



# HOUSES OF PARLIAMENT

## Joint Committee on Human Rights

Oral evidence: [Freedom of Expression](#), HC 979

Wednesday 9 October 2020

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Members present: Ms Harriet Harman (Chair); Lord Brabazon of Tara; Fiona Bruce; Ms Karen Buck; Joanna Cherry; Lord Dubs; Baroness Ludford; Baroness Massey of Darwen; Lord Singh of Wimbledon.

Questions 1 – 20

Witnesses

I: Alan Rusbridger, former editor of the Guardian; Jim Killock, CEO, Open Rights Group; Ruth Smeeth, CEO, Index on Censorship.

## Examination of witnesses

Alan Rusbridger, Jim Killock and Ruth Smeeth.

**Q1 Chair:** Good afternoon and welcome to this evidence session of the Joint Committee on Human Rights. As our name implies, we are concerned about human rights and we are a Joint Committee. Half our members are from the House of Lords and half from the House of Commons. We are concerned with the most fundamental and basic human rights such as the right not to be detained and the right to a fair trial.

One of those rights is freedom of speech. We are looking into whether here in the UK the right to freedom of speech is working effectively. We are holding an inquiry and this is our first evidence session. We are grateful to be joined not only by the members of the Committee from the House of Commons and the House of Lords but by three witnesses who will help us set the scene as we undertake our inquiry. Alan Rusbridger for many years was an eminent editor of the *Guardian*. He is now principal of Lady Margaret Hall in Oxford and chair of the Reuters Institute for the Study of Journalism and is involved with Facebook on its oversight board. Ruth Smeeth was deputy director of Hope Not Hate and is now CEO of Index on Censorship. Jim Killock is the CEO of the Open Rights Group. Thank you for joining us.

Have you ever individually experienced a restriction of your freedom of expression that you feel was unjustified?

**Ruth Smeeth:** I have held a series of jobs that have given me a privileged position. This time last year I was a parliamentarian, however, and many of you will know that I was subject to a great deal of abuse in that role, particularly as a Jewish Labour Member of Parliament. I do not think that my free speech was impinged upon, but only because I chose to ignore the abuse. My ability to engage on social media platforms was impinged upon. My ability to respond to my constituents and fulfil my job was impinged upon, because of the sheer volume of abuse that I was the target of then and continue to be a target of now. I had to develop other ways of communicating. At any level in society, you can have challenges with making sure your voice is heard.

**Chair:** The price you paid for exercising your freedom of expression was death threats and all sorts of threats of violence.

**Ruth Smeeth:** Threats, yes.

**Chair:** Thank you. Alan, have you ever felt you were not able to say what you wanted to say or express yourself in the way you

wanted to in writing or verbally in a way that was unjustified?

**Alan Rusbridger:** As a newspaper editor, lots. I am subject to a whole barrage of laws on libel, privacy, secrecy, contempt, national security—

**Chair:** I was asking whether you felt you had been restricted in your freedom of expression in a way that was unjustified. Could you differentiate between what you feel is justified and what you feel is not justified?

**Alan Rusbridger:** I thought there were plenty of examples where the public interest as I thought of it would have benefited from being able to publish things that I was not able to publish. I felt in that in lots of cases it was unjustified, yes. In lots of ways, the situation is getting worse.

**Chair:** Could you give some examples of when you felt you wanted to publish something and you were not able to, not when you were able to and it caused a row and was difficult but when you actually were not able to publish?

**Alan Rusbridger:** Quite often, the way the laws work they play to the advantage of people who have money and rich lawyers. British libel laws work in a way in which there is a reverse burden of evidence about things you know to be true but that you cannot necessarily prove are true. There were a number of cases where I would have wanted to publish something, and in the end, it was too expensive and too risky. We were quite bold. The situation for most local news publishers, especially nowadays, is that if they get a writ or a lawyer's letter, that is it. They simply cannot afford to contest it.

**Jim Killock:** There have been a couple of times when my personal freedom of expression has been directly impacted by copyright takedown laws.

In one case, a video I helped produce had a music soundtrack that was openly distributed under a creative commons licence. There was full permission for anybody to use that music track. It was a political video for a candidate, Siân Berry, at the time. When the video was published, we got a takedown notice and we had to persuade the political party involved, the Green Party, that it was not under legal threat and could republish that video. Of course, the thing with any kind of political video is that it matters when you publish it, not a week or two later when everyone has agreed that it is okay to contest a copyright claim.

We have seen many other similar instances where people just do not wish to contest those copyright claims. Over the last few years, the Football Association has been taking down any video streams that involve people watching a football match and cheering. Sometimes people use their mobile phones to film their mates with the football in the background. These videos get taken down automatically from YouTube and elsewhere. That is clearly not infringing the copyright of the Football Association. It is not threatening ticket sales. It is not threatening Sky's broadcast rights. But they get taken down because they are automatically identified.

We have seen similar issues with trademarks. A group called Ecolab in the UK—it is still going—was threatened repeatedly by a US cleaning firm called Ecolab with a claim of trademark infringement. It was very scared by that. It was a very small group. It did not want to get involved with trademark infringement proceedings. US law requires trademark owners to be aggressive about their trademarks and they undermine their right to the trademark if they do not contest everywhere. That is deeply problematic. McDonald's is guilty of similar things over the years, as you probably remember.

For us, intellectual property rights can be a particular area of friction in the legitimate use of material. That is why we were very concerned by the proposals in Europe last year for automatic copyright searches under Article 17 and removal of material that had been identified that way.

**Chair:** Thanks, Jim. You have widened it out helpfully. Alan, you started to say you thought that things had got worse and were heading in the wrong direction. We would be very interested to hear what you mean by that. How are things getting worse and why?

**Alan Rusbridger:** The context for this whole discussion is that the economics of information has completely changed. The people who held the megaphones, the printing presses and the broadcasting studios for 200 years are now really struggling. They are in competition with 4 billion people who have freedom of expression. That is in some ways a good thing, but it does mean that the institutional strength of being able to see off power is weakened. It is simply an economic thing whereby a lot of rich and powerful people and organisations can buy immunity from scrutiny.

The other thing is the way the laws work. Yesterday I got an email from a Swedish editor-in-chief who obviously publishes in Sweden. He was being sued in London by a Swedish businessman who lived

in Monte Carlo. London, if you are going to go forum shopping, is still a great place to sue. It should be rather shaming for us that oligarchs and people who want to hide information find London such a congenial place to do that.

**Q2 Chair:** Thank you. Ruth, do you think that freedom of expression is generally under threat? If so, how? Also, whose freedom of expression is most challenged and on what issues? We are used to discussing the issues when it is felt that freedom of expression is under threat, but there is the question of who is able to speak freely and who is not. Do some people have more freedom of expression than others?

**Ruth Smeeth:** I agree with Alan Rusbridger. I do think that freedom of expression is under threat in the UK, in subtle ways. It is all contextual. In a British context, it is under threat in terms of what we are used to. Compared with other countries, it is not.

I will outline some of the areas where I think it is under threat. It emerged a week ago that the Cabinet Office now has a clearing house for FOIs deemed sensitive, which is blacklisting some journalists, too. We have never seen that before.

We have an issue with academic freedom, which I am sure we will talk about later, and the impact of the Chinese Hong Kong national security law.

We have a conversation happening in the House of Commons, and new legislation that is likely to come forward on online harms, which looks like it will set a different language classification for how we talk to each other offline as opposed to online, and a "legal but harmful" classification.

We have seen the Scottish Government's recent efforts to remove the concept of intent from hate speech law.

We are seeing private dwelling exemptions and, as Alan Rusbridger said, we are seeing the impact of vexatious lawsuits across Europe but absolutely within the UK. One of my team is supporting in the Swedish case outlined earlier.

Who is being censored? If you have money or if you have status and privilege, you are less likely to be censored or you will find a way through. This is at the heart of the free speech/free expression issue at the moment. Unsurprisingly, people who are poor, those who do not have the income to sustain either legal action or to ensure that their voice is heard, as well as those who have protected characteristics are more likely to have their voices silenced.

Index on Censorship was established 50 years ago both to explore international censorship and to ensure that the issues of who was being silenced and access to have your voice heard were underpinned. That is why we are moving forward.

In a piece of research this year in the Index on Censorship magazine, the phrase "LGBT" was analysed for us for a week in February on news aggregator sites. On the most well-used news aggregator, Google, 46% of promoted stories were from conservative and right-wing websites. Only 4% were from what would be considered progressive websites. In the same period with the same news stories, DuckDuckGo, an alternative news aggregator, featured only 6% of the right-wing stories, and 69% of stories featuring the word "LGBT" came from mainstream articles.

So there is an issue about what we are reading and how the algorithms and machine learning are operating, and an issue with how, without transparency, we know whose voices are being heard and at what point, how that is shaping the wider conversation and agenda, and also how it is silencing other people's voices.

**Q3 Chair:** Does all speech, and do all speakers, require the same level of protection? Is it assumed that somebody who has a great deal of wealth and power should not use their freedom of speech to oppress people who cannot answer back and who are vulnerable?

**Jim Killock:** These two come together for us. We think of the internet as an enabler for speech but, as Ruth outlined, there is a small number of gatekeepers to that knowledge at this point, at least in effect. Facebook, Google, YouTube in particular, and Twitter of course are deciding how information is prioritised for us. At this point, we have little choice about how we interact with them.

That has two features. They can be biased and can offer information that is not quite what we want or are seeking. It also offers government the opportunity to say, "If we regulate three or four companies here, we can reshape information that's imparted in the way we would like". That is quite a dangerous situation. It puts government in potentially a lot of control through a small number of private operators.

The online harms approach unfortunately plays straight into this. It is an attempt to depoliticise the argument but, in practice, it is repoliticising it in a way that we would not find acceptable if this was press regulation. I find it quite curious at the moment that we have politically assumed that it is okay to regulate speech on this small number of platforms but we would not do the same with the

press. We are not thinking through the consequences of that for the medium term.

We should be asking ourselves, "Do I have choice about the way my personal information is used to prioritise content for me? Are my data protection rights and privacy rights being abused in such a way that my free expression is then affected?" Secondly, "Why is there not more competition around platforms? Should we open them up? Should there be interoperability? Should I be able to choose the content prioritisation engine perhaps or maybe I can talk to people on Facebook using some other third-party product, so I do not have to put up with Facebook's prioritisation, ads or whatever else?"

Without these measures, we have a lack of media plurality in the social media space, which I hope addresses a little bit of your second question about who is able to speak here. Of course, everybody should be able to exercise their free expression to the extent that they can within the law. The problem is that this is mediated by companies that, ultimately, are in an attention market. They are like tabloid newspapers. That is a very unhealthy way of deciding what speech gets promoted, because it pushes everything shocking to the top. Shocking is not the same as truthful. In fact, to be shocking it helps if it is less truthful, because the truth might make the content circulate less. The market is in a failure situation here. We need to think about this as a competition issue if we want to protect free expression.

**Q4 Lord Dubs:** I am a Labour Member of the House of Lords.

Alan, is the public discourse on freedom of expression helpful? We have in the recent past had a lot of new terms or expressions such as "cancel culture", "no platforming", "snowflake", "woke" and "hate speech". Do these expressions help, or do they limit freedom of speech in a rather unfortunate manner?

**Alan Rusbridger:** They are bits of shorthand and not very helpful shorthand. I really hate the word "woke", because it is thrown at anything vaguely liberal or enlightened and it has become part of culture wars by proxy.

There is a terrible blurring of issues in which the Suzanne Moore affair is the same as the Eton schoolmaster or JK Rowling, David Starkey, Amber Rudd or Selina Todd, but they are all slightly different and some of them may not actually be free speech issues as much as human resource issues or employment issues. At the moment, the way everything is wrapped up into one is quite indiscriminating.

To repeat a bit what I said earlier, we are in the middle of a seismic readjustment of who has a voice. It is tremendously problematic, as it was after the invention of Gutenberg's invention of movable type: there was a century of people trying to ban books they thought were unsuitable and deploring the fact that many more people had access to learning and publishing than before.

So of course if you are going from a world in which a few rich people had printing presses to a world in which 4 billion people can talk to each other, it will cause a liberation of expression; there has been more expression than at any time in the history of the world. That is a good thing, but it is also creating a situation which nobody yet has any idea how to handle. To bandy around the words that you quoted is sometimes not helpful.

**Lord Dubs:** Some years ago, I was on a Select Committee in the Lords looking at why women who reached a certain age in broadcasting, particularly in news and current affairs, were got rid of while men stayed on until whatever age. We discovered that the BBC was imposing gagging clauses on some of the women it had sacked because they did not look as young as the BBC wanted them to. What do you think about that?

**Alan Rusbridger:** The use of NDAs is now rampant. It is a serious problem for getting at the truth and for journalism. They are used almost indiscriminately in employment contracts in the health service and more broadly. Journalists in their work of trying to get information in the public domain, whistleblowers or people who want to talk about things they know about are prevented from doing so by these gagging clauses and NDAs. It really should not happen at the BBC.

**Lord Dubs:** Ruth, some years ago somebody stood up in the Lords and said that Hitler's *Mein Kampf* should be banned—as it is, I believe, in Germany. What do you think of that?

**Ruth Smeeth:** Thank you for an obviously straightforward question. Unsurprisingly, given that I represent a free speech organisation, I do not think that it should be banned at all. There are lessons to be learned. I also believe that it should be treated as an academic text for study. If we do not understand our history, we will never be able to stop it being repeated.

**Q5 Lord Singh of Wimbledon:** Good afternoon. I am a Cross-Bench Peer in the House of Lords.

My question is directed particularly to Jim Killock, but others can come in. Anyone can have access to the internet, and this now means that anyone can speak to the wider world on just about any

topic. Does this mean that there is an unprecedented freedom of expression, or are the penalties of doing that so high as to have a chilling effect?

**Jim Killock:** Both are true to different extents. Of course, there is a huge amount of free expression, and that, as we have been discussing, is a good thing.

However, people make mistakes. The internet is recorded, so things that you said five, 10 or 20 years ago are accessible in a way they were not before. That often leads to people picking up on mistakes people made when they were relatively young or things they said which they would not say when they were a little bit older and wiser. Similarly, people say things that are unwise or can be taken out of context. Those things do lead to attempts by people to wield the power of the crowd sometimes against those people.

There is a certain inevitability to that. You cannot legislate against people attempting to do that sort of thing, nor can you legislate against people making mistakes when they are young, but you can implement a right to be forgotten, as with Google Search and so on. You can also, as a culture, learn to forgive a bit and to distinguish between a mistake someone made and something they believe now. That is an important part of the growing-up process that Alan Rusbridger articulated.

**Lord Singh of Wimbledon:** I agree on the point about forgiveness, but it is difficult to implement or push in that direction. Do you agree?

**Jim Killock:** Yes, but perhaps it is something that we have to learn. In the same way we had to learn that everything is printed is not true, we also have to learn that things people said when they were young may not be sustainably the same things those people believe now. That is a cultural thing. Sometimes culture adjusts to the landscape it lives in. We have this semi-permanent record on the internet and we have to find a way to understand that.

Q6 **Lord Singh of Wimbledon:** This question is particularly to Ruth Smeeth but, again, anyone can come in.

Do you think that fears of being subjected to a public backlash are shrinking the range of opinions that people and organisations feel able to voice in public?

**Ruth Smeeth:** There is definitely a chilling effect. It is very difficult to assess how much of an impact it is having. It is a fear and a concern, but, given the volume of information and the level of

debate that is happening every single day, it is difficult to determine how much of a chilling effect there is.

There is obviously much more of an opportunity to be heard at the moment, given all the different platforms and the range of platforms. Therefore, because of people's access and opportunities to engage, it may feel as though some issues will lead to a backlash. I am not sure that that was not always the case, by the way. The big issue and the big change now is that the backlash can be instant. Something can go viral within minutes of you having written it and there can be an immediate backlash. Thirty years ago, it could have been a slow-burning news story that was picked up by other media. It could have had the same long-term consequences on you but not necessarily the immediate impact.

Having said that, we have to remember the types of technologies we are talking about. Just as we used to talk about how today's newspaper is tomorrow's fish wrapper, it is also the case online. Today's Twitterstorm is typically forgotten tomorrow. Given that we are all politicians, or a former politician in my case, many of us would have experienced that. The following day, the world has moved on. There are both positives and negatives to all of that.

**Lord Singh of Wimbledon:** Thank you. Do you believe all sections of the community have a fear of the same backlash or do some sections, communities or cultures have an ability to get away with things others do not?

**Ruth Smeeth:** I do not think that anybody has the ability necessarily to get away with anything anymore. Unless you are aware of what has happened to someone else and unless you are aware of one of the controversial debates, you will not necessarily understand what you are getting yourself involved with in that context. It is your own exposure to some of the more challenging online issues. You could find yourself in the middle of something you had no expectation of.

There was a clear case at the beginning of the pandemic with a young woman paramedic who put a photo of herself in her uniform up online. She got a huge positive response but an overwhelming level of abuse, which was completely unexpected. She got that as a public servant because she was wearing makeup and a uniform, fundamentally. It was perverse. You do not necessarily know you are walking into it on occasions.

Q7 **Ms Karen Buck:** Alan, from the experience of being an editor, how much are editorial decisions shaped by the expectation or the possibility of a backlash? To what extent is that chilling effect

flowing into newspaper editorial decisions?

**Alan Rusbridger:** Again, there is good and bad. When newspaper editors had almost complete control of the message, when I first became editor, if you did not like something in the *Guardian* you could write me a letter. Some 300 or 400 people did that every day and I would print 17 or 18 letters. I had complete control of that process. There is something quite healthy in the fact that now anybody can criticise the *Guardian* volubly, en masse, and as aggressively as they want. It is quite salutary for editors sometimes to be exposed to that. That is the positive.

The negative is that sometimes you do get a mob mentality in which people go after news organisations or editors. You ought to be big enough and strong enough as an editor to be able to take that. It becomes more unpleasant when they target individual journalists, particularly women, because we know that women come in for more abuse on social media platforms than men. Some of that becomes quite hateful and sometimes quite threatening. That is the downside of all this. News organisations have to be very attuned to how they can offer protection to their staff, and sometimes matters have to be referred to the police.

**Ms Karen Buck:** I do not want to put words into your mouth, but has social media perhaps made everything more instant and possibly increased the volume but not fundamentally changed the power dynamic between editorial decisions and the public?

**Alan Rusbridger:** It has hugely changed the power dynamic. I like to think of the world in which I started editing as a time when information flowed vertically from the people who knew best to the people who had no other way of receiving information. Now information travels horizontally. It is difficult to think of a bigger change in society than that.

A lot of that is wholly to the good. Now we think about it, it was quite weird that a few rich proprietors—when you look at them, they are weird people, quite often—were able to have such an enormous megaphone and be the gatekeepers of all information and without challenge. It is enormously healthy in some ways that that has all been broadened out.

But the downside is speed, which you and Ruth mentioned: the fact that something can feel so powerful and threatening and overwhelming. People panic: I have seen editors panic, I have seen politicians panic. There was an example last year when Roger Scruton was exposed to a Twitterstorm over something he was supposed to have said and he was sacked within a day. With

mature reflection, it was found that he had not quite said what he was alleged to have said and he was reinstated. It behoves anybody in a position of leadership not to ditch normal processes just because there is a Twitterstorm going on.

**Ms Karen Buck:** Do editors court controversy sometimes? Has that had an impact and shaped polarisation and the drive for controversy?

**Alan Rusbridger:** Yes. Journalists do not change their behaviour, and some editors and individual journalists court controversy. Some are speed junkies. There were some bad examples recently of journalists who were fed morsels by No. 10 or other people in Whitehall and could not wait to get it out on Twitter because they wanted to be first with the news even if it turned out to be not particularly true or not true at all.

Speed is a great menace. I rather like organisations like Tortoise—the clue is in the name—which are trying to say that there are advantages to speed but there are advantages to thought, contemplation and contextualisation as well.

**Ms Karen Buck:** You do not seem to be indicating that the impact of new media and the context of freedom of speech have narrowed the way the traditional media allow freedom of expression.

I want to push you on the specific example you referred to earlier in your list of recent controversies. Suzanne Moore, a columnist for the *Guardian*, left the *Guardian* recently, feeling that her freedom of expression and ability to talk on women's issues was being limited. Do you feel that that was a case, without necessarily going into the merits of the positions, where the range of views that can be expressed within the paper had been narrowed down because of a fear of controversy?

**Alan Rusbridger:** I do not know enough about the Suzanne Moore case beyond what I have read, and no editor likes their predecessor to weigh in on public controversies. When I edited the *Guardian* I tried to hold the ring. We had people who were violently opposed on different sides of lots of arguments. I saw it as a positive good that the *Guardian* was a place where these arguments happened.

I am sure that most of us in this session would passionately agree with the John Stuart Mill view of the world that the best response to argument is more argument. The more argumentative and interesting you can make a paper, the more people are likely to

buy it and value it. That seems to me the ideal version of a newspaper.

**Ms Karen Buck:** In practice, the Suzanne Moore case appears to contradict that. It proved not to be possible for a journalist to be free to express that opinion. I totally agree with where you want us to be with regard to the range of expression, but it appears that that could not happen. Do you have a view on that?

**Alan Rusbridger:** I have read Suzanne Moore and, clearly, she felt that. I completely respect that. I am sure that the motives of people have come out of a good place—a desire to be intolerant of intolerance is a good thing—but there is something about the transgender issue. I personally do not understand why it has become so toxic and why people are felt not to be allowed to have views. As I said, I do not know enough about the specifics of the Suzanne Moore case, but it seems to me that there is something particularly problematic about the transgender debate.

Q8 **Chair:** I am not sure where you are ending up with all this, Alan Rusbridger. You described very well how the information flow has changed from vertical to horizontal and that being an amazing transformation of opening up of freedom of expression. But to begin with, you said things were going in the wrong direction. I am not quite clear about what you mean. In the context of things going from vertical to horizontal, surely things are going in the right direction.

**Alan Rusbridger:** It is both. I am not sitting on the fence. I am just describing the situation we face. There are wonderful voices and wonderful things that happen on social media that could never have happened before. Sometimes it is quite easy to become too UK-centric or western-centric, but companies like Facebook, Twitter and WhatsApp enable forms of expression that simply would not be allowed in repressive states. At the same time, you have absolutely hateful and lethal stuff there, too, which the social media companies ought to be doing more about.

We will be going here later in this discussion, but I will say here that we cannot even agree what these companies are. Are they platforms or are they publishers? The Section 230 law effectively said, “You are just a platform. You are like the Royal Mail. The Royal Mail cannot be held accountable for the contents of every letter it publishes”.

That seemed to work for about 15 years and then people said, “Oh come on. That’s ridiculous. You have to be liable”. Yet it is plainly impossible to make companies liable for billions of pieces of

information a day. We do not know how that would work. If this were a debate about freedom of expression and you were trying to protect the valuable things on the internet, what worries me is that a stampede to regulation would, first, choke off digital innovation and, secondly, kill off the powers of expression that have been released by this.

I am not surprised that you are finding me muddled on it, but I am describing a situation that is a muddle.

**Chair:** Where would you end up on fake news or the freedom of expression of lies like, "The vaccine will harm your health", and the individual versus the collective on that?

**Alan Rusbridger:** Broadly, I believe that argument meets argument. On the Facebook oversight board we have been doing some test cases involving Covid and the kind of information that may be wrong but is a legitimate expression of people's belief in a free society. If you were to suppress them, it would give rise to even more conspiracy theories about what people are trying to gag.

That is slightly different from the vax argument. If people are spewing out stuff that is completely wrong and could influence a lot of individual decisions that could be overwhelmingly harmful to society, that is a different case from, say, an argument for herd immunity.

You have to take them case by case. That, in a way, is the point of the Facebook oversight board: to try to consider individual cases rather than the decisions being taken by a lot of machines, which sometimes get it right and sometimes do not.

**Q9 Baroness Massey of Darwen:** Good afternoon. I am a Labour Peer.

I have a couple of questions for Jim Killock about social media platforms getting the balance right between guaranteeing freedom of expression and protecting people from abuse. There are two questions. First, do platforms provide equal protection to all voices? Secondly, is there always a trade-off between people being protected from abuse and curtailing the rights of others to freedom of expression?

**Jim Killock:** For sure, there are trade-offs, but the platforms do not do a particularly good job of either protecting free expression or protecting people from abuse. They are quite bad at both. The reason is that they are not designed to be doing these things in any sophisticated way. Their basic point here is to do things at low cost and to allow communications at volume.

That means that the amount of money they invest in moderation is quite low. The two favoured methods of moderation are farming it out to countries where English is a common language but wages are low, or getting machines to do the moderation and to spot the content and to do the removal. Moderation is problematic and is done badly. You hear stories about moderators having a target of about a minute to make decisions. Combine that with the economic model the platforms have in terms of commanding attention. They need that shock value. They want content to circulate. They want people to be interested in the content. That is when they start to prioritise particular sorts of content. That means cute things like cat videos and it means, bluntly, hate speech. Those are the kinds of content that are pushed forward and they are not necessarily the things that are best for people.

The problem then is for users. They are trapped by this. They do not have a choice to say, "I don't mind the cat videos on Facebook, but I'd really rather not get all the absurd content", which might be published by national newspapers, by the way. The sort of objectionable content we see is often seen in tabloids. It is not necessarily all about things that are wholly fake or wholly wrong. These things are being pushed forward. You do not wish them to be prioritised in the way they are being prioritised. You do not have a lot of choice about that. You cannot walk away from Facebook if you want to continue talking to your family and friends there. You are stuck.

We have to think about this as a dysfunctional market where people are not getting proper choice over the content they are getting. They need that. Again, that is based on personal data. It might be your personal data preferences and the things you have liked that are pushing content forward. It might be videos you have seen. This is personal information that is being used to make those prioritisations. You should have control of that, therefore, in general privacy and data protection law.

If that is not enough, which it probably is not, the other thing you need to do is to say that you do not have to use Facebook to talk to people on Facebook. Why should you? It should work like email. If I want to email people, I do not have to be on Google's platform to do that. Why should I have to be on Facebook's platform to talk to people on Facebook? If we start thinking about this in that kind of way as a plurality question, we introduce incentives for content to be treated in ways that users want and for the moderation to be done in ways that users want.

Without those things, the online harms legislation is just tinkering at the edges. It can only ever look at the absolutely worst things and the absolutely obvious things to do. It cannot lead where people want to go. It does not remove the attention market or reduce its impact. Unless we start thinking about the attention market, we will never get to where this needs to be.

**Baroness Massey of Darwen:** If moderation not designed to be effective, is that deliberate? Do people want it to happen by accident or is it a failure to design something?

**Jim Killock:** Moderation is not designed to be effective because there is too much content to moderate. There are too many complaints to deal with. It cannot possibly do it. The automated, machine decision-making is one of the worst things. Facebook attempting to spot nudity by identifying nipples and so on had all kinds of absurd results from breastfeeding through to famous pictures from artistry—you name it, it gets taken down. It is pretty bad, but that is where the policy is leading. That is where online harms legislation will lead. There will be more automated content removal, because that is what they can do without it costing a lot of money.

Q10 **Baroness Massey of Darwen:** These next questions are directed to Ruth and Alan but, Jim, you may chip in if you want to.

We looked into concerns about no-platforming in universities in a report in 2018. There continue to be reports of people being no-platformed at universities. Do you think it is a widespread issue? Why is it becoming more common? Are there any simple steps you would support universities or government taking?

**Alan Rusbridger:** There have been a number of high-profile cases. I have been in Oxford for six years and I can think of three or four—so maybe one a year—that hits the headlines, most recently with Amber Rudd. There was one over an academic called Selina Todd. When you look at them, they are usually slightly chaotic decisions taken by student groups and they are clearly wrong, in my view. It should not happen. You should not have no-platforming.

I will break down the answer into two parts. Is more legislation required? I am not sure it is a question of legislation. It is there in Section 43 of the 1986 education Act that free speech ought to be allowed and has a high priority. It is certainly there in Oxford University's policies. All colleges have pro-free speech policies, and 99% of the academics I know are rigid and fierce in their defence of free speech.

There is a problem with education about information generally and almost everything we have touched on so far today: how to spot fake news, how to know a good source, how to be sceptical about news, how to play your part in not spreading misinformation and the value of free speech itself. My experience of Oxford undergraduates is that they have not thought deeply about these issues. It has not been part of the curriculum. They come with fiercely developed ideas about identity, which is both good and bad, but when you start talking about the value and importance of free speech, they look a bit blank. No one has ever told them about it. These are very bright students who come to Oxford.

I would begin at the age of about six with a programme of education about information and digital information as the answer rather than trying to create more laws, which I am not sure would crack it.

**Baroness Massey of Darwen:** Are they being influenced by people or organisations to no-platform people or are they just acting chaotically?

**Alan Rusbridger:** No, I think they see that there are laws in place about anti-Semitism, for example, and about hate speech against people of colour. There are laws that protect gay people. They say, "Now I want to protect my identity. My identity is X. I feel threatened. I want a safe space. This feels threatening to me". Again, you can understand that, but somebody ought to have told them by the time they are 18 and at Oxford about the broader theory of free speech and how free speech itself is the most potent weapon. If you have Oxford undergraduates who are shying away from using their immense intellectual capabilities and articulacy to say, "We don't feel powerful enough to take on these arguments", then you have a problem.

**Ruth Smeeth:** Unsurprisingly, I agree with most of that. Because of Covid, it is difficult to assess what is currently happening on campus, given that for this academic year there have been no guest speakers.

Also, while the Government have committed and did commit in their manifesto last year to legislation on free speech, they have not issued a policy directive on free speech as they could have done. There are certain steps that I would advocate and I think we would all advocate before we bring more legislation in. These are cultural issues, as has been highlighted, and we keep trying to legislate and regulate culture rather than have a conversation about what we are trying to achieve and where the red lines are,

especially with regard to academic freedom. That is probably a good starting point.

If the Government wanted to do something proactive, as Alan Rusbridger mentioned earlier, there are more imaginative ways than yet more legislation. Sometimes this is to do with funding. Some of this is about security and guaranteeing safety on campus. It would be easy to establish a fund to ensure that these events could go forward.

- Q11 **Baroness Massey of Darwen:** Is academic freedom under threat from pressure from students or anywhere else? Should any academic topics be off limits for study? Can academic freedom inhibit some students' ability to participate on an equal footing with others? Alan said once—I am not sure where he said it—"The balancing of free expression with the need for a better organised public square is one of the most urgent causes I can imagine". Does that fit in here?

**Alan Rusbridger:** It probably does, in the sense that we have described a position of a certain amount of chaos at the moment. Certainly in the middle of a Covid crisis when it is really important that people are able to say with some certainty, "I believe this to be true" or "I believe that not to be true", it is very alarming to live in a society in which people say that they cannot. It is extremely alarming if you have a US President who almost deliberately blurs the lines between truth and fact and untruth and lies. You can see why he did that.

I think we are coming to our senses and realising that society cannot work unless we have an agreed basis of facts and evidence. I am not sure that singling out universities as places that feel uniquely threatened is right. There are clearly some issues that are more problematic. I mentioned transgender issues. People are working in areas that touch on colonial legacy. Some people feel that is underrepresented, and some people will probably tell you they feel frightened of expressing rather traditional views about empire and so on. Maybe Oxford is unusual. Both sides may be underrepresented and may feel there are aspects that are missing from the curriculum, but I do not feel that they feel particularly intimidated in saying things that are unpopular.

**Baroness Massey of Darwen:** Should it be possible that some topics are off-limits for study?

**Alan Rusbridger:** My instinctive answer is no. Sometimes it depends on how well it is taught. I am quite interested in the Eton case. The point of that case is not that it is not possible to take an

alternative view of the patriarchy; if you have been misfortunate enough to sit through the YouTube presentation, it is just not very good. It is rubbish. You can see why the headmaster of Eton might say, "I don't want Eton's name on that". That may be a significant factor in this case.

There may be scientists who would say that if something is scientifically untrue, we should not be teaching it. I am sure there are exceptions in science.

**Baroness Massey of Darwen:** Yes. I will not go there, although I am tempted to. Ruth, would you like to add anything?

**Ruth Smeeth:** Yes. There are other issues we also need to consider like state actors and the impact that is having on academic freedom. There have been key issues at Oxford. We are seeing the impact of the Hong Kong national security law. The teaching of certain subjects, primarily in social sciences, is being forced to change because of the potential impact on Chinese students if they return home.

There are two ways in which this has come to fruition. One is that the marking process has changed. Now it is anonymous marking in case of packing. You cannot see what student has submitted what. We have also seen a change from classroom discussion. I believe that challenging each other as you are having a conversation is a core element of academic freedom, especially at Oxbridge. That has been changed to one-on-one conversations with tutors and anonymous papers from students being presented by other students so that no one knows what they are presenting and who had the original argument. A law introduced in June this year in Hong Kong is already having an immediate knock-on effect.

Also, the Government's Chief Scientific Adviser for National Security, Anthony Finkelstein, has instructed universities to be "increasingly adversarially conscious". They are worried not just about hacking and about protection of intellectual property on university campuses but about pressure that is being applied through soft power about what students should be taught. Some universities are reporting anecdotally that their foreign students have to report to their embassies once a month about what they are being taught at university.

Research published two months ago showed that in a survey of 1,500 academics undertaken by Oxford and Exeter Universities, 75% of academics believed that institutional autonomy at their institution had been eroded. This is not just about academic freedom in the way we would necessarily have traditionally

discussed it, but there is a national security element to it. There is also the impact on our curriculum and the pressure that students are being put under. We look at Hong Kong at the moment as if it is separate but, actually, in partnerships with Hong Kong academics the British academics are worried about their ability to continue those relationships because the Hong Kong academics may be made more vulnerable at home.

**Q12 Joanna Cherry:** Good afternoon. I am a Scottish National Party MP.

In this Committee, we are focused on the law of England and Wales. There are some differences in Scotland; Ruth has already alluded to the hate speech Bill, which is not without controversy and is currently being pored over by a committee in the Scottish Parliament. Some of the issues that have arisen in Scotland are probably due to arise south of the border as a result of the Law Commission's proposals.

Ruth and Jim, do hate speech laws as they currently stand strike the correct balance between protecting individuals and allowing people to express their views? If not, how should they be reformed?

**Ruth Smeeth:** These are easy questions today. We need to tidy up hate speech legislation so that there is consistency. Whether that is about making sure appropriate groupings are covered or whatever else it may be, we need a level of consistency.

My concern, however, is overreach and the policy guidance issued to police forces, to judges and specifically to magistrates, to ensure that they understand their obligations under Article 10 and that free speech and free expression are also key. There is a great deal of focus—and I say this as someone who has been a victim—on the hate speech element but not on ensuring that there is balance. That is truly due to a lack of training.

**Joanna Cherry:** What do you think about the police guidance on non-crime hate incidents? It appears that the College of Policing in England and Wales is advising police officers to log non-crime hate incidents against people. Do you know about that?

**Ruth Smeeth:** I can understand why they are doing it if it is to demonstrate a long-term pattern of behaviour, as they would with incidences of stalking, which could escalate. I understand the logic behind it. However, it is being done without any real understanding of the impact of other key rights and protected rights under the Human Rights Act. Because of my former role, I can understand

where these things come from, but they are not helpful in the context of protecting free speech.

- Q13 **Joanna Cherry:** We have already alluded to the debate on reform of the Gender Recognition Act, and whether we should have self-identification of gender in England, Wales and Scotland and whether there is any conflict with women's sex-based rights.

Alan said that he may not be completely on top of what is going on. For those who do not follow the debate on sex and gender identity, it is difficult to overstate the depth of disagreement about what constitutes hatred. There are many people who maintain that it is hateful or transphobic to advocate for female-only spaces and services and to collect data on biological sex. Across the United Kingdom, women have faced serious consequences for asserting that biological sex matters. People like Suzanne Moore have lost their jobs or felt squeezed out of jobs. People have faced disciplinary action. People have been interviewed by the police. People have had their details recorded for saying things as simple as, "A woman is an adult human female", or, "Women do not have penises".

Ruth, can you comment on that area? I know it is an area fraught with danger for those who comment, but surely would you agree with me that to state biological facts can never really be hate speech?

**Ruth Smeeth:** There is always context to everything and how we use language. The wonderful thing about language is that it is for ever evolving. There are code words and there are ways in which people can feel threatened or abused.

Having said that, this debate on top of all debates is probably one of the most toxic, especially online. You talked earlier about a chilling effect. This is the one area where people very carefully consider their language before they engage because of a possible backlash and they try not to offend anybody.

I am a woman and I have had certain lived experiences. I also, however, think that while some voices are being definitely abused in this process, trans women are also regularly abused and their voices are not necessarily being heard at all. People are shouting at each other and a lot of people are shouting on behalf of trans voices. When you talk about voices that are not being heard, the voices of some people who should be heard are missing. Not many trans voices are being heard in this area.

We have to be careful about context. One issue in the legislation in Scotland that both of us have mentioned is the basis of intent and

your intent to harm and your intent to offend. That is important, especially when you are talking about issues that are so emotive. Gender and sexuality are definitely two of those areas.

**Joanna Cherry:** Do you think the statement that a woman is an adult human female could ever be intended to be hate speech?

**Ruth Smeeth:** Not as you or I would say it, but we do not know what the sentence before or after it was.

**Joanna Cherry:** I can tell you that there are documented experiences of women being accused of hate speech simply for saying that a woman is an adult human female, with no abuse and no context other than just saying that. Would you agree with me that we would be getting into hot water in relation to the protection of freedom of expression if we were to say that simply to state a scientific reality is hate speech?

**Ruth Smeeth:** Given that my definition of hate speech would be anything that incited violence and broke criminal law, I would not consider that to be hate speech at all. We have to be clear about legal definitions within the context of this, which is why the policy guidance is so incredibly important. There will be people, probably with the greatest positive intent, who overreach, whether they are magistrates or police officers. They need to be reminded of our core human right. The issue of freedom of speech and freedom of expression seems to be the one core human right that we are prepared to sacrifice.

Q14 **Joanna Cherry:** Jim, do hate speech laws strike the correct balance between protecting individuals and allowing people to express their views? Do you think they need to be reformed in any way?

**Jim Killock:** In general, they are doing a reasonable job. It is not an area we work on a huge amount, but I will give two examples of how the current laws are in the wrong place or are going to be in the wrong place.

I am sorry to say, Joanna, that the SNP's legislation in Scotland at the moment—

**Joanna Cherry:** It is all right. You do not need to apologise. There is a widely held view that aspects of it might be problematic. That might not be too far from my own opinion.

**Jim Killock:** That is good to hear. There is one particular aspect, which is to include the idea of stirring up hatred with insulting speech. Bringing the idea of insulting into what we consider hate

speech is problematic. It is not a particular harm. It is a conceptual thing, which will be different in different people's eyes.

That mirrors the concerns we have with the current test of grossly offensive speech in the Communications Act. Again, should grossly offensive speech ever be the right test for what is unlawful? It currently is.

Going back to the question of what the police do and when they intervene, there have been plenty of cases down the years where the police have considered something and have wondered whether particularly online speech has been sufficiently bad to pass hate speech tests. They worry that it might not pass hate-speech tests, so they explain to the person concerned that they may have broken the Communications Act for grossly offensive speech. Sometimes they even persuade the Crown Prosecution Service that that is the right way to take those people forward into the legal system.

That is deeply problematic from two points of view. First, it is simply not the right test. Secondly, if there really is hate speech, to say that it is offensive is also wrong. If something is hate speech and is reaching thresholds of criminality because it is pushing genuine harm at people, it should be defined as such in law. They should not say, "It's offensive and that's why we are going to take you to court". That is wrong.

In that regard, the Law Commission's work on the Communications Act recommended to get rid of the grossly offensive test and to replace it with something based on harm. We are working through the proposals. We are a bit concerned about the breadth of them, but this question has been approached in the right way, which is to consult widely, work through the issues, think them through and then to consult again to see whether this works. We can contrast the care and attention over this important change to law with some of the other things proposed in the area of free expression online over the last few years. It stands as a good example of how to do it compared to some others.

**Q15 Joanna Cherry:** As things stand, the offence of stirring up racial hatred can be committed by intent or where racial hatred is likely to be stirred up. For religious hatred and hatred on the grounds of sexual orientation, you have to prove intention to stir up. I think I am stating the law correctly as it applies in England and Wales.

Ruth, earlier you mentioned the importance of proving intent. Would you talk a little bit about that?

**Ruth Smeeth:** One big issue here is that culture and language are evolving. Even abuse evolves. I can say that from personal

experience. From “Jew” to “Zio” to whatever else I am regularly called online, language evolves. Therefore, the comments could be seen as acceptable words, but someone’s intent, how they are planning on using them and what they mean are key. The definition of hate speech needs to be consistent across all protected characteristics and include people’s intent and their use of language.

I am concerned about the removal of the private dwelling element of the Law Commission’s proposals. Lord Dubs mentioned *Mein Kampf*. If I were studying *Mein Kampf* and read out sections of that at home, my goddaughters were there and repeated it at school, I could get a knock on the door. There would have been no intent because it was my academic research, yet they would potentially have repeated something vile. We have to be careful about how we are applying the law and that we are not ensuring the police are there to police speech because we have never wanted them to do that.

- Q16 **Joanna Cherry:** You mentioned covering all the protected characteristics, because of course the law at present in England, Wales and indeed Scotland does not cover all the protected characteristics as listed in the Equality Act. Ruth, is it your view that it should be consistent across all protected characteristics?

**Ruth Smeeth:** Yes.

**Joanna Cherry:** That would include sex?

**Ruth Smeeth:** It would be very hard for me to say that it should not include sex. I have yet to see the rationale behind some of the other subgroups and I should take off my work hat for a second before I get myself into trouble with my board. For example, one of the other groups that the Law Commission is consulting on is Goth culture. I am not sure that Goth culture would warrant being a protected characteristic, which is why I think we have to be very careful about hate speech law in itself, and have a broader conversation. A lot of this is about culture, but it is also about public acceptance, and we need to make sure that people are taken on a journey for some of those. However, that is a personal view, not an Index view.

**Joanna Cherry:** Of course, the phrase “protected characteristics” at present has legal meaning in terms of what is protected under the Equality Act, and I do not think Goth culture is included in that.

**Ruth Smeeth:** No, but the Law Commission is consulting on expanding the definition to include Goth culture.

**Joanna Cherry:** What is your view about expanding it beyond the currently recognised protected characteristics in the Equality Act?

**Ruth Smeeth:** I have not seen hate crime data that would warrant that.

**Joanna Cherry:** Okay. Jim, would you like to come in on that?

**Jim Killock:** Only to repeat the obvious points that have been made and say that I very much agree with them. You have to limit this to where it really matters. If you are not doing that, you risk bringing the whole thing into disrepute. Ruth's point is exactly right. It is very easy to argue for protecting more and more and for criminalising more and more. That is a pressure we face from society all the time, but ultimately if that happens, we fuel the far-right extremists who want to make free speech their weapon to promote their victimhood. It must not; it must never do that. We must restrict free speech only where it is absolutely necessary so that that is defensible and it can never be used as a standard for far-right extremists to wave their victimhood on. It is extremely important that we avoid that.

**Joanna Cherry:** Alan, I am conscious that I have left you out of this questioning. Would you like to express a view on whether hate speech laws as currently constituted get the balance right, or whether we should be looking at reforming them in any way?

**Alan Rusbridger:** I was feeling rather relieved to be able to sit this one out. I do not think I have anything particularly useful to add. Jim and Ruth are the experts on this.

**Joanna Cherry:** Thank you very much. Chair, I will hand back to you.

Q17 **Lord Brabazon of Tara:** I am Lord Brabazon, a Conservative Member of the House of Lords. My question is probably best answered by Jim Killock, but if anybody else would like to come in as well, please do.

We have seen instances of people being reported to the police for speech that some people consider offensive, even when it is not criminal, such as an individual who drew a political cartoon concerning trans women entering women-only spaces, and was reported to the police by someone who saw it. Do you think the police are being brought into situations when it is not justified?

**Jim Killock:** Yes, I think this works both ways. In this sort of question about online behaviour and abuse and what platforms and others should do, the role of the state and the role of the police in particular, has been neglected. On the one hand, the police will

step in when it is not warranted. I feel, but I do not have evidence, that a lot of the time that is because something has riled a particular local community, is very visible, the press and people on Twitter are getting concerned, and the police feel they need to intervene and attempt to intervene in that way but it may be that criminal thresholds have not been reached. The grossly offensive test adds fuel to the fire in those sorts of situations. More or less anything can be defined as grossly offensive if you try and the police feel they have the permission to do so.

Where there is no obvious community concern, however, although individuals may be genuinely affected by threats or experience harassment they may not get the treatment they deserve because the police feel they are just spatting on Twitter.

We get both: no enforcement where it is needed and overenforcement where it is not needed. Government promises to look at how the police deal with online behavioural issues, whether they prosecute, and whether they follow up accusations of harassment and so on, but I do not think it has ever really been properly resolved. Also, of course, there are many police forces and the reactions one might get from local police forces are likely to be varied. There is a piece of work to be done to work out how police draw the line where it is warranted.

If the answer to the question about the overall strategy to deal with online abuse is that Twitter and Facebook take down abusive accounts, we are really saying to abusers, "Go ahead. You will get your accounts deleted but you can have another go once you set up another account". It does not hold people to account. It does not serve as a deterrent. We need to look at how law enforcement works in both directions, whether overreacting or failing to react.

**Lord Brabazon of Tara:** Do you think the police have the necessary expertise to deal with this kind of thing?

**Jim Killock:** The likely answer to that is no, they do not. That is why one has to think about how those sorts of referrals are dealt with. Are they dealt with by national or regional teams, rather than in local teams? Are local teams given enough guidance to make sure they are referred to the right places for those things to be dealt with? I do not have lot of evidence about this. We hear things. It feels as if there is a body of work to be done to understand how the police work in the online environment on these kinds of issues.

**Chair:** Jim, you mentioned something about people asserting, or weaponizing, their victimhood. Are you implying that there is no

such thing as discrimination against and prejudice towards women or people with disabilities? You were using it, it seemed to me, in a more pejorative sense: that somehow anybody who complains is making a bogus assertion of victimhood. Quite frankly, I think people who are oppressed might find that they might not want to put so much weight on your views if that is what your views are based on.

**Jim Killock:** No, that is absolutely not what I meant. I meant purely neutrally that if somebody is asserting to the police that they are a victim and the police ignore it, we are not solving the problem, because the police are not reacting and dealing with their problem. I think that is very likely to happen because the police are—

**Chair:** I was talking about your earlier answer about universities. It was not to do with the police. It was the more general thing about people trying to silence other people by way of asserting their victimhood.

**Jim Killock:** I am not sure where I might have said that. I do not think I responded to the universities question.

**Chair:** Oh, perhaps I have misunderstood you. Sorry.

Q18 **Lord Brabazon of Tara:** Could I now turn to the subject of employment? I would like to ask Ruth Smeeth in particular, if I may. There have been several cases of employees losing their jobs for expressing their views on social media. For example, a woman was sacked by the British Council in 2016 after posting a comment on Facebook about “white privilege” under a photograph of the two-year-old Prince George. What is your view on cases like this, and is it a widespread issue? There have been many cases of people losing their jobs.

**Ruth Smeeth:** It is always difficult to comment on individual cases. As a former trade union officer, I am aware that one might not know the background of any specific case.

In terms of the principle, of course—you are right that we are seeing many more reports in the media of this happening more often, and of course it should not be happening—a person’s right to free speech is clear. One of the elements we are missing in this, and we touched on it earlier, is the effect of the immediate Twitterstorm. Alan Rusbridger talked about the fear and panic that certain organisations go through in the middle of an issue. Some people are sacked and then reinstated, as Roger Scruton was, but others will not be.

We have to be very clear about what social media policies need to be in place. ACAS, for example, should have a clear policy in place, but on their new website they do not. You have to hunt through their old website for a template about how you can have a proper social media policy. There are lots of other steps that I think everybody would recommend you take before you move to dismissal. There is training and there is understanding your cultural and reputational responsibilities to your employer. Too many employers do not have social media policies and too many do not undertake training for their staff.

There is another element to this. We need to be really careful with some of the legislation that governs charities and lobbying specifically, especially at times of elections when all staff can be held accountable, or an organisation can be held accountable, for the tweets of all the staff. I think that has led to a chilling effect. We have to balance organisational reputation with my right and your right to free speech. I think there are grown-up ways to do that, but lately we have seen immediate reaction rather than a considered approach.

**Q19 Baroness Ludford:** I will go straight to the question that I was supposed to ask. We were talking about the role of employers. Alan Rusbridger, should an employer—for example, an editor whose employees are paid to provide an opinion or engage with issues of public debate, as journalists are, particularly those who write opinion pieces rather than reporting political events—be more cautious about restricting the speech of such employees and give them more latitude than the people who were being discussed in the last couple of questions?

**Alan Rusbridger:** Yes. When I was editing, I used to think that if we were paying someone to have an opinion, to be opinionated, then people would understand they were that kind of journalist and that was their job. I felt relatively relaxed about them going on to social media and expressing their opinions. I was less happy if reporters, who were supposed to be more neutral in their approach to subjects, became very opinionated, because I thought people would judge the neutrality of their reports.

The other dimension relates to somebody who is primarily an activist but also a journalist, and whether there is a reputational wash-back into the news organisation where people would say, “Are they saying that because that is their political belief and they have political ambitions or aims outside journalism as opposed to being an opinionated journalist?” which is not the same as being an activist. It is a complicated issue, but that is how I used to think about it.

**Baroness Ludford:** Do either Jim or Ruth wish to comment on that? I appreciate that you have not been in Alan's position.

**Ruth Smeeth:** I completely support Alan Rusbridger's views. I think there is a clear issue about the impartiality of journalists, but there is a difference between commentators and reporters. Protecting media freedom in all its forms is clear and has to be at the heart of this.

**Alan Rusbridger:** It is clearly different for an organisation like the BBC, which is supposed by law to have due impartiality. I understand why the BBC is doing a review on the use of social media and how damaging it can be to the overall reputation of a news organisation.

Q20 **Baroness Ludford:** The last question is to all three of you or whoever wants to jump in. Alan said earlier that there was no need for more legislation about academic freedom because there is lots of law about universities. He also suggested education from the age of six, which seems like a good idea, in the context of civic education, which we seem to lack in this country. Ruth referred earlier to policy guidance. I do not think I picked up exactly what policy guidance she was referring to.

Imagine that you could wave your magic wand and influence the Law Commission or the Government. What would be the most important change in law or guidance they could make to improve the exercise of freedom of expression?

**Jim Killock:** I will put one forward. It is a really simple thing. The Human Rights Act lacks a degree of enforceability and does not give enough legal jeopardy to the Government across the board on human rights, but that is particularly stark in relation to free expression and privacy. What you get out of the Human Rights Act if you challenge with a judicial review is a declaration of incompatibility. That means that the Government effectively have as much time as they like to reform the law as they like. It is a weapon, but it is not an especially strong one.

You can compare that with the way our privacy rights are protected in European law up to this point. European courts, courts in other countries, will just strike the law out: "That's it. It doesn't work with our values. It no longer exists or applies". That should make a Government more cautious about what they replace a law with. First, it has to replace it because it has gone; the law needs to be replaced. Secondly, they have to make sure that the replacement does not simply get struck out again and would be much more likely to consider where the boundaries are. Under our current system, government can replace laws with laws that are equally

incompatible and equally as likely to be stopped by the courts, so we potentially never reach human rights compliance. That is the change I would argue for.

**Baroness Ludford:** We are going back to a very sensitive debate from 20 years ago, which I suspect our Chair was heavily involved in.

**Chair:** As it happens, the Government are reviewing the Human Rights Act, so this is a very opportune moment for you to raise that point. They have just started their considerations of that now and we will be feeding into that. That is something we can look at as well.

**Baroness Ludford:** I invite either Ruth or Alan to come in. What change would you like in law or guidance?

**Ruth Smeeth:** Broadly, if I ran the world, I do not think that need more legislation, but one policy change that I would like to see, and it is something that I have been advocating because of the online harms Bill, is digital citizenship training in schools. We need to give people the tools to protect themselves. People need to understand how online platforms work, especially after what we have seen this year during the pandemic. We no longer have an offline world and an online world. They are completely intermingled, including in our personal life with our families, so making sure that people have the right skills from a very early age would be a good thing. We have seen a wonderful development in this area in the last two months: the introduction of a new Scouts badge on digital citizenship. It is a good step forward, but we should be seeing it in every classroom.

**Alan Rusbridger:** I echo both Ruth and Jim. Lots of today's questions and answers have been about the impossibility of the scale of the issue that we have to deal with. We can demand that companies have 20,000 moderators, 30,000 moderators, 40,000 moderators. It will still not be enough unless we, as citizens, take the power that we have. I would start at age six and say that if you retweet something that you have not checked is true, you are adding to the problem. If you are not spreading misinformation, you are helping to be part of a citizen force that is choking the problem off. Education is a big part of it.

We have heard lots about the fabled British Bill of Rights that we may be getting, or not getting. I have always wondered why the First Amendment of the American Constitution seems to have so much more weight than Article 10 of the Human Rights Act and the European convention. If you could produce something that had the

ringing force of the American First Amendment, it would be tremendously beneficial and would answer many of the problems that we have been talking about today.

**Baroness Massey of Darwen:** I want to make a point about the issue of citizenship in schools. Some of you may remember the horrible time we had many years ago with something called Section 28, which was about promoting homosexuality in schools. A fine line can be drawn—I do not think it is a fine line, but many people do—between teaching and promoting things in school, for instance capitalising on children's youth to brainwash them into thinking certain things. That is something one has to be aware of in all this stuff about freedom of speech and freedom of expression. It was just a thought. I do not have a final question.

**Chair:** I conclude this evidence session with very sincere thanks to Alan Rusbridger, Ruth Smeeth and Jim Killock. You have set the scene very well for us in the very wide-ranging but profound, difficult and complex discussion that we will be having. I am very grateful to you for marking out the territory and showing us precisely how difficult these issues are. I think it is long overdue that this Committee is looking into these issues and I hope that we will be able to come back to you during the course of our inquiry and that you will be able to assist us as we progress. Thank you all very much indeed.