes and engender a culture on campus where everyone feels able to debate and challenge - and we must avoid a temptation to "turn back the clock" to some mythical past where all could speak freely.

## **Responding not reacting**

However, the concerns are there. As representatives of students, trustees of charities and leaders within higher education, we have a duty to protect the reputation of the organisations we serve, advocate passionately for the interests of our members and defend the people that volunteer and work for us to serve students. We think that it is reasonable to request that debate about our services and activities is well evidenced and advanced in good faith – how all campus debate should be conducted.

Nevertheless, there is a problem. The government's recent higher education restructuring regime suggested that universities accessing the scheme tackle expenditure on SU sabbatical officers and "niche activism". The Office for Students has announced that it will shortly issue regulatory guidance on public interest governance principles relating to academic freedom and free speech. And the Secretary of State for Education, Gavin Williamson, has said that "If universities can't defend free speech, the Government will".

There is a real danger that students' unions look closed to feedback or unwilling to engage in a "good faith" discussion about our activities. And when we are defensive, we look unwilling to engage in the very culture of debate on campus that we seek to protect. We believe that it is important that students' unions and associations, and the wider higher education sector, responds in a constructive way, reflecting on events that may have led to concern,



identifying the contradictions that might exist within our operating context and seeking to strengthen our practice to give confidence to students, institutions and the wider public.

Crucially, we have to recognise that concerns expressed by the media and government about our role and practice in a number of cases has caused public concern, however frustrating that might be. Our duty to protect our reputation will be strengthened by reflecting carefully – not just on how we are portrayed, but also in relation to what we do, how we do it and the decisions we make. We have to respond, rather than just react.

### **Taking the debate forward**

To this end a group of students' unions, supported by Wonkhe, the home of higher education debate, have been [working to identify how the concerns might be addressed](#)<sup>3</sup>. Two round table events, a detailed call for evidence and a series of stakeholder meetings have revealed that while much is being done, there is more to do.

In our view it is crucial that there is clear guidance and high standards for SUs that secure the maximum possible level of diversity of viewpoints and debate and discussion on campus. As such in this report we recommend the creation of a code which establishes important principles on campus of political diversity and freedom of expression.

It should reflect the widespread assumption that legislation on freedom of speech effectively directly applies to students' unions, creates clear guidelines that set out how the societies will be supported to host debates and speakers (including the way in which costs will be met), and makes recommendations on the updating and revision of university policies on freedom of speech – many of which may not have been updated significantly since the passage and implementation of legislation in this area in 1986.

We also set out the role that we believe the charities and universities' regulators should play to both strengthen practice and secure public confidence in the work of students' unions in relation to political diversity and freedom of speech.

In our call for evidence we found examples of strong partnerships between universities and students' unions over freedom of speech and political diversity. But we also found unhelpful examples - gaps and overlaps in policies, a lack of clarity over complaints and an occasional tendency in the heat of

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<sup>3</sup> <https://wonkhe.com/blogs/if-this-is-a-free-speech-culture-war-were-calling-a-ceasefire-2/>

public scrutiny on the part of universities to distance themselves from their student groups or unions. We think a partnership approach that celebrates the rights of students to debate and be challenging is essential, and so our proposed code should form a part of wider relationship agreements between students' unions and universities.

### **Boosting debate and speech on campus**

Launching work on freedom of speech in 2018, Universities Minister Sam Gyimah argued that new guidance should signal a “new chapter” for free speech on campus, ensuring future generations of students get exposure to stimulating debates and the diversity of viewpoints that lie at the very core of the university experience. Our recommendations should both extend and embed that work.

Much of the work we have convened has been focussed on the regulation of student activity. But we also wanted to take up some of the introduction to reflect on the nature of the “problem” we are trying to solve. In our call for evidence, it became clear that much of the controversy surrounding political diversity, freedom of speech and external speakers is concentrated on a handful of the country's most elite universities.

Whatever the assessment of the nature or character of that problem, more broadly it is clear that not all students have access to the breadth or depth of political engagement and exposure to debate, external speakers or controversial ideas as others. This is a free speech problem in and of itself. Some of the diversity of opportunities available may be down to student choice, or subject mix, or geography - but some will be down to hierarchy, prestige and class.

We therefore call on all sector agencies and the government to work together with universities and their SUs to not get too lost in “regulation”, but to also focus on deepening and broadening opportunities for political engagement and debate on campus - so that all students have the opportunity to be enriched by this type of extra curricular activity.

To improve clarity and assure compliance, we recommend:

- That students' unions adopt a code of students' unions' political diversity and freedom of speech (draft appended) and report on its operation annually. The code would form an addendum to the Guide for Members of Higher Education Governing Bodies on the relationship between universities and students' unions.



- That a group should be formed, sponsored by NUS, Universities UK and other sector bodies, to host, develop and supervise sign up to the code, in a similar to way to the operation of the [Charity Governance Code](#)<sup>4</sup>.
- The code should substantially adopt the widely used principles within the [free speech policy statement](#)<sup>5</sup> produced by the Committee on Freedom of Expression at the University of Chicago.
- That the code should set a goal of increasing the volume and diversity of debates and student political groups on campus, and should see all universities pledging to work with their SU to use networks and influence to set targets for expanding opportunities to meet and debate with important figures.

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## **Additional notes:**

**Devolved nations:** This report addresses substantial issues of freedom of speech, political diversity and students' unions, guilds and associations across the UK - although its regulatory, legal and political focus and context is on England / Westminster. We would encourage student organisations, sector bodies and others with an interest in this area in the devolved nations to consider adopting and adapting the principles and recommendations embodied in this report.

**Autocratic regimes:** In our call for evidence we found a significant number of concerns inside students' unions about threats to freedom of speech and free expression arising from autocratic regimes, and the links they may have to particular countries' student societies on campus. We recommend that the Foreign and Commonwealth Office coordinates with other departments, the Office for Students and Universities UK International to understand the problem(s), assess the risks and develop meaningful advice and guidance on the issues for anyone supporting student groups on campus.

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<sup>4</sup> <https://www.charitygovernancecode.org/en/about-the-code-1/support-the-code>

<sup>5</sup> <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf>

## External speakers, “no platforming” and risk assessment

**E**very year students’ unions and their clubs and societies organise and facilitate hundreds of thousands of events, debates and talks involving external speakers on campus. The breadth of perspectives on offer is an important part of students’ wider educational, social and political development - and only a tiny number of these events attract criticism or any form of regulation.

Many of the cases that have reached the public domain have focussed on what is often referred to as the “no platforming” of external speakers due to visit campuses. This has its origins in a tactic used by the National Union of Students first in the 1970s - where far-right, extremist organisations were banned by NUS on the basis that allowing those groups to operate on campus might create active harm. Today NUS maintains six organisations on its “No Platform” list - Al-Muhajiroun, the British National Party, the English Defence League, Hizb-ut-Tahrir, the Muslim Public Affairs Committee UK and National Action. The policy is not binding upon students' unions.

When contemporarily referenced, “No platforming” can include refusing to host an event, as well as members of the elected SU leadership refusing to share a platform with a specific speaker or a speaker from a specific organisation. It also includes instances where an SU may have a pre-existing policy on a speaker or organisation, where a students’ union does not hold a pre-existing policy but reaches a decision to regulate or halt an event, and even where students merely campaign to have an event or speaker cancelled regardless of whether an SU or university resolves to do so.

The closest that the sector has to a [comprehensive list](#)<sup>6</sup> of incidents appears to be this one hosted at the “Academics for Academic Freedom” site, listing 91 controversies across 15 years and 130 universities. In many of the cases listed events went ahead. A tiny number involve students’ unions. As such the “banning” of speakers by SUs does not appear to be a widespread problem, although critics would argue that lists of this sort do not pick up a wider “chilling effect”.

An OfS data collection exercise in England in 2017-18 found that 0.09 per cent of the total number of event requests made under an external speakers process at a university were refused permission (at just 17 universities, out of more than 140 universities and 400+ higher education providers). This includes

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<sup>6</sup> <https://www.afaf.org.uk/the-banned-list/>

cases where student groups had not followed procedures or insufficient notice was given of a planned event and a postponement was not possible.

A Wonkhe survey of 61 university students' unions in December 2020 found that in 2019-20, just 6 events from almost 10,000 involving an external speaker (0.06%) were cancelled. Four failed to get paperwork in on time. One involved a pyramid scheme fraudster attempting to access a student entrepreneur society. And the fourth was Jeremy Corbyn - the Labour Party requested to run a rally on campus through the university Labour Club with insufficient notice. The rally was moved to the town centre.

## **Legislation and formal regulation**

The [Education Act 1986](#)<sup>7</sup> requires that every individual and body of persons concerned in the government of any [higher education] establishment must 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. It also says that where a students' union occupies premises which are not premises of the establishment in connection with which the union is constituted, any reference to the premises of the establishment should be taken to include a reference to the premises occupied by the students' union.

There has been some concern that the nature of the duty placed on universities in EA86 is such that students' unions do not believe that the duty applies to them. We think this concern is unfounded - it appears from our call for evidence that the level of practical integration and day to day compliance with principles of free speech is such that SUs accept that the act applies to them to all intents and purposes.

Section 26(1) of the Counter-Terrorism and Security Act 2015 imposes a duty on "specified authorities", when exercising their functions, to have due regard to the need to prevent people from being drawn into terrorism. Certain higher education bodies ("Relevant Higher Education Bodies", or "RHEBs") are subject to the section 26 duty. All universities are RHEBs.

To comply with the duty all RHEBs should have policies and procedures in place for the management of events on campus and the use of all RHEB premises. When deciding whether or not to host a particular speaker, RHEBs are required to ensure there is careful consideration of whether 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

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<sup>7</sup> <https://www.legislation.gov.uk/ukpga/1986/61/section/43>

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.

As such the statutory guidance expects RHEBs to ensure that there is a system for assessing and rating risks associated with any planned events, which provides evidence to suggest whether an event should proceed, be cancelled or whether action is required to mitigate any risk. There should also be a mechanism in place for assessing the risks associated with any events which are RHEB- affiliated, funded or branded but which take place off-campus and for taking “swift and appropriate” action.

Political engagement with or approval of the so-called “Prevent” agenda has been historically low amongst students’ unions. However that does not mean that SUs or NUS have been universally opposed to all of the policies or practices that support [universities’ duties under Prevent legislation](#)<sup>8</sup>. Students’ unions have been, for example, concerned that their members do not come to harm; that safeguarding issues highlighted with the agenda are appropriately addressed; and that students’ union societies are not used by extreme groups as “fronts” through which students might be accessed or radicalised - from any extremist political perspective.

## **Managing risks**

Outside of the Prevent duty specifically, the Charity Commission’s guidance notes that most student societies are part of a students’ union and that these are usually charities that are established to advance education. It says that the right to freedom of expression is an important element in furthering educational charitable purposes and that “many of these charities are leaders in promoting democracy, human rights and civil liberties”. But it also says that this must be balanced with ensuring that activities aimed at promoting these rights “do not interfere with or deprive other people of their rights”. For example, it says that speech or literature that aims to make the lives of a particular group intolerable would not be protected under the right to freedom of expression.

The Commission [expects](#)<sup>9</sup> that Charity Trustees have in place procedures that consider the risk posed by Charity events, and that (for example) steps are taken to identify when external speakers might present at an event and that checks are made on people that are planned to speak at an event. As such the

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<sup>8</sup> <https://www.officeforstudents.org.uk/advice-and-guidance/student-wellbeing-and-protection/counter-terrorism-the-prevent-duty/>

<sup>9</sup> <https://ogs.charitycommission.gov.uk/g048a001.aspx>

Commission expects that when handling these sorts of issues, there are procedures in place to monitor, examine and make judgements on the activities of societies and their event; that there are opportunities for the trustees to consider the range of legal responsibilities that are placed on them, including both the university's requirement to secure freedom of speech and other legal considerations on the trustees (such as the need to consider risk and follow union policy), when making judgements about what can or cannot happen in the name of or under the auspices of the union.

In the early part of the last decade, the National Union of Students (NUS) was funded by the then Department for Business, Innovation and Skills (BIS) to work on [guidance for SUs](#)<sup>10</sup> on improving the handling of external speakers that embodies the risk management approach. The aim was to shift from the "blunt" practice of "No Platforming" toward one which could maximise the number of events going ahead, "reserve" the practice of outright bans for organisations on NUS' (short) "No Platform" list, and better equip students' unions to manage sometimes competing requirements to secure both safety and freedom for members.

The [guidance work](#)<sup>11</sup> was largely successful with the majority of students' unions adopting versions of the model policies as a way of risk-assessing external speaker events, and enabling concerns to be formally process-flagged to a university as part of its duties in pursuit of both safeguarding and freedom of speech. As such the majority of SUs have adopted policies which assess events and speakers for risk and put in risk-mitigation steps that, ironically, have often been identified as curtailing free speech when in many cases they have been implemented as a way to ensure it.

The sorts of risks typically assessed include:

- The potential for any decision to limit freedom of speech as per the university's code of practice in pursuance of the 1986 Education Act
- The potential for the event going ahead to cause the union to be in breach of its equal opportunities policy
- The potential for the event going ahead to cause the union to fail in its wider legal duties
- The potential for the event going ahead to cause reputational risk to the union, and the associated potential for the event not going ahead to cause reputational risk to the union.

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<sup>10</sup> <https://www.nusconnect.org.uk/learning-resources/faith-and-belief/external-speakers-guidance>

<sup>11</sup> <https://www.nusconnect.org.uk/learning-resources/faith-and-belief/external-speakers-guidance>

- The potential for the speaker’s presence on campus to cause harassment, alarm or distress to members of the student body
- The potential for the speakers presence on campus to give rise to breach of peace

Regulatory steps designed to mitigate risk typically include:

- Requiring that the event be filmed by an independent body
- Requiring that the event be observed by union, university or third party officials
- Requiring that the event be stewarded or subject to “security” on the door
- Requiring that an event promoting a particular view includes an opportunity to debate or challenge that view
- Requiring that an event closed to society members only be opened to all members of the union
- Requiring that a copy of any speech to be delivered by the speaker be submitted to the union

## **How procedures are used and viewed**

In the wider narrative on freedom of speech and students’ unions, there have been some suggestions that the procedures deployed by SUs to manage risks associated with external speakers are manipulated to restrict freedom of speech. In some cases such procedures (and risk mitigation steps that might be required) should be removed in the name of freedom. In other cases some have argued that student clubs and societies should not be managed or regulated by SUs at all and should either exist entirely independently, or under the auspices of universities directly.

In our **call for evidence** we saw some concern that procedures were often focussed on the booking of rooms - when in particular this year many events have moved online. OfS’ consultation on harassment and misconduct makes clear that procedures in that space should cover interactions between students generally and SU policies should probably reflect that.

We also found:

- A widespread belief that risk-based processes work well and have facilitated and enabled, rather than restricted debate and external speakers over the past decade.
- Some evidence of frustration from external speakers and student societies that procedures existed at all, or were too slow and complex to navigate.

- Some complexity surrounding the interplay between students' union and university procedures in this area.
- Some evidence that students' unions are "giving away" their own power to make judgements in this area (see section 4).
- Some concern that a focus on regulation and restriction was hampering students' union efforts to attract and encourage a rich and diverse speaker programme.
- A number of unions found the process of attracting, contacting, risk assessing and researching speakers to be onerous and called for greater collaboration.

Generally, we take the view that the role that students' unions play in regulating, supporting and developing student groups is highly valuable and preferable to them being "cut loose" or regulated directly by their university. Effective regulation should be carried out with consent and being "cut loose" would likely see more complexity and less trust in the regulatory and risk decisions a students union may have to make.

The call for evidence also suggests that students' unions would benefit from the pooling of knowledge about speakers and the development of an online speakers' pool - reducing the need for travel and mitigating local security concerns.

To improve clarity and assure compliance, we would recommend:

- That students' unions adopt a code on students' unions' political diversity and freedom of speech (draft appended) and report on its operation annually to their university as part of their annual report to governors. The code would form an addendum to the Guide for Members of Higher Education Governing Bodies on the relationship between universities and students' unions.
- That the NUS guidance on external speakers and risk is formally reviewed by higher education representative bodies, the Charity Commission, the Office for Students, NUS, the Home Office and the Department for Education in light of practical experience over the past decade.
- That the code would require all SUs to publish clearly to clubs and societies how all events - online and offline, on campus and off campus - will be regulated and approved.
- The code would require an annual review of external events and speaker policies, fed into the university, to gather feedback from users to ensure that processes are kept as rapid in execution and as simple to understand as possible.



- The code would require SUs to accept that the Education Act 1986 (Freedom of Speech) applies to all students' union activities, save that where an SU resolves formally to pass a decision to "no platform" an organisation that the responsibility to manage an external speaker request for a speaker covered by such a policy is handled directly by a university.
- NUS, Universities UK and other sector bodies work together to identify how they might collaborate to streamline and support the process of attracting, contacting, risk assessing and researching external speakers, developing an online speakers' pool in the process.

## **Facilitating speech**

"In line with the legislation, we seek to ensure that freedom of speech is prioritised and that speakers are able to address audiences regardless of their particular views.

"Our only exemptions are for speech that incites hatred or violence (i.e. in contravention of the law) or where we do not feel we could safely facilitate an event on campus (e.g. for a particularly high-profile controversial speaker whose security could not reasonably be guaranteed by the university).

"Along these lines, events are from time to time restricted to those within the university (i.e. not allowing members of the public to attend) to reduce the security burden. But that's incredibly rare."

## **Partnership working**

"We work closely with our institution and have ensured our respective policies are in sync. There are high levels of confidence on both sides that freedom of speech is being safeguarded, and while there are occasional timing issues i.e. student groups submitting requests for external speakers with very little notice, we are committed to working together to ensure events can go ahead. There are occasions where we recommend a change in format and/ or location, but we do not have a track record of refusing requests for speakers. As an SU we do not have our own building/ spaces, and so the university is necessarily involved in our decision making on events taking place on campus."

## **Campaigning and political activity**

**S**ome of the concern that surrounds the work of charities generally and students' unions specifically involves campaigning and political activity. There are strict rules and prohibitions on this type of activity - charities are not completely free to campaign on political issues but must ensure their activities are confined to their objects, which in our case are focussed on education and students.

While there is no evidence of widespread concern or poor compliance raised with or through the Charity Commission, a round of meetings between the Charity Commission and SU boards in the mid 2010s had campaigning and political activity as a focus, and a central theme was that Charity Trustees must understand their authority and responsibilities, and be able to demonstrate compliance. They recommended a strategic look at how SUs do so in the round.

This paragraph from a lay Trustee at an SU at the time summarised the concerns:

"I was struck by the extent of the CC's anxiety at any evidence of political positioning by the student union on issues beyond the university. (They had read references to Syria and Palestine on the SU website.) Though I don't think this is a current issue here, I suspect the wider student union movement may find this difficult: some sabbatical officers are bound to put themselves forward for election on an overtly political ticket, and students will want their voices to be heard on wider political issues from time to time."

[Case law makes clear that](#) students' unions both can and should host debates on matters of concern to students in wider society, and meetings held under the auspices of a students' union should be free to express corporate conclusions on such issues. It is however generally accepted that spending charitable resources on campaigning on issues outside of the objects would not be allowed.

Separately, [case law allows for](#) a diverse set of student groups to be funded, supported and undertake political activity - many of which may be focussed on particular political parties or causes - as long as these are dealt with in an "even handed" way.

We found a range of practice in this area in our call for evidence. In some cases SU Trustee Boards had implemented detailed policies to proactively address

some of the concerns. In some cases Boards had reactively wrestled with issues brought to their attention in this space by students, external organisations or universities. Some unions had struggled to identify activity that was and was not permissible ahead of controversy surrounding it and so were ill-prepared.

To improve support and assure compliance, we would recommend:

- The new code should include, define and clarify the separate areas of campaigning on matters that advance the education and welfare of students, debating activity, and the role of campaigning student groups.
- It should specifically ensure that the requirements of charity law in this area are drawn to the attention of trustees during induction and training.
- The code should make clear that SUs may reach “corporate conclusions” on matters outside of their objects but that SUs will not seek to communicate or otherwise adopt those corporate conclusions outside of the university, as well as committing to ensure that the processes of debate are fair, non-discriminatory and impartial.
- The code should set out basic standards that ensure that all students are informed of how they might raise or challenge policy matters and questions democratically, or obtain funding or support for a student group that might undertake political or campaigning activity.
- The code should require students’ unions to ensure that student representatives make clear where they are expressing a personal view, particularly on contentious issues.
- The code should require students’ union trustee boards to regulate this area of activity appropriately and develop an annual statement on it for inclusion in annual reports and reporting to their university.

## **Campaigns and political activity**

“Students and Officers are often passionate about an issue which may not meet the legal criteria of an issue which impacts “students as students”.

“So we have a separate framework and principles which define the SU’s political campaigning activity, with specific guidance relating to local and general elections.”

“We generally apply the principle that campaigning and political activity undertaken by student groups provides an educational, engagement and developmental benefit for members which furthers our charitable objects - as long as those groups are treated equitably.”

## **“Pile ons” and protest**

**T**here has been considerable concern in the press surrounding what we might describe as “pile ons”, protest and what is also sometimes described as “academic mobbing”. Students - often not connected to the students union - engage in protest (both online and in person) about or otherwise object to a speaker or an event at which a speaker is due to attend. In many cases the “storm” surrounding an issue or speaker can extend beyond the student body, drawing in participation on social media from wider society and anonymous “trolls”.

On the one hand, most agree that students should have the right to object to a speaker and their views, and a right to protest. On the other hand many argue that that behaviour may in and of itself amount to threatening or harassment behaviour.

In our call for evidence, students’ unions raised a number of concerns in this area. Some were concerned as to whether such issues should be handled through their own or university procedures. Others were concerned to ensure that conduct procedures protect students’ and speakers’ rights to both safety and protest.

Students’ unions are obviously not responsible for the actions of all students all of the time although sometimes protest or objection is led by groups within a students’ union. More often than not, students unions instead find themselves at the centre of passionately held and contradictory calls from students and others to protect either the right to speak or the right to exist on campus free from discrimination.

Where it is defined, “protest” tends to be drawn in the context of public order and bringing the institution into disrepute - and is rarely drawn in such a way as to include many of the online behaviours which seem to be generating concern.

We found significant evidence of a need to consider the support that student societies, student officers and/or students’ union staff may need in these situations in order that they discharge their responsibilities effectively and make sound decisions. In particular students leading student societies can find themselves under intolerable pressure from students, the wider public and the media. Students’ unions and universities should work together to ensure that clear communication and support protocols are in place.

Some have proposed that the mere act of objection or protest in reaction to a speaker whose views or actions are within the law should be prohibited. We think that unwise, and that both controversial views and the right to object or protest them be protected in the cause of freedom of speech and expression.

To improve transparency and assure compliance, we would recommend:

- That Universities UK leads work in conjunction with NUS and SUs and other higher education representative bodies that specifically addresses the issue of protest and harassment (including in online spaces), re-emphasising in doing so the right to peaceful protest within Codes of Practice on freedom of speech established under the Education Act 1986.
- That such work should ensure that it is clear how students, external speakers and stakeholders might raise concerns about the conduct of campaigners into processes that are demonstrably appropriate and fair.
- That the code establishes the way in which student groups and student officers will communicate and access support during an incident of this nature.
- That students' union codes of conduct and/or complaints procedures should specifically reference this issue and be linked appropriately to the university's procedures (see below).

## **Protest**

“There is not an abundance of these sorts of incidents on our campus. That notwithstanding, there have been student protests against various figures both internal and external visitors and speakers.”

“While these students are usually dealt with respectfully, and demonstrations have sometimes been given space, in some instances [the university] has been quite heavy handed in removing students or moving them on from the location in which they're protesting.”

“Some clear guidance would be very welcome.”

## Equality and Human Rights Commission guidance

**I**n 2018 the then Universities Minister Sam Gyimah called on higher education organisations to stamp out what he called an “institutional hostility” to unfashionable views that had emerged in some student societies and urged them to work with the government following recent reports of a rise in “safe spaces and no-platform policies”. At a round table event, he offered to work with the sector to create new guidance that would clarify the rules for both students and universities.

Later in the year the Charity Commission [revised](#) its operational guidance for students’ unions on freedom of speech, and early in 2019 the Equality and Human Rights Commission [published](#) its own guidance for universities and students’ unions in response to the call from the Universities Minister.

The majority of students’ unions that responded to our call for evidence had seen and made use of the EHRC guidance, with many using it within briefing and training activity internally; some using it to guide decisions over particular activities; and a number using it as a trigger to review policies in this area.

There were however two areas in the guidance that several respondents referenced that have generated confusion. The first concerns the cancellation or “disinvitation” of a invited speaker - the controversy around which is typified by the Oxford/UN Women/Amber Rudd case earlier this year (even though in that case student societies are not operated by or regulated by the SU).

[Page 27 of the EHRC guidance](#)<sup>12</sup> says:

“NUS guidance talks about the need to balance freedom of speech with ‘freedom from harm’. Freedom from harm may refer to a number of the legal duties mentioned in this guide, including an SU’s duty of care and responsibilities to protect students from unlawful harassment, discrimination and hate crime

“SUs are entitled – and required, to the extent that the speech may break the law – to consider ‘harm’ that someone’s views may cause to some of their members, when deciding whether to invite a speaker to an event they are organising.

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<sup>12</sup> <https://www.equalityhumanrights.com/en/publication-download/freedom-expression-guide-higher-education-providers-and-students-unions-england>

“However, if a speaker has already been invited by an SU society or group and the speech will be lawful, the SU will need to consider their obligations under their HEP’s s.43 code of practice. If an SU cancels a speaker in these circumstances, their HEP has a duty to take reasonably practicable steps to ensure the speaker event can proceed.

In most cases this has been taken to mean that a university might or should bypass or overrule a students’ union to facilitate an event which a society wishes to go ahead but that an SU has blocked. In other cases, both in theory and in practice, this has been taken to mean that a university might or should require a society event to go ahead even where the society itself no longer wishes that to happen.

These interpretations raise serious charity law concerns given that in the majority of cases the societies are legally a component of the SU itself. They also raise the question of whether it really is “reasonably practicable” to require a student society to hold an event or host a speaker that it no longer wants to hold/host, and what the sanctions might be if it refuses.

This is partly because in casework surrounding students’ unions, the Charity Commission has repeatedly stressed that SUs have a range of sometimes competing duties of their own that should not be automatically relinquished to universities. For example:

“It is important to recognise that the Commission does not dispute an individual's right to freedom of speech. Our intervention in this instance is to ensure that the trustees in promoting freedom of speech are not failing to comply with their other legal duties. These include issues of charity/trust law, criminal law, human rights and equality law.

“In addition, we have also considered section 43 of the Education (No.2) Act 1986 and its impact on charity trustees of student unions. Whilst we accept that this legislation imposes a duty to ensure that freedom of speech is secured for visiting speakers, it seems to us that it is applicable to the executive body of the university and not the trustees of the student union.

“There may be instances when it is necessary for the trustees to curtail freedom of speech if they are put on notice that speakers at events within their control may:



- infringe the rights of others;
- discriminate against a protected group;

Even where both SUs and universities agree that they are committed to freedom of speech within the law, it is clear that from time to time the two bodies may reach different conclusions about how to interpret the law in a given situation.

The assertion in a number of cases is that while everyone accepts that neither SUs nor their the societies are under any obligation to invite anyone in particular to speak at their events, that once an invitation has been extended an invitation to a particular speaker it is under some kind of obligation not to rescind that invitation at the behest of other students who disapprove of the speaker or disagree with the speaker's political views.

The argument is that a student society that withdraws an invitation to a speaker at the behest of other students who disapprove of the speaker's views endangers freedom of speech on campus because it effectively gives groups of activists and protestors the power of veto over the expression of viewpoints they disagree with.

The problem is that it is not clear how a university or SU might practically differentiate between a society or SU changing its mind for other reasons, nor how a university might practically or legally differentiate between an individual student, a student society they were involved in or a students' union making a decision to invite or disinvite a speaker.

What we think would help would be if students' unions were to integrate some training and guidance for student societies on creating effective external speaker events, generating robust debate, and thinking through the ramifications of (and seeking advice when) actions they might take when a planned event attracts protest - all with a view to maximising rather than limiting the number of events that happen on campus.

We also think that there should be unambiguous clarity across an institution on who can issue a formal invitation on behalf of a university, students' union or student group, and how - in much the same way that organisations issue purchase orders for goods. This need not be manifest as a way to shut down debate or speakers, but as a way of appropriately managing expectations and processes required by regulators and institutions for their effective operation.

A related issue concerns costs that students' unions or universities might incur in permitting an event to go ahead in a safe way. It is generally regarded that

in many cases a controversial event attracting protest (sometimes from outside of the student body) may for example require security staff to attend to facilitate the event going ahead - the concern surrounds who should fund that cost.

In some cases the allegation is that the imposition of such a cost onto a student society's budget with an SU is used as a "back door" way of preventing freedom of speech. However in our call for evidence the majority of SUs made clear that they are unlikely to be resourced in such a way as to enable the deployment of significant ad-hoc expenditure on such events, and doing so may put at risk theory specific legal duty to treat student group expenditure in an even handed way.

To improve support and assure compliance, we would recommend:

- That the new code should establish that in principle no event should be cancelled due to a society or SU not feeling able to meet security costs; and that recognised students' unions should either be resourced appropriately in grant funding to meet reasonable security costs for external speaker events incurred following a risk assessment, or that the union will not be expected to fund reasonable costs directly and that reasonable costs will instead be funded directly by universities.
- That the new code should establish with unambiguous clarity across an institution on who can issue a formal invitation on behalf of a university, students' union or student group, and how. It should make clear that generally, where a student club or society no longer wishes to hold an event it should not be forced to do so - albeit that reasonable notice should be given.
- That the new code should make clear that where a students' union reaches a proper judgment about any risk posed by a speaker or event and imposes associated mitigations (up to and including cancellation), that as long as this judgement has been reached properly and in accordance with policies agreed by the university this judgment should not be subject to direct "overrule" but can be subject to formal complaint, and appeal/review involving the university (see below).
- That the specific issue of the legal status of clubs and societies, and the potentially competing legal duties of universities and SUs is subject to more detailed legal work involving stakeholders.

## **Speaker costs**

“Security costs - uni pays/absorbs costs on some occasions but not others. Ideally that would be consistent. Often it’s the student group responsible for paying the full cost of security if additional are needed, which can be expensive.

“We understand there is a cost, and not everything can be absorbed, especially for the amount of events our groups run, so we’d welcome clarity on this- because by the time the groups find out about costs, it’s too late to apply for SU grant funding.”

## Complaints

**F**rom time to time it is inevitable that students, staff or stakeholders will want to raise complaints about the conduct or actions of a students' union or one of its clubs and societies in relation to issues surrounding freedom of speech and political diversity. This may include judgements that it makes about speakers or events as outlined above.

The [Education Act 1994](#)<sup>13</sup> established that there should be a complaints procedure available to all students or groups of students who are dissatisfied in their dealings with the union, or claim to be unfairly disadvantaged by reason of their having exercised the right to opt out, which should include provision for an independent person appointed by the university governing body to investigate and report on complaints. Complaints should be dealt with promptly and fairly and where a complaint is upheld there should be an effective remedy.

In our call for evidence it became clear that the complaints procedures established under these provisions are rarely used. It was also clear that students' unions often run parallel and separate procedures that regulate the conduct of their officers, members and volunteers ("codes of conduct"). There was considerable confusion in some cases as to the links between those policies, and whether all three should be subject to the external review suggested in the Education Act 1994.

There is a diversity of practice over matters that rightly should concern both students' unions and universities. For example complaints about harassment within a student society may be dealt with by an SU, a university or both, in different ways and to different standards or definitions.

There is also confusion that surrounds the role of the Office of the Independent Adjudicator. It is accepted that it has a role in adjudicating complaints surrounding university's duties under the Education Act 1994 generally, and in the external review of complaints about SUs specifically. However in many cases this means that neither students, universities nor SUs are clear on whether and when they might refer a complaint about an SU to the OIA.

To improve clarity and assure compliance, we would recommend:

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<sup>13</sup> <https://www.legislation.gov.uk/ukpga/1994/30/contents>

- That the code requires that students' unions adopt, promote and publish a single complaints procedure/policy - taking into account members' and leaders' conduct, general dissatisfaction and election issues - where a student can have that complaint reviewed by the person appointed by the university governing body.
- That Universities UK, the Office of the Independent Adjudicator, the Office for Students and SUs along with other representative bodies GuildHE, AoC and IndependentHE form a task and finish group to specifically interrogate the issue of "complaints crossover" - with particular reference to harassment and freedom of speech issues - with a view to simplifying processes for students and boosting the speed, clarity and fairness with which complaints concerns are investigated and addressed.
- That the Committee of University Chairs issues guidance to universities on the role and appointment of persons required to undertake external review of SU complaints with a view to sector-wide standardisation.
- That OIA promotes guidance on the way in which it might be caused to review a complaint about a students' union and the circumstances under which a university should issue a completion of procedures letter relating to an SU complaint. It should also consider advising universities on good practice when appointing someone to review SU complaints and the principles/approach reviewers should take when doing so.

## **Complaints**

"In the past the university pushed complaints it received to the union - for example, if a case of harassment happens within the context of a society activity or event and the solution the complainant would like is for the accused to be removed from said society, the university would not investigate it and would expect us to do so.

"Over the past year, the university has concluded that that action is less than satisfactory and has begun to take on cases between students regardless of their context. We'd like to see that tidied up in policy."

## Clubs and societies

**A**round 30,000 student clubs and societies exist on campuses<sup>14</sup> and are funded and supported by students' unions - providing support with administration, events, financial management and risk.

(Student sports clubs can be operated by the SU, the university or under a joint arrangement. Student societies are supported and regulated by the university Proctor's office at both Oxford and Cambridge).

In a small number of cases concerns have been raised surrounding the politicisation of the process of approving and funding student clubs and societies. The allegation is that the approval of new clubs and societies and the funding and support afforded to them by SUs is based upon their political views rather than objective criteria.

The [Education Act 1994](#)<sup>15</sup> requires that SU procedures for allocating resources to groups or clubs are fair, in writing and freely accessible to all students. And case law permits a range of politically diverse clubs and societies to exist and be supported, as long as they are supported in an even-handed way.

In our call for evidence in this area we found good practice making clear to students how to form a new group, the criteria that would be used to approve new groups and ongoing arrangements for the approval and allocation of funding. However in many cases approval information was not readily available to students. In some cases decisions were not rules-based but subject to wider votes and political judgement, creating a false impression to the student body that it may be lawful to reject a group. And despite existing and being widely used, funding criteria were not generally published to students or reported upon.

To improve clarity and assure compliance, we would recommend:

- That the code requires SUs to publish and make clear to students the objective, rules based criteria for the approval and or re-recognition of new groups and sets out how a professional/technical decision of that sort should be made and/or challenged.

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<sup>14</sup> (Student sports clubs can be operated by the SU, the university or under a joint arrangement. Student societies are supported and regulated by the university Proctor's office at both Oxford and Cambridge).

<sup>15</sup> <https://www.legislation.gov.uk/ukpga/1994/30/contents>

- That the code requires SUs to publish and make clear to students objective funding and support criteria for student clubs and societies, reporting on decisions made against those criteria annually.

## **Clubs and societies**

“New society requests are managed via a process that we publish clearly online. Explicit reference is made to the need to assess the resource that will be required to support the group and these factors are based on legal requirements, such as compliance with the Education Act 1986 to ensure lawful free speech is never prevented or inhibited on campus - rather than any political or policy consideration.”



## Students' union funding

**T**he funding and support for students' unions almost always comes in five types:

1. University block funding, which shows up as unrestricted funding in Charity-SORP compliant accounts;
2. University - provided specific project/service/initiative funding, which shows up as restricted funding in accounts
3. University - provided support in kind (buildings and additional services like IT or cleaning) which are ascribed a value in the accounts but for which there isn't cash.
4. External fundraising for projects or initiatives;
5. Income from social enterprises - often raised through on campus trading subsidiaries focussed on retail, catering or bars, or the facilitation of commercial marketing

As per [22:2g of Part 2 of the Education Act 1994](#)<sup>16</sup>, the governing body has to take such steps as are reasonably practicable to secure that financial affairs of the union are properly conducted, and appropriate arrangements must exist for the approval of the union's budget, and the monitoring of its expenditure, by the governing body.

As such almost all students' unions have a financial memorandum (or equivalent) in place with their university that, as well as detailing the day to day supervision arrangements delegated from the governing body above, set out how a students' union will apply for its funding and support in each of the categories above.

Block funding supports the general functions of students' unions that are common to almost all of them and described in EA94 - representing students (individually and collectively) in academic, disciplinary or other matters relating to the government of the establishment, and the support for and regulation of student groups or clubs.

There has been a general move away from "per capita" block funding - but that doesn't mean that funding is somehow "automatic". In fact almost all SUs receive funding on the basis of their planned activity and its value to the student experience, submitted and assessed by the university as above. And there has been an increase over the past decade in the proportion of funding that is restricted for particular initiatives or projects.

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<sup>16</sup> <https://www.legislation.gov.uk/ukpga/1994/30/contents>

These functions funded through general block funding tend to manifest publicly as (professionally staffed) student advice centres supporting individual student casework; support for student engagement (ie course reps and university committee work) as outlined in the quality code, TDAP rules and by OfS; and support for and regulation of student activities (through student clubs, societies, events, projects and initiatives).

Specific project/service/initiative funding will generally be allocated on the basis of particular priorities relating to the student experience at the time. Typical examples in recent years would include project work on widening access, the implementation of projects on harassment or misconduct, awareness work around collusion and plagiarism, international student integration and mental health awareness. Some of the critique of students' union funding has focussed on the expenditure of students' unions and has questioned the way in which funding is determined, how expenditure is monitored and how value for money is secured and assured. In our call for evidence we found a range of excellent practice in this area where we believe there is scope for universal adoption.

So to improve clarity and assure compliance, we would recommend:

- That a dedicated version of the Charities SORP is developed by and for students' unions in conjunction with auditing firms that would allow more straightforward and meaningful comparison of income and expenditure between universities on their students' unions - including clear definitions of and ways of accounting for support in kind;
- That work is progressed with BUFDG to update and promote the model financial memorandum between SUs and universities, setting out in detail how the general expectations in EA94 are met with particular reference to value for money.

## **Value for money**

"We apply annually for our grant and funding decisions are based upon a description of activities and initiatives planned for the year.

"Some draft objectives are provided which are then reported back on to the university to track performance.

"Some specific project funding is ringfenced for that specific purpose e.g. this year we got £40k to run a new peer assisted learning scheme and we report this funding separate to the block grant.

"We send the Uni our monthly management accounts and a senior member of the Uni finance team sits on our audit and risk sub-committee of the board."

## Support and advocacy for students

**S**tudents' unions undertake an important role in the individual advocacy of students, on matters including academic misconduct and appeals, complaints and housing. Most employ professional staff and many SU advice centres are already part of the Advice Quality Standard (AQS).

On a wider basis many SUs involve students in the design and delivery of awareness or peer support work within the SU and often across a university, and more generally a number are also involved in a range of projects and services aimed at improving the welfare of students.

There has been some concern expressed that students may not trust a service with “political” officers at the helm, and that students may not be clear on the services that are peer delivered, professionally delivered or delivered without any particular political influence of the SU officers of the day.

To improve clarity and assure compliance, we would recommend:

- That all universities and higher education providers ensure that students have access to independent, professional advice in the event of a complaint or appeal.
- All students unions undertaking advocacy of any sort sets out a service delivery promise to all students setting out the way in which each service is delivered, the standards to which it is delivered, and how that function is governed inside the SU.

## The regulatory environment

**P**art II of the Education Act 1994 defines a students' union in law, and places duties on universities to regulate and monitor them. It was amended in the [Higher Education and Research Act 2017 \(Further Implementation etc.\) Regulations 2019](#)<sup>17</sup> to widen coverage of the act to include any provider funded by the Office for Students.

In addition Schedule 11 of HERA refers to s. 43 of the 1986 Education Act which it amends by broadening the providers covered by the legislation to “any registered higher education provider”.

There is no evidence to suggest that there is widespread non-compliance with either charity law or the education acts of 1986 or 1994 across university students' unions in England. Yet many of the aspects of concern referred to above surround the way in which the law is interpreted or implemented, or the way it is enforced by regulators.

While the Charity Commission has a formal role in ensuring that students unions comply with charity law, there is for example no regulator that currently directly ensures compliance with the Education Act 1994.

Students' unions are not directly regulated by the Office for Students, nor is OfS the “principal regulator” of students' unions as it is for universities - given that students' unions were specifically excluded from the definition of “connected” institutions/charities in the Charities Act 2011. However the work and practices of students' unions do relate to a number of aspects of universities that OfS has a regulatory concern in. A non-exhaustive list includes:

- The “A” conditions on access and participation are often in part fulfilled by work carried out by students' unions in involving, representing and delivering project work supporting the access and participation of disadvantaged and underrepresented students.
- The UK Quality Code, which currently forms a central part of the Office for Students (OfS) “B” conditions on quality, expects that providers will actively engage students, individually and collectively, in the quality of their educational experience. The working assumption across most of higher education is that “collective” engagement is secured through the

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<sup>17</sup> <https://www.legislation.gov.uk/ukdsi/2019/9780111186572/contents>

establishment of, support for and work with a successful students' union.

- The “B” conditions also cover support for students and the delivery of successful outcomes, which students' unions contribute to through support services and support for and regulation of extra-curricular activities. Students unions have also played a key role in organising student feedback into the TEF.
- There are particular requirements that apply to providers with Taught Degree Awarding Powers on their academic governance, where providers should seek to engage students as partners as part of the management of academic standards and quality. This is generally operationalised through resourcing and supporting a students' union's representative function with particular reference to the active engagement of student representatives both at programme level and institutional decision making, usually through the students' union.
- In the “C” conditions on complaints and protection, students' unions play a key role in supporting and advising students on their rights and supporting them through the processes.
- In the “E” conditions the Public Interest Governance conditions require that the governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider. They also require that:
  - the governing body ensures that all students have opportunities to engage with the governance of the provider, and that this allows for a range of perspectives to have influence. Again the working assumption across the sector is that this is generally delivered through the establishment of, support for and work with a students' union.
  - the governing body takes such steps as are reasonably practicable to ensure that freedom of speech within the law is secured within the provider, a reference to the Education Act 1986 which itself references students' unions.
  - the governing body ensures that there are adequate and effective arrangements in place to provide transparency about value for money for all students and (where a provider has access to the student support system or to grant funding) for taxpayers, which would include funding and support for students' unions.
- And in the “E” conditions students' unions have tended to play a central role in provider efforts to facilitate electoral registration.

As well as the contribution that students' unions make generally to OfS' regulatory objectives, the Education Act 1994 Section 22(2) (requirements to be observed in relation to students' unions) relates to several aspects of OfS' regulatory framework:

- Section B requires that the SU constitution should be subject to the approval of the governing body and to review by that body at intervals of not more than five years (E1/E2);
- Section C requires that providers ensure that students who exercise a right to "opt out" are not be unfairly disadvantaged with regard to the provision of services or otherwise (B1-5);
- Sections D-F require that elections are monitored and specifically that the governing body satisfies itself that elections are fairly and properly conducted (E1/E2);
- Sections G and H require the provider to ensure that the financial affairs of the union should be properly conducted and appropriate arrangements should exist for the approval of the union's budget, and the monitoring of its expenditure, by the governing body (with financial reports of the union published annually with detail on the external organisations to which the union has made donations) (E2);
- Section I asks to providers to ensure that SU procedures for allocating resources to groups or clubs are fair, in writing and freely accessible to all students (E1);
- Section M requires providers to identify an independent person appointed by the governing body to investigate and report on complaints within the union with a view to ensuring that complaints are dealt with promptly and fairly, and where a complaint is upheld there should be an effective remedy (C2).

Section 22(4) requires the governing body to bring to the attention of all students, at least once a year any restrictions imposed on the activities of the union by the law relating to charities, and the local provisions pertaining to the Education Act 1986 (freedom of speech in universities and colleges) and of any code of practice issued under it, that are relevant to the activities or conduct of the union.

As such while OfS does not have a direct role in the regulation of students' unions, it has an interest in ensuring that the role that any recognised students unions play in contributing to its wider regulatory objectives is effective and supported, and in ensuring that universities undertake their duties on students' unions under the Education Act 1994 effectively where those duties relate to OfS' regulatory concerns, requirements and powers.

To improve transparency and assure compliance, we would recommend:

- OfS condition E2 requires that providers must have in place adequate and effective management and governance arrangements to deliver, in practice, the public interest governance principles that are applicable to it. As such where one or more students' unions are recognised by a higher education provider, we believe there is a case for including evidenced compliance with the Education Act 1994 in the list of arrangements that OfS will consider when making a judgement about whether a provider's management and governance arrangements are effective (RF 441- 444).
- We believe there is a wider case for signalling to providers that the inclusion of the work of any recognised students' unions in operation at a provider and the way in which the requirements of the Education Act 1994 are carried out may be used both to evidence compliance and non-compliance across the range of regulatory conditions.
- We further believe that there is a case for OfS to collect and publish links in its register to information relating to any students' unions recognised by a higher education provider, including any records held by the Charity Commission where that students' union is a registered Charity, and information that sets out how the provider complies with the Education Act 1994. This information could also complement existing webpage information on students' unions included on DiscoverUni.



## **“Safe space” policies and harm**

**S**tudents’ unions centrally operate a number of democratic meetings and forums that allow students to obtain experience of debate and discussion with others. In some cases, they will adopt so-called “safe space” policies for the operation of these events, which generally set out the standards of conduct that the SU might expect during those meetings.

Several studies in the middle of the decade found that democratic meetings were hard to access for some students - so these policies are aimed at ensuring that there is an open and welcoming environment so that all our members feel able to participate.

These types of policies have been frequently mischaracterised as policies governing “all students, all of the time” by various parts of the media. In fact they are almost always focussed on meetings and forums held centrally by the students’ union. Even then, there is a focus on conduct rather than political views or expression.

In our call for evidence, we reviewed a range of these policies and found that:

- The majority explicitly upheld principles of freedom of speech.
- Were concerned with incidents and acts of discrimination, harassment and bullying.
- A particular focus was racist, sexist, homophobic, threatening or violent behaviour.
- There was some confusion and divergence of practice between concepts of “respect” and “tolerance”.
- Serious breaches of the policy usually refer into more formal union or university procedures for proper investigation.

As such there is little reason to believe that the policies in operation in this space do anything other than reassert wider standards of behaviour usually adopted by universities.

However, their titling and framing are clearly causing confusion. We accept that there is a significant danger that policies that stress “safety” may end up perceived as trying to create an environment where robust debate, challenge and difficult ideas are not welcome - when ironically creating a space where everyone can explore and express those things is the aim of these policies.

There are some wider uses of the term “safe spaces”. In some cases both universities and students support or operate events or networks of students from under represented or marginalised backgrounds to provide peer support and give a voice to particular groups of students. Such groups have often been vital to the development and delivery of Access and Participation initiatives and to support victims of overt discrimination.

Some commentators complain that such groups are in and of themselves discriminatory, rather than methods to combat discrimination - and while sometimes misconceptions in this area are deliberate, they can be through a lack of understanding. We believe that NUS and other sector bodies, led by Universities UK, should work together to promote public understanding of the role and value of such activity.

Finally, the EHRC guidance covered in section 4 references an students unions’ general duty of care and responsibilities to protect students from unlawful harassment, discrimination and hate crime. There are related (adult) safeguarding expectations placed upon students’ unions by Charity Law and the Charity Commission. The Commission says that:

“Protecting people and safeguarding responsibilities should be a governance priority for all charities. It is a fundamental part of operating as a charity for the public benefit. As part of fulfilling your trustee duties, you must take reasonable steps to protect from harm people who come into contact with your charity.

The government’s recent announcement on its [online harms bill](#)<sup>18</sup> will set out a definition of harmful content and activity, and in the legislation companies in scope will have a duty of care towards their users. It will require companies to prevent the proliferation of illegal content and activity online, tackle harms to children and will hold the largest tech companies to account for what they say they are doing to tackle activity and content that is harmful to adults using their services.

To meet that duty of care, companies in scope will need to demonstrate an understanding of the risk of harm to individuals on their services and will have to put in place appropriate systems and processes to improve user safety. Nevertheless the legislation will also ensure that freedom of expression will be protected. There are clearly parallels for students’ unions.

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<sup>18</sup> <https://www.gov.uk/government/speeches/oliver-dowdens-oral-statement-on-the-online-harms-white-paper-consultation-response>

To improve clarity and assure compliance, we would therefore recommend:

- That the code would expect students' unions to rename and reframe "safe space" policies to focus at least in part on their intended outcomes of an environment of freedom of expression and robust challenge that all students feel able to participate in.
- That the code establishes a principle that students' unions will expect their members to be tolerant of others' views, if not necessarily respectful.
- NUS and other sector bodies, led by Universities UK, should work together to promote public understanding of the role, value, purpose and benefits of networks of underrepresented and marginalised students.
- That the code requires students unions, as part of their safeguarding work, to set out how they will both proactively prevent the proliferation of illegal activity within their activities, groups and services, and how they will tackle activity and speech that is legal yet harmful to adults in a way that ensures that freedom of expression is protected.

## **Appendix One: Draft Code on Students' Unions' Political Diversity and Freedom of Speech**

*To form an addendum to the CUC supplementary guide regarding the role of university governing bodies in relation to students' unions.*

### **Overarching statement**

The right to express views and ideas freely, without fear of interference or persecution, is an essential part of democracy. Respectful debate and conversation helps us challenge discrimination, get rid of intolerance and harmful attitudes, and build strong, positive communities.

Freedom of expression is a key part of the higher education experience. Sharing ideas is crucial for learning, and allows students to think critically, challenge and engage with different perspectives.

The union will foster an environment in which all of its members can participate fully, feel able to question and test received wisdom, and to express new ideas and controversial or unpopular opinions within the law, without fear of intolerance or discrimination.

In exercising their right to freedom of expression, the union expects its members to be tolerant (but not necessarily respectful) of the differing opinions of others. The union also expects its members to be tolerant of the diverse identities of others, in line with core values of freedom from discrimination.

### **Principles**

1. Everyone has the right to free speech within the law, and higher education providers and their students' unions should always work to widen debate and challenge, never to narrow it.
2. Any decision about speakers and events should seek to promote and protect the right to freedom of expression.
3. As a democratic organisation, the students' union aims for the maximum level of political diversity to exist and be expressed by students on campus.
4. Peaceful protest is a protected form of expression; however, protest should not be allowed to shut down debate or infringe the rights of others.

5. Freedom of expression includes the right to “offend, shock or disturb” but should not be abused for the purpose of unchallenged hatred or bigotry.
6. The university and the students’ union should always aim to encourage balanced and respectful debate.
7. In conjunction with the university, the students’ union has a duty to consider the need to eliminate discrimination, harassment, victimisation and other behaviour that is prohibited by the Equality Act 2010.
8. It also has a duty to advance equal opportunities between people who share a relevant protected characteristic and people who do not, and encourage good relations between people who share a relevant protected characteristic and people who do not, including the need to tackle prejudice and promote understanding.
9. It also has a duty to think about how it can promote equality and minimise tension and prejudice between different groups on campus - and even where it facilitates events and debate, must consider the potential impact on students who may feel vilified or marginalised by the views expressed.
10. The students’ union will manage and support events in such a way as to ensure that they do not interfere with or deprive other people of their rights. Speech or literature that aims to make the lives of a particular group intolerable will not be protected.
11. The students' union accepts that the Education Act 1986 (Freedom of Speech) applies to all of its activities, save that where the SU resolves formally to pass a decision to “no platform” an organisation that the responsibility to manage an external speaker request for a speaker covered by such a policy is handled directly by the university.

## **1. Campaigning**

The students’ union undertakes, hosts or facilitates a variety of activity that might be regarded as involving campaigning or political activity.

Political activity is defined by the Charity Commission as activity aimed at securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad.

Campaigning and political activity is undertaken by the union only in support of the delivery of its charitable objects and with due regard to the overall

financial position of the union, any risks involved in the proposed activity and its other commitments and legal obligations.

The union's trustee board will oversee the process by which this activity is regulated, funded and managed, ensuring that the charitable funds, property and other resources (including the time of sabbatical officers) of the union are used to further and serve the union's charitable objects.

The union's board will review activity and expenditure falling within the categories/definitions outlined above annually, publishing the results of that analysis and this statement in the Annual Report.

### **1.1 Campaigning on matters that advance the education and welfare of students**

From time to time the union will undertake direct campaigning activity to advance the interests of its student members, in their capacity as students. Examples might include campaigning for better contact time, higher quality student housing or a flexible lifelong learning system. Campaigning activity of this type will only be pursued outside of the university to the extent that the trustees believe it will advance the educational experience of students at the university in furtherance of the union's charitable objects.

Elected officers will always make clear where they are expressing a personal view, particularly on contentious issues.

### **1.2 Debating activity**

The union's democratic structures include the opportunity for students to debate, and sometimes take a position on matters which do not affect students as students. This debating activity is intended to be educational in character and not to influence law or policy outside of the union and the university, meaning that participation in this activity advances the charitable objects of the union.

The union may reach and communicate a "corporate conclusion" on the subject matter of such debates, to the effect that a particular policy or course of action would be desirable, even if that desirability is justified in the course of debate on the effect it would have on persons who are not students. The union will not seek to communicate or otherwise adopt that corporate conclusion outside of the union or the university, as this may result in the activity exceeding the boundaries of facilitating educational debate within the union and the university.

The union is committed to ensure that the processes of debate are fair, non-discriminatory and impartial, even though the subject matter of the debate may be controversial or politically contentious. Corporate conclusions reached by the union must always be possible to be subject to challenge by counter-proposal.

The union is committed to assisting those who disagree with union policy in the process of preparing a counter-motion to ensure the continuation of that policy debate.

The union commits to the principle that debate or deliberation will not be suppressed because the ideas put forth are thought by some or even by most members to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the union, not for the union as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the union to engage within the law in such debate and deliberation in an effective and responsible manner and is an essential part of the union's educational mission.

### **1.3 Campaigning student groups**

Union resources are sometimes used to support clubs, societies and student campaign groups. These are supported and dealt with in an even-handed way, with funding and other resources being made available by the union on a fair, equitable and non-discriminatory basis.

This activity is intended to be educational, and so to further the charitable purposes of the union, by encouraging students to develop their political knowledge and awareness and to debate current political issues.

The union does not make any direct donations to external organisations, particularly political parties, or causes, and does not permit union resources to be donated to such organisations, parties or causes by clubs, societies or student campaign groups.

Students are entitled to provide personal support to political organisations, parties and causes outside the university at their individual discretion, provided they do not use union resources (including resources provided by the union to a student club, society or campaign group) to do so.

The union and university will work together to ensure that it is made clear how students, external speakers and stakeholders might raise concerns about the conduct of any student campaigners into processes that are demonstrably appropriate and fair. This

## **2. External speakers**

The university will work with the students' union to increase the volume and diversity of debates and student political groups on campus, and will work with the SU to use networks and influence to set targets for expanding opportunities to meet and debate with important figures.

The students' union will establish, publish and promote procedures which assess the risks posed by a speaker or event. These risks should include:

- The potential for any decision to limit freedom of speech as per the university's code of practice in pursuance of the 1986 Education Act
- The potential for the event going ahead to cause the union to be in breach of its
- equal opportunities policy
- The potential for the event going ahead to cause the union to fail in its wider legal duties
- The potential for the event going ahead to cause reputational risk to the union, and the associated potential for the event not going ahead to cause reputational risk to the union.
- The potential for the speaker's presence on campus to cause harassment, alarm or distress to members of the student body
- The potential for the speakers presence on campus to give rise to breach of peace

Regulatory steps designed to mitigate risk as a result of the assessment should typically include:

- Requiring that the event be filmed by an independent body
- Requiring that the event be observed by union, university or third party officials
- Requiring that the event be stewarded or subject to "security" on the door
- Requiring that an event promoting a particular view includes an opportunity to debate or challenge that view



- Requiring that an event closed to society members only be opened to all members of the union
- Requiring that a copy of any speech to be delivered by the speaker be submitted to the union

There will be an annual review of the students' union external events and speaker policy, submitted to the university, to gather feedback from users to ensure that processes are kept as rapid in execution and as simple to understand as possible.

In principle no event should be cancelled due to a society or SU not feeling able to meet security costs; and that the students union should either be resourced appropriately in grant funding to meet reasonable security costs for external speaker events incurred following a risk assessment, or that the union will not be expected to fund such costs directly and that instead these will be funded directly by the university.

The students' union and university will work together to establish the way in which student groups and student officers will communicate and access support in the event of media or wider public interest in an event on campus.

### **3. Clubs and societies**

The students' union will annually inform all students of how they might obtain funding or support for a student group that might undertake political or campaigning activity.

Specifically, the students' union will:

- Publish and make clear to students the objective, rules based criteria for the approval and or re-recognition of new groups and sets out how a professional/technical decision of that sort should be made and/or challenged.
- Publish and make clear to students objective funding and support criteria for student clubs and societies, reporting on decisions made against those criteria annually.

The students' union will publish clearly to clubs and societies how all events - online and offline, on campus and off campus - will be regulated and approved.

The students union and university will work together to provide unambiguous clarity on who can issue a formal invitation to an external speaker on behalf of

the university, students' union or student group, and how. It will also be clear that generally, where a student club or society no longer wishes to hold an event it should not be forced to do so - albeit that reasonable notice should be given.

Where the students' union reaches a proper judgment about any risk posed by a speaker or event and imposes associated mitigations (up to and including cancellation), that as long as this judgement has been reached properly and in accordance with policies agreed by the university this judgment should not be subject to direct "overrule" but can be subject to formal complaint, and appeal/review involving the university (see below).

## **4. Complaints**

The students' union will adopt, promote and publish a single complaints procedure/policy - taking into account members' and leaders' conduct, and general dissatisfaction issues - where a student can have that complaint reviewed by the person appointed by the university governing body.

The union and university will work together to ensure that students understand how complaints about the students union can be raised and the circumstances under which such a complaint may be subject to review by the university, and subsequent review by the OIA.

## **5. Safeguarding and harm**

As part of its safeguarding work the students union trustee board will develop and annually review on and report on measures taken to:

- proactively prevent the proliferation of illegal activity within their activities, groups and services, and
- tackle activity and speech that is legal yet harmful to adults in a way that ensures that freedom of expression is protected.

## **Appendix 2: Oxford and Cambridge**

There are a number of ways in which the arrangements at Oxford and Cambridge differ from the rest of the sector.

As well as central SUs, each of the colleges at each institution tends to have its own students' union - usually referred to as a Junior Common Room (JCR) for undergraduate students and Middle/Graduate Common Room (MCR/GCR) for graduate students. This refers to both a physical space and the SU. Elected representatives will often run social events and activities as well as provide support and advice services and a means of voicing student concerns about college affairs.

University wide clubs and societies are not a part of the SUs at Oxford or Cambridge - they can register with the university's Proctors Office but have no obligation to.

