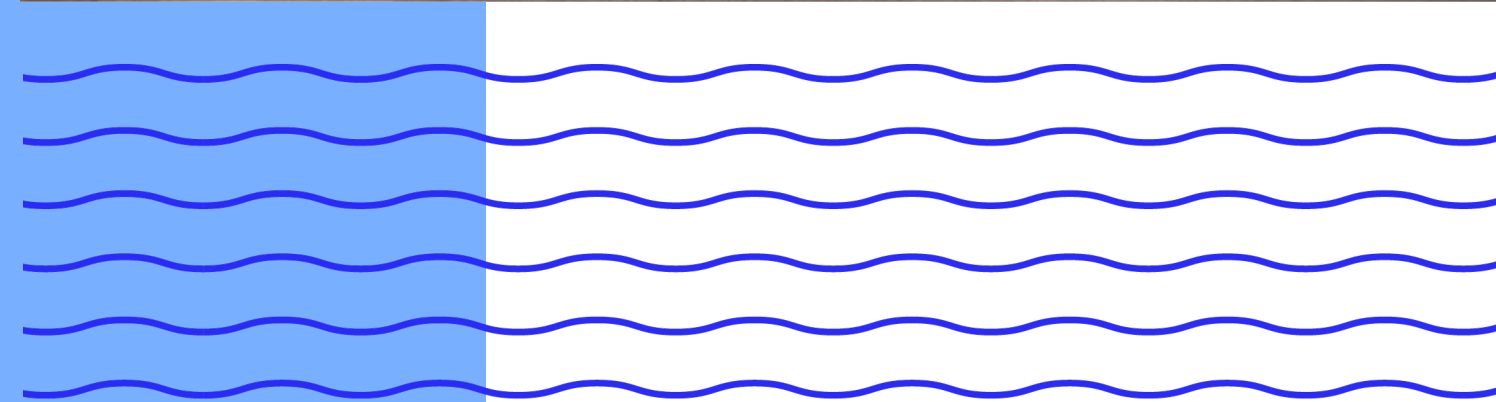


Today's agenda

- 11.00am How does student representation work?
- 12.15pm How the higher education sector works
- 2.00pm Students' unions and the law
- 3.15pm Understanding fees, loans and student finance
- 4.30pm How to be an influential and effective SU officer



WONKHE
SUs



Students' unions and the law

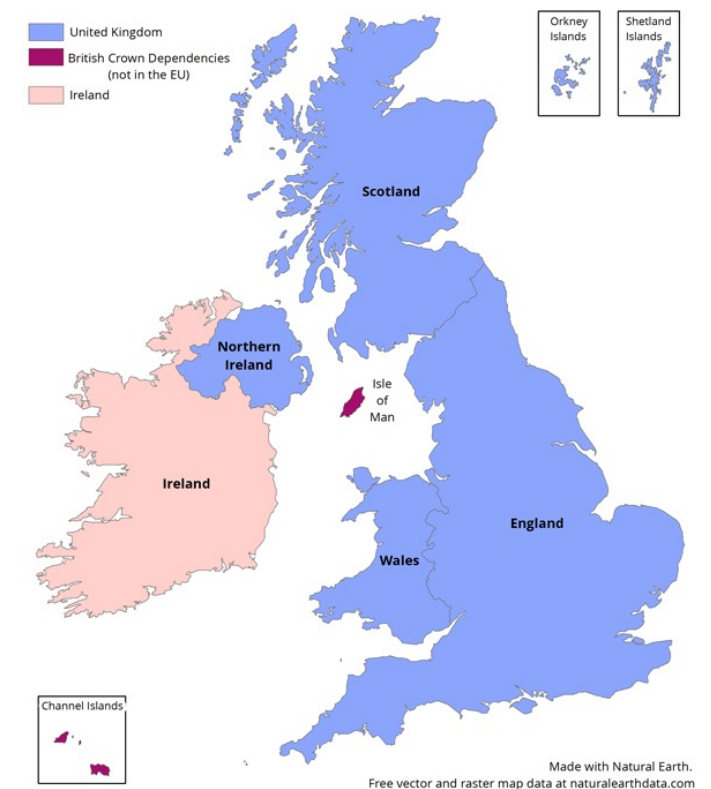
The main legal frameworks that surround
students' unions in the UK



Purpose

- Describe the main legal frameworks that surround students' unions in the UK
- Give you an understanding of both what the law says, how it could/would be used and why it is in place
- Help you to avoid legal pitfalls and carry out activities and objectives safely
- (Note we'll do freedom of speech later in the summer)

Students unions as charities



WONKHE
SUs

Benefits

A lock on assets

- Organisations with charitable status cannot use assets for any purpose other than the pursuit of charitable objectives. The assets of a charity can never be used for private benefit.

Tax relief

- Charities benefit from a variety of tax reliefs

Funding

- Certain sources of grant funding are open only to organisations with charitable status.

“Disadvantages”

Restrictions and requirements

- Certain political activities and types of trading are subject to restrictions.
- Organisations with charitable status must comply with regulatory

Unpaid board

- Individuals on the board of a charity, often referred to as trustees, must not be paid unless the constitution of a charity, and the Charity Commission, authorise it.

No equity investment

- Charities cannot raise equity investment. It should be remembered that, for many organisations these disadvantages are seen as advantages.

**Sometimes SUs have
wanted to be defined as
charities (tax) sometimes
not (campaigns and
expenditure)**

Sussex

- At the AGM back in 1972 the SU approved the adoption of a new constitution with the new object of “the promotion of any matter whatsoever of interest to its members”
- Budget adopted authorising payment of £500 to “War on Want”, and £800 towards a political campaign of protest against the government’s policy of ending the supply of free milk to schoolchildren (Thatcher! Thatcher! Milk snatcher!)
- A student then sought to prevent the unions’ funds being used for these purposes.
- The court found that the objects of the union were confined to charitable educational purposes – and the amendment to the union’s constitution was invalid
- The union argued that part of the educational process was research and debate and reaching a corporate conclusion on social and economic problems.
- However, the court resolved that the provision of money to finance the adoption *outside* the university of that corporate conclusion did not form part of the educational process.
- (Baldry v Feintuck)



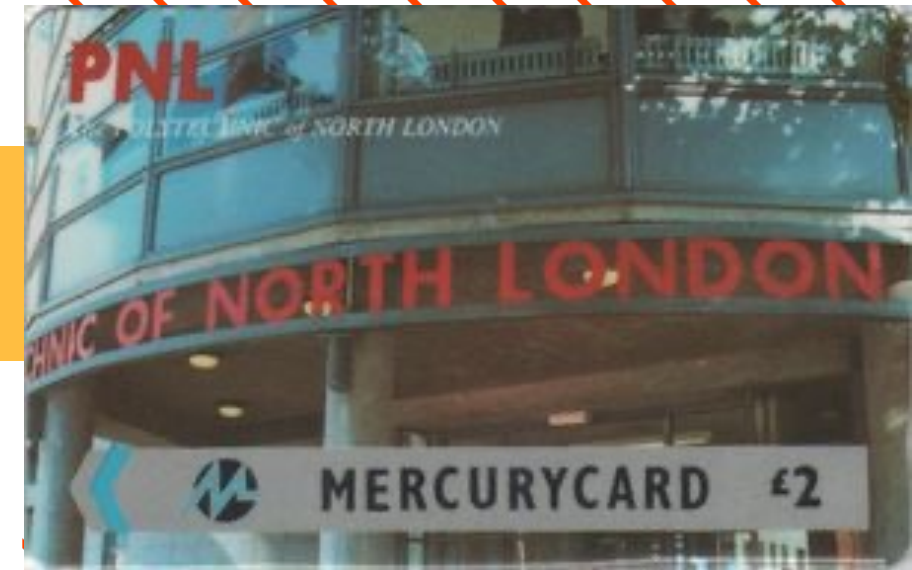
London Hospital Medical College

- 1976 – Inland Revenue challenged whether a students' union was charitable.
- The court held that the union was charitable because the union existed solely to further, and did further, the educational purposes of the college.
- It was heavily dependent on the college which sponsored its activities because it realised the importance of the union to the success of its own educational activities. Benefits given to the members of the union were only given with a view to giving encouragement to and carrying out the main charitable purpose of the college.
- The fact that the union relied partly on membership subscriptions for its support and that students had to be elected to membership (that was their defence) was irrelevant.
- The Attorney General went on to issue guidance on expenditure by students' unions.



Attorney general v Ross

- 1985 - Polytechnic of North London SU wanted to donate funds to the striking mineworkers and donate in aid of victims of the famine in Ethiopia.
- The court held that the SU in question was an “integral part” of the polytechnic. The Attorney General viewed these payments as being for purposes outside the scope of the union’s objects and therefore ultra vires – and sought an injunction restraining the payments.
- The union argued that although some of its objects were charitable others, such as power to affiliate with the NUS and representation on outside bodies, were not and the activities of the union since its formation showed that the main purpose of the union was not charitable, but to give effect to the political views of its members.
- The courts resolved that the activities of an organisation which were ultra vires and non-charitable were not relevant in determining whether the organisation was charitable. It was formed and existed for the charitable purpose of furthering the educational purpose of the polytechnic. The non-charitable activities which its constitution authorised it to carry on were ancillary means by which the overall charitable purpose could be pursued.
- Note that because it was unincorporated, the President, Treasurer and Vice-President of the students’ union were sued in their own names.



The key quote

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

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

Webb v O'Doherty

- 1991: Anglia Polytechnic Student Union (now ARU SU) union tried to implement a resolution to support a campaign against the Gulf War.
- The union had passed a resolution in January which mandated the executive in the following terms:
 - To affiliate to the National Student Committee to Stop the War in the Gulf and the Cambridge Committee to Stop the War in the Gulf.
 - To campaign on the above issues.
 - To support and publicise national and local demonstrations, speaker meetings and non-violent direct actions organised by CND and Committee to Stop War in the Gulf.
 - To support the teach-in on the Gulf Crisis organised by the Student Committee to Stop War this Thursday.
 - To allocate L100 from the Campaign budget to the anti-Gulf War campaign.
 - To write to the Prime Minister and Ministry of Defence outlining this policy.
- The issue was not so much the passing of the resolution, but that the exec acted on it by using SU funds.



The key quote

- There is a clear distinction between the discussion of political matters, or the acquisition of information which may have a political content, and a campaign on a political issue.
- There is no doubt that campaigning, in the sense of seeking to influence public opinion on political matters, is not a charitable activity.
- It is, of course, something which students are, like the rest of the population, perfectly at liberty to do in their private capacities, but it is not a proper object of the expenditure of charitable money

This means

- Over the years, the courts have accepted that a whole range of activities with political characteristics can be pursued by an educational charity as ancillary.
- These include research, discussion and debate on social and economic problems and, also, reaching and expressing a collective decision on these issues.

Charity Commission

OPERATIONAL GUIDANCE WEB HOMEPAGE

OG48-01

Overview / Summary

OG Contents

Casework Guidance

Charts

Case Studies

Legal / Policy
Accountancy
Framework

Q & A

Model Letters
and Orders

OG 48 Students' Unions

Last reviewed: 30 May 2019

Last updated: 31 May 2019

Policy Statement/Overview

This guidance has undergone extensive review in November 2018.

Summary of the guidance

The purpose of this operational guidance is to provide guidance to Commission staff on:
As of February 2020, because of a technical issue with the website that hosts the operational guidance we cannot make any changes to it. This means the website could include outdated content. We are working on a solution and will update this page as soon as possible.

- What an SU is
- The structure, charitable status and legal forms of SU's
- The relationships between SU's and their partner establishments
- Democratic decision making and activity
- Political activity and campaigning and commercial activities
- Speakers and events
- No Platform policies and risk management

Summarised as

- Students unions may use funds and facilities to campaign on issues which affect members as students.
- E.g: Local - Better street lighting near campus or more public transport to halls
- Students' unions may not use funds to promote or support campaigns which do not affect members as students.
- E.g. Environmental policies, road building the treatment of political prisoners in a foreign country
- Funds cannot be used for any party political purpose but reasonable expenditure on debating matters of common concern is permissible
- Political clubs and societies are okay and can affiliate to national organisations to obtain educational materials or information

Charities

- Wider issues of charity law and governance of charities (and how that applies to SUs) will be covered in the webinar on Governance later in the summer.

Education Act 1994

- Various attempts to legislate on SUs throughout the 80s
- Freedom of speech (no platform) 1986
- Continues amidst concern about
- Public funds flowing to NUS
- Students being indoctrinated
- “Closed shop” and “forced membership”
- Slipstream of wider Trade Union reforms



Education Act 1994

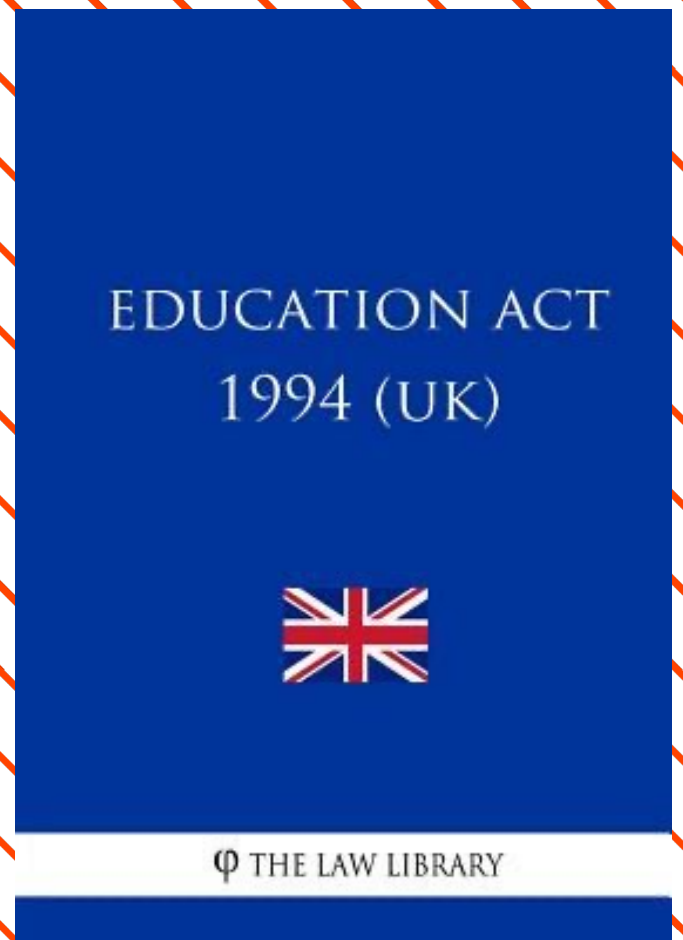
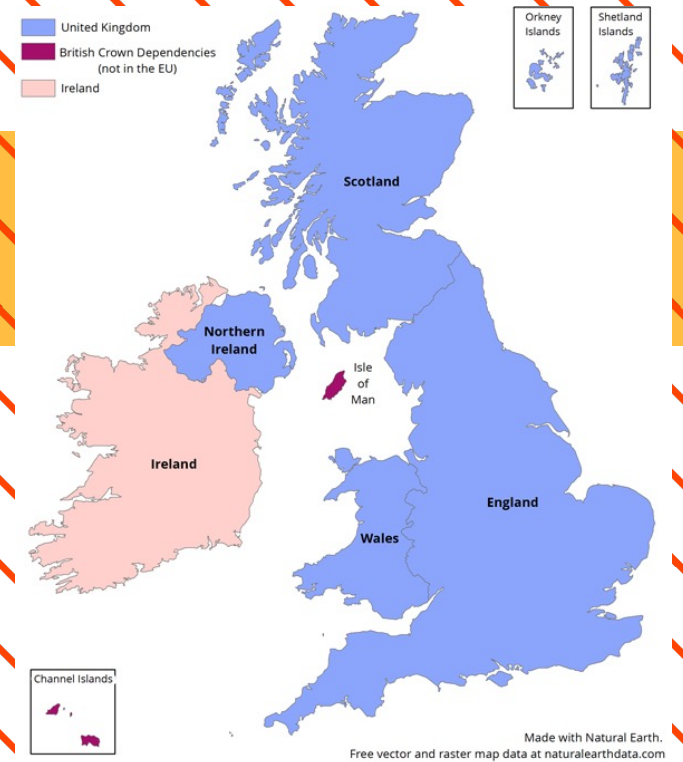
The act does three main things:

1. It defines what “counts” as a students’ union for the purposes of the law;
 2. It specifies those higher education institutions to which the act applies;
 3. It then details a number of provisions/rules that determine how any SU should operate
- In other words – if either of the first above two do not apply, then the list of rules do not apply (at least in law) either.
 - That doesn’t necessarily mean that charity law does not apply – charity law is quite separate although some bits of the act overlap with general charity law provisions.

Education Act 1994

The act does three main things:

1. It defines what “counts” as a students’ union for the purposes of the law;
 2. It specifies those higher education institutions to which the act applies;
 3. It then details a number of provisions/rules that determine how any SU should operate
- In other words – if either of the first above two do not apply, then the list of rules do not apply (at least in law) either.
 - That doesn’t necessarily mean that charity law does not apply – charity law is quite separate although some bits of the act overlap with general charity law provisions.



What counts?

- an association of the generality of students at an establishment to which this Part applies whose principal purposes include promoting the general interests of its members as students; or
- a representative body (whether an association or not) whose principal purposes include representing the generality of students at an establishment to which this Part applies in academic, disciplinary or other matters relating to the government of the establishment.

Plus:

- References in this Part to a students' union include an association or body which would fall within subsection (1) if for the references to the generality of students at the establishment there were substituted a reference to:
- the generality of undergraduate students, or graduate students, at the establishment; or
- the generality of students at a particular hall of residence of the establishment.

Also:

- An association or body may be a students' union within the meaning of this Part in relation to more than one establishment but not in relation to establishments generally in the United Kingdom or a part of the United Kingdom.
 - In other words – Loughborough SU (which is the SU for both the college and the university) is a students' union under the act, but neither NUS nor the Federation of Student Islamic Societies (for example) is a students' union for these purposes.

Two other self-explanatory qualifications are included:

- References in this section to an association of the generality of students, or of any description of students, include—
 - any association which the generality of students, or of students of that description, may join, whether or not it has in membership a majority of them, and
 - any association which would fall within paragraph (a) if the references there to students were confined to full-time students;

Requirements

- NOTE these are not requirements placed directly on SUs but instead on their universities' governing bodies
- (When the act was drafted this to some extent matched charity law, where the “principal regulator” of students' unions as exempt charities was the parent institution. Now most students' unions are regulated directly by the Charity Commission which means there is some overlap between institutional duties and Charity Commission duties)

The central overarching requirement is:

- The governing body of every establishment to which this Part applies shall take such **steps as are reasonably practicable** to secure that any students' union for students at the establishment operates in a **fair and democratic manner** and is **accountable for its finances**.

And the detail

The union should have a written constitution;

- the provisions of the 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;

And the detail

a student should have the right—

- (i) not to be a member of the union, or
- (ii) in the case of a representative body which is not an association, to signify that he does not wish to be represented by it, and students who exercise that right should not be unfairly disadvantaged, with regard to the provision of services or otherwise, by reason of their having done so;

And the detail

- a person should not hold sabbatical union office, or paid elected union office, for more than two years in total at the establishment;
- appointment to major union offices should be by election in a secret ballot in which all members are entitled to vote;
- the governing body should satisfy themselves that the elections are fairly and properly conducted;



And the detail

- 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;
- financial reports of the union should be published annually or more frequently, and should be made available to the governing body and to all students

And the detail

Each such report should contain, in particular—

- a list of the external organisations to which the union has made donations in the period to which the report relates, and
- details of those donations;

And the detail

- the procedure for allocating resources to groups or clubs should be fair and should be set down in writing and freely accessible to all students;
- (Objective) rules for the (evaluation of and) approval of groups
- The (objective) criteria that will be used to judge funding allocation



And the detail

if the union decides to affiliate to an external organisation, it should publish notice of its decision stating—

- the name of the organisation, and
- details of any subscription or similar fee paid or proposed to be paid, and of any donation made or proposed to be made, to the organisation, and any such notice should be made available to the governing body and to all students;

where the union is affiliated to any external organisations, a report should be published annually or more frequently containing—

- a list of the external organisations to which the union is currently affiliated, and
- details of subscriptions or similar fees paid, or donations made, to such organisations in the past year (or since the last report), and such reports should be made available to the governing body and to all students;

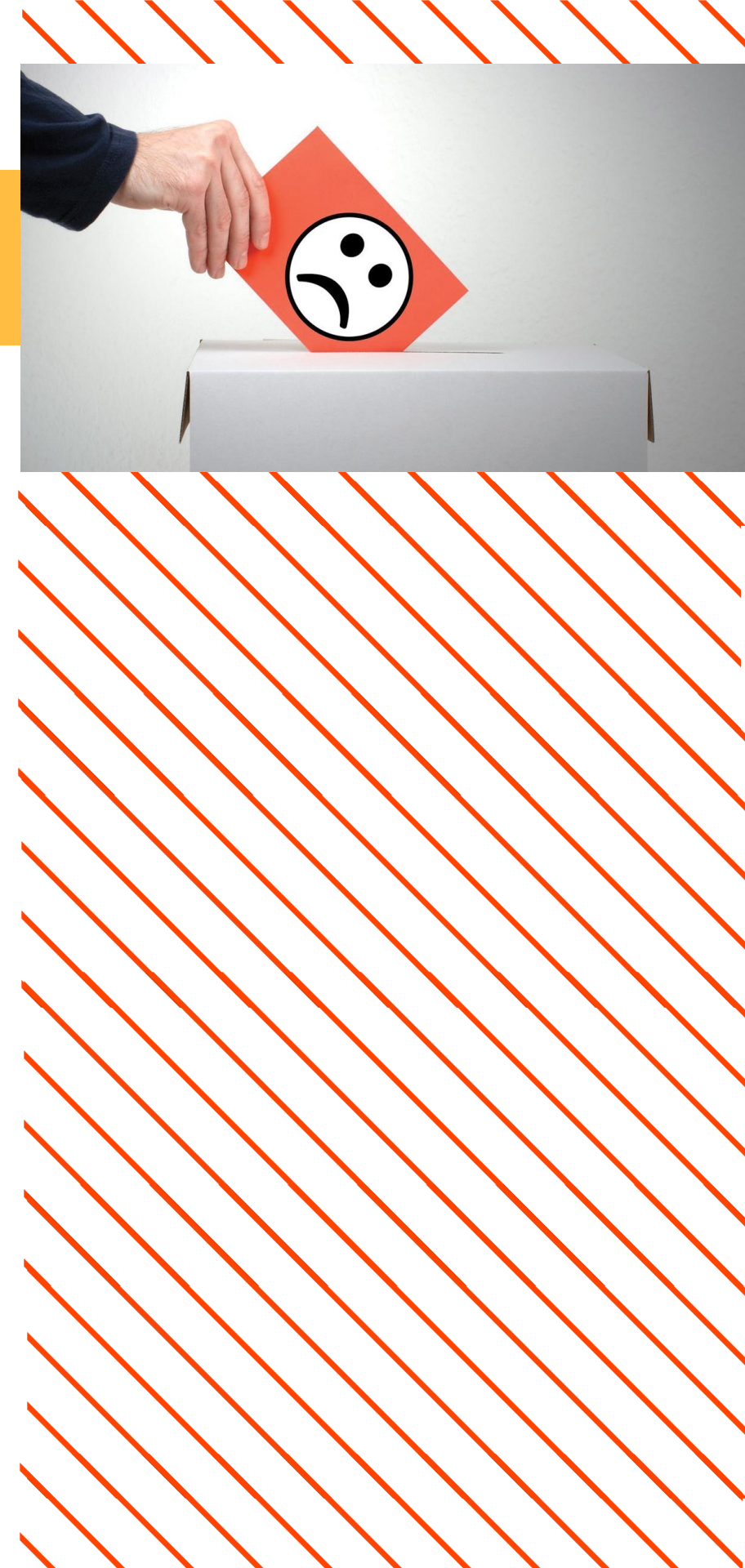
there should be procedures for the review of affiliations to external organisations under which—

- the current list of affiliations is submitted for approval by members annually or more frequently, and
- at such intervals of not more than a year as the governing body may determine, a requisition may be made by such proportion of members (not exceeding 5 per cent.) as the governing body may determine, that the question of continued affiliation to any particular organisation be decided upon by a secret ballot in which all members are entitled to vote;

And the detail

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 referred to above, which should include provision for an independent person appointed by the 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.



How that works

prepare and issue, and when necessary revise, a **code of practice** as to the manner in which the requirements set out above are to be carried into effect in relation to any students' union for students at the establishment, setting out in relation to each of the requirements details of the arrangements made to secure its observance.

Duty to annually bring to students' attention:

- the code of practice currently in force
- restrictions imposed on the activities of the union by charity law
- details of how the 1986 Education Act re Freedom of Speech works at that institution;
- detail on how to opt out of the union;
- details of any “arrangements it has made for services of a kind which a students' union at the establishment provides for its members” to be provided for students who are not members of the union.

Things to remember

- Almost all unions already comply
- Remember the duties are on universities
- No case law here at all
- OIA can handle complaints about university duties under EA1994
- Poor ongoing compliance in some areas
- We'll cover free speech and coming legislation later in the summer...

And finally...

- Health and safety law and duty of care
- Employment law
- Equality Act 2010 and EDI
- Company law
- Consumer protection law
- Data Protection

Back at 3.15pm



Back at 3.15pm



WONKHE
SUs