



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: [Freedom of Speech in Universities](#), HC 589

Wednesday 24 January 2018

Written evidence from witnesses:

- Aarti Thakor, Head of Legal Compliance, [Charity Commission for England and Wales](#)
- Michelle Russell, Director of Investigations, Monitoring and Enforcement, [Charity Commission for England and Wales](#)

[Watch the meeting](#)

Members present: Ms Harriet Harman (Chair); Ms Karen Buck; Alex Burghart; Joanna Cherry; Baroness Hamwee; Baroness Lawrence of Clarendon; Jeremy Lefroy; Baroness O'Cathain; Baroness Prosser; Lord Trimble; Lord Woolf.

Questions 58–67

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

Q58 Chair: Thank you very much for joining us and being prepared to come and give evidence as the Office for Students and the Charity Commission. As you know, we are the Joint Committee on Human Rights, which means that we are half House of Lords and half House of Commons. We are looking into the very important issue of free speech in universities.

I will just put the session into context for you. We have heard from academics, students, political activists and commentators, and we are very interested to hear from you as regulators. Free speech is an important human right, protected indeed by the European convention, but, of course, it is not an unqualified right. The important thing is that the system is effectively securing free speech within the law.

We are concerned today about the role that regulation is playing, and whether it is ensuring that people can exercise that right to speak freely within the law or inhibiting them from doing so. We did not start the inquiry meaning to hear from the Charity Commission; I confess that you were not on our radar. Previous witnesses put you on our radar, so we are very glad that you have come along, at quite short notice, to deal with the points that have been raised with us.

We are well aware that the Office for Students is in transition towards taking over from HEFCE. You have started your work, but you are not yet fully in control, and there are a number of issues that you are still consulting on. We are very grateful that you have been prepared to come, even before you are fully fledged and have decided absolutely on everything. We appreciate that.

With that, I will ask Jeremy to ask the first question.

Q59 Jeremy Lefroy: This first question is specifically about the Charity Commission, but I will ask other guests to comment. We have heard a lot of evidence suggesting that the Charity Commission rules are having a chilling effect on free speech. The commission's operational guidance for students' unions states that they may "comment publicly on social, economic, environmental and political issues if"—"if" is in italics—"these relate to its purposes or the way in which it is able to carry out its work", but they "should not comment publicly on issues which do not affect the welfare of students as students". One of the examples given of an issue that does not affect students is "the treatment of political prisoners in a foreign country".

Michelle Russell, do you think that this could have an inhibiting effect on freedom of speech for students' union officers?

Michelle Russell: My role in the commission is as director of investigations, monitoring and enforcement. I am responsible for the cases that we see and the engagement that we have with charities, including students' unions, on a preventive or assistance basis, not just intervention. The guidance you are quoting is our operational guidance. It is actually our operational guidance for staff. As a regulator we take the view that we should be transparent, and we publish our internal guidance. That, I think, is the guidance that you are quoting from, as opposed to our guidance for trustees.

The first things I would say is that this is long-standing guidance that was created to help students' unions when they came on board to be registered. The examples that you refer to, which are set out in the guidance, derive from some of the case law that exists.

Perhaps at this stage I might ask Aarti Thakor, who is our lawyer, to explain the examples that you have referred to.

Aarti Thakor: Good afternoon. You have mentioned quite rightly that that is what is says in our guidance. I thought it would be helpful first to simply explain the distinction between “must not” and “should not”. A lot of our guidance refers to what are seen as legal mandatory requirements, and we say quite clearly that it is for those that we use the word “must”. That is stated at the beginning of our guidance, and charity users are well familiar with our distinction in that regard and with when we use “should”. The particular paragraph that you referred to relates to a “should not”. It is not an absolute mandatory requirement.

The basis for that comes effectively from two pieces of case law. The first is Baldry against Feintuck. If I may be permitted to read it, there is a very small paragraph from Mr Justice Brightman, which may be of assistance in this regard. He says quite simply in the context of this case: “The union is clearly an educational charity and the officers of the union who have power to dispose of the union’s funds are clearly trustees of those funds for educational charitable purposes. It is not therefore open to the union by purported amendment to the union’s constitution to authorise the use of the union’s funds for the purposes of promoting any object which may happen to be of interest to the members of the union, regardless of whether such object is charitable and educational or not”.

That is the first case that refers specifically to funds. There is a second case, that of Webb and O’Doherty, where effectively that principle is upheld. It states that where corporate conclusions are being expressed on issues that are wider than student-related issues, either by the union or specifically by the trustee board, they run into difficulties, because in effect they may be doing one of two things. They may be engaging in activities that are wider than the strict educational, charitable law context, or, in effect, they are straying into what may be seen as impermissible political activity, because it becomes an end in and of itself rather than a way to further that particular purpose.

Jeremy Lefroy: Thank you. That is very helpful. I will put a simple question, and forgive me if I am asking about something that I should know. Is it a legal requirement for a students’ union to be registered as a charity, or could it be, for instance, a company limited by guarantee and therefore not within the purview of the Charity Commission?

Michelle Russell: First, “charity” is a legal status. There are charitable companies, trusts and unincorporated associations, so it

does not matter what legal form the entity takes. "Charity" was created back in 1601, since when Parliament has decided that it is about what the organisation does and what its purposes say that make it a charity.

In the case of students' unions, the purpose for which they have been established is the advancement of education. That is their usual purpose. By virtue of that purpose, they are a charity. Whether or not a charity is registered, exempt or excepted, the charity-law principles apply across the board to the 167,000 charities that are registered with us and the hundreds and thousands that are not.

Jeremy Lefroy: Thank you. I suppose I should declare an interest as the trustee of a number of charities. When I was an officer of a students' union in King's College, Cambridge—a long time ago—our students' union decided by a majority to hold a rent strike over a disinvestment from Barclays Bank. Would that students' union have fallen foul of the charity laws? I ask, because I do not think that it was an issue at the time. The college did not particularly like it, but it was not taken as something that we could not do at the time as a students' union. Have things changed, or was the rule not enforced at the time, given that you have talked about charities having in effect had the same remit since the 17th century?

Michelle Russell: I will try to be brief. The key date for students' unions is 2010. After 2010, Parliament decided that it would no longer exempt charities; they had always been exempt before. If they met the threshold income of £100,000, they had to be registered with the Charity Commission. Nothing changed in their legal status before or after that parliamentary decision. What that decision may have exposed was that the institutions and universities responsible for that regulation under charity law were not doing it, but that is the only thing that changed from 2010.

I would add just one other thing to your specific example, and this is where it can get quite complicated. There is a difference between a student membership or a student group debating something and deciding something. Take the example of the National Trust or the RSPCA. Their membership has the freedom to debate issues, and in that there might be votes of no confidence and so on. The bit that bites in this territory is where the trustees of the students' union—in other words, the body as a whole—decide perhaps to go further and endorse or pass motions. There is an important distinction in that territory.

Jeremy Lefroy: My final question is for Sir Michael Barber. First, may I say, having seen the work that you did in Pakistan in education, how much I appreciated it? I saw how influential it has been.

My question is therefore about the international scene. Are you aware of other countries having similar debates about the roles and the vires or ultra vires of the activities of students' unions? Have you come across that at all, and are their conclusions different from ours or similar?

Sir Michael Barber: First, thank you for your comment on Pakistan. I have made 53 visits to that country over the past eight or nine years and it has been an amazing thing to be involved in. Your congratulations should really go to the Chief Minister of Punjab and his team, who have done a fantastic job. Pakistan is in a totally different category in relation to this particular issue, however.

I am not an expert on what happens with students' unions around the world, but these kinds of debates certainly come up in other countries, particularly in countries with an English-speaking heritage—Australia, New Zealand, Canada and the US—although all have different laws. The laws on charitable status in the US are very different from what we have here. However, issues about freedom of speech on campuses and about relations between students and the administrations of their universities come up everywhere.

Lord Woolf: In the evidence that we have heard on previous occasions, both universities and students have said that they are finding it very difficult to know what they can do and what they should not do. Is there any truth in the suggestion that one problem is probably that the Charity Commissioners have an historical role here, but that if one were starting with a clean sheet of paper, one might not have put the Charity Commissioners where they are now and have all these other bodies involved as well?

Michelle Russell: Some 90,000 charities with educational purposes are currently on our register, and the 120 students' unions that are on our register are part of that educational charity sector, which is very important and thriving in this country. We hope that our regulation is enabling and supportive of those charities.

Some of the issues that we are discussing today arise not only in relation to students' unions; they can affect a lot of other educational institutions, such as think tanks, which over the past five to 10 years we have explored in relation to speakers and so on, and faith organisations. Today, we are discussing an acute issue in relation to students' unions, but it is an issue that arises across the board.

Our challenge as a regulator, with all those 167,000 charities and a million trustees' roles, is to try to explain how those rules, which apply equally to all of them, apply to different charities in different circumstances. This is not a get-out clause, but we have to strike a balance between trying to describe the framework in a way that most charity trustees will understand and, equally, not being too prescriptive about individual circumstances. It is really important to make clear that the discretion lies completely with charity trustees. Our role, through the guidance that we have published, the toolkit, is to help charity trustees to navigate the rules and know what the issues are.

While we are extremely supportive of charity trustees' discretion, with that freedom and power comes responsibility. As you pointed out earlier, there is no complete freedom of speech with no checkpoints. It cuts across equalities legislation and the human rights of other individuals. Our role as the regulator is to ensure that where charities are exercising their discretion, they are managing the risk properly and are held to account. We provide specific advice and guidance in individual cases where we think a charity may have got it wrong.

Lord Woolf: May I put the question the other way around? Do you think that the introduction of other bodies working, or trying to work, in parallel with you makes it very complicated for students and universities? Is it more complicated than it need be?

Michelle Russell: I do not think we would say that, actually. You will appreciate that our relationship to date has been with HEFCE, and going forward it will be with the Office for Students. We have a very complementary role along with good relationships and liaison with the other regulators to make sure that we do not tread on each other's toes and to ensure that there is an equal and fair playing field between the universities, which are still charities and still subject to the same rules, and the relevant students' unions and higher-education institutions.

Lord Woolf: That is your assessment of the situation, and of course you have given practical evidence of it. But certainly the impression that we have been given by the governing bodies of some universities and from heads of students' unions is that their task is made unduly complicated, because they think that they are complying, but then they find that there is another layer of regulation.

Aarti Thakor: Perhaps what may assist is also to understand it. Some of the fundamental issues lie more with understanding the core trustee duties, regardless of whether or not they are a

students' union operating in that context. I suspect there is more to be done on culture and attitude in relation to what it means to be a trustee in that context. We must also bear in mind that student bodies can be quite transient, and there is a high turnover of trustees. There is probably something to be said about putting more into education and an understanding of the practical implications of some of the legal consequences. I can see that there might need to be more literature in that regard.

Chair: It is clear, as Harry has said, that for a long time since there has been a legal framework for charities. It has been added to by statute and by case law. You are the regulators in order to make all this happen. I am struggling to work out how you actually add value. For the moment I am not thinking about think tanks or your other 160,000 charities; I am thinking about students' unions within the context of free speech at universities.

Although your perception is that you want to help them to understand the problem, their perception is that you are the problem, because you are the messenger because of the case law and the statute law. But, actually, what if you were to close down, while suitably re-employed in personal terms obviously, and your work on students' unions stopped? What can you tell us about why there would be a problem, bearing in mind that we have the Equality and Human Rights Commission, the Office for Students, the police and university administration?

Why do they need you as well, bearing in mind that you are looming large in their sense of what they feel they can or cannot do? The problem is that if there is pressure on them—they have to do their essays, their research and their work—it becomes one more thing to do and they might think, "Oh, for heaven's sake, let's jack it in. The time for the meeting has passed and we can't be tangling with the Charity Commission".

Michelle Russell: I have taken the liberty of reading some of the evidence that you have heard. What came across, at least in some of the evidence, is that they did not realise that they were charities or do not want to be. I stress that 2010 changed nothing about their status, so even if they were not registered with us, they would still have to do all those things. It was exposed back then that they were not doing the things they should have been doing, and no one was checking to make sure that they were.

Some of the evidence came across as suggesting that these were compulsory or legal requirements. In our guidance, we talk about examples to try to help the trustee bodies on how they can manage this. It is not compulsory, for example, for all student unions to vet all speeches before they are given. But if, having done the due

diligence, you find that you are working in a particularly high-risk situation, that may be your tool to know what is coming before you are in the debating chamber and something happens and you have to intervene to distance the charity, the student union, by saying "These are not our views. We have debated them, but we want to make clear that we do not endorse them". That does not prevent the debate from happening, and it does not stop those views being aired. We cannot see someone providing that supportive guidance and advice at the moment.

We have invested quite a bit of time in going to students' unions to do outreach events. Although you might have heard some evidence of where we have had to intervene at perhaps the more forceful end to call them to account, we have been welcomed in several students' unions, because it helps them to deal with difficult situations. Our experience is that there are both: there are those who welcome it and use the charity law framework to manage difficult situations, but I appreciate that there are some examples of where we have had to call students' unions to account, on behalf of the public, to explain to us what has happened and how the risk has been managed. In some of the cases in which we have intervened or carried out an inspection visit, we have found that they have managed it very well. It is not always criticism, shall we say, that ends with our engagement.

Q60 Baroness Hamwee: You touched on two questions that I had for students in previous sessions. One student union officer, who I do not think had been subject to any intervention, talked several times about having to avoid doing anything that might be ultra vires. I asked someone from the NUS whether there was a distinction between the union taking a position on an issue, endorsing it, and the union promoting debate about an issue.

You have made a very clear distinction between those, which I am glad to hear, but he did not see that distinction. This question is therefore about your role and the advice that is available. Do you see it as part of your role to be very proactive in encouraging students' unions to fulfil their role as broadly as they can within the law?

Michelle Russell: I hope we do. I know that there are elements in our guidance that touch on the more difficult areas. I hope we have made it clear enough in our guidance that we very much see part of the role of students' unions as promoting freedom of speech and leading in that area.

Baroness Hamwee: What more do you think you might do, because on the whole it has not got through to the people who have pitched up here?

Michelle Russell: That is specifically why we have invested in previous years in proactively going out to offer students' unions training. Some of our officers have worked through those issues with them. We cannot force all students' unions to take part in that training, but we have engaged with around 20 to 30 different students' unions in that enabling way.

As my colleague, Aarti, said, one of our challenges is that, unlike other charities, there is quite a high turnover among the trustees. We might have worked with trustees two years ago, but each year it is like starting again. That puts a little more onus on us as the regulator. We have to make some difficult choices about how much to do or not.

We do have an open offer to students' unions for us to come and do training sessions with them if they want us to. We have also been to university boards and talked to the security groups about issues there. We are trying to be proactive in that practical sense. We always want feedback on our published guidance. In fact, our toolkit was framed and developed because we saw a space. Having spoken to and engaged with individual charities, not just students' unions, we saw a gap. We need to get that feedback back, and if students' unions see further gaps, we are up for listening to them on that.

We also try to gather elements of good practice. As I said earlier, it is not all bad; there are some really responsible student bodies, which are managing some of these difficult things quite well. Perhaps we should be trying to promote that good practice on a more themed basis a little more than we are. Certainly we are feeding that back to individual student unions in the outreach sessions.

Baroness Hamwee: Possibly linking the good practice with the guidance would be very helpful so that we see more than just recommendations that you should not talk about overseas political prisoners, which, I have to say, most of us here spent a lot of our university time doing.

Michelle Russell: On reflection, having seen that staff operational guidance, we realise that it needs refreshing. We have probably passed on a little from that time. We can probably be a bit more helpful in explaining the width and breadth of education and the promotion of it. We will certainly take that away to look at.

Chair: Obviously part of the student experience is spending a lot of time reading guidance and liaising with proactive administrations from the Charity Commission.

Baroness Lawrence of Clarendon: Students see themselves as quite independent, so if they choose not to be part of the students' union and want to have a discussion about, say, foreign prisoners, would they fall foul of the Charity Commission's guidelines?

Aarti Thakor: Do you mean activities outside of the context of a students' union activity?

Baroness Lawrence of Clarendon: Yes.

Aarti Thakor: It is stated expressly in our guidance at OG 48 that if someone wishes to take up activities outside the students' union, that is not an issue for charity law per se.

Baroness O'Cathain: You have to do a huge amount of work. Is it getting easier? Can people take any shortcuts? Students are probably telling themselves that it is just not worth the candle.

Chair: They just have to read OG 48 and then it gets sorted.

Michelle Russell: I hope that we are not having a chilling effect on charities wanting to take risks and to push boundaries. That is not why we have published the guidance. It is to help charities to work through some difficult situations.

Baroness O'Cathain: I am sure that is right, but I am thinking about the other cohort, which is the students themselves, getting involved and then realising that there is all this bureaucracy that has to be dealt with.

Michelle Russell: You mean students being involved with students' unions and not wanting to step forward as charity trustees.

Baroness O'Cathain: Yes.

Michelle Russell: Part of our duty and responsibility as a regulator is to encourage volunteering. Parliament has put that into our regulatory framework, so it is one of the considerations that we have to balance all the time. We do not want that to be the case. That is why we produce our guidance: to try to help trustees.

Although we are perhaps not always as successful as we would like to be, we try to make the guidance easy to navigate. We have toolkits and checklists, so that volunteers do not have read through all the guidance. That is partly why we have a short answer and a long answer style; if someone wants to read the detail, they can, but if they just want the top level, they can have that. We are trying to improve that.

That is why, particularly with this sector, we have invested extra resource in face-to-face outreach. It is of limited facility, but we see it as very important, and we are pleased to see that some students' unions have taken it up.

Q61 Lord Trimble: I will roll my supplementary question and the next question together. Commenting on OG 48, you said that they have to draw a distinction between things that are a matter for their discretion and other things that they have to do. Coming down to protecting charities from abuse for extremist purposes, I see that there is a brief quote at the end of the first line: "and must have acted to avoid damage to the charity's reputation", et cetera. There appears be no scope for them to use their discretion or judgment. The guidance says that they "must" do this. That might be something that you want to look at again.

I was glad to hear Jeremy Lefroy say at the outset of his question that this applies to the officers of the students' union, not to its members, and your comments at that point touched on the same thing, because the officers will not be trustees. So this is what the trustees must do. But for the students who join the union and take part in activities, it is a different matter entirely.

Finally—these are more my observations than anything else, and I may be wrong about this because it is 28 years since I last dealt with any law on this matter, so I am very rusty—I see that, "Under charity law all charities must work for the public benefit". Yes, but. You mentioned the statute of 1601. It is the preamble to that legislation that contains the definition of a "charity". With regard to the point about education, it is not education but the "advancement of education", just as it is the advancement of religion. The key word here is "advancement". If you are advancing education, as far as the statute is concerned it is entirely up to you how you go about doing that; it is at your discretion.

I think that the language here is cast far too wide and goes further than what is in the 1601 Act and in subsequent case law. I know that there are ambiguities in the 2010 Act, but it contains a clause stating that the Act is not intended to change the definition of "charity". You are therefore making an exaggerated reference to "public benefit", because if it is for the advancement of charity, public benefit is assumed and does not have to be proved in each case. You cannot prove public benefit in religion. It is in the same category as education in being "for the advancement of".

Aarti Thakor: There has been a change in the law, which is codified in the 2011 Act and means that the public benefit presumption has been removed. It is now a statutory obligation under Section 2 of the Charities Act 2011.

Lord Trimble: I suspected that I would be told something along those lines, but it just goes to show what a bad Act that was. It is upsetting the normal running of charities.

Michelle Russell: That said, on the question of the advancement of education, it is relatively easy for most charities to show that they are advancing education for the benefit of the public. So even though Parliament changed the law by removing the presumptions for the first three heads of charity—there used to be four heads of charity, roughly—for most charities it should not have changed anything in reality and practicality.

Aarti may want to talk about this, but the phrase “advancement of education” is really broad. We were quite brief in what we could say our written evidence, but the case law that has developed and that has been preserved, as you say, is quite enabling and broad for all sorts of educational charities in terms of what they can do. It becomes a little more tricky in relation to think tanks when debating whether to start from neutral positions and how to manage those sorts of things.

Aarti Thakor: I will not give a precis of the whole educational issue at this moment, but I will say that it is recognised absolutely in case law that students’ unions can operate in a way that promotes debate and creates an awareness of political issues. That is not disputed by us or by those operating in this subsector as we understand it. As far as we have seen, there has been no issue with our understanding in relation to general educational charity law requirements. The boundary in educational law in and of itself has not been seen to be an issue, nor has it been raised with us.

Chair: You say that, but it does not seem to match the guidance, which says very clearly, “should not comment publicly on issues which do not affect the welfare of students as students”. That implies that it is all right to talk about housing, tuition fees and mental health support for students, but nothing else.

Aarti Thakor: That is also to do with the overlapping duties. There is the issue relating to the construction of a charitable purpose under education law, and there are the overlapping duties in relation to the duty to protect your assets, which includes your reputation. If, for example, there was a controversial issue, they would need to consider whether it was in the interests not the trustee board but the charity to speak publicly about it. If there are clearly two sides to that particular argument, one side might make certain individuals such as the membership feel unwelcome or that

it is too polarised. Then you are going beyond the pure educational aspect of what a charity ought to do in that context.

There is also the duty to act with reasonable care and skill, which means acting in a neutral and impartial way in the context of education law. That restriction is clearly stated in the law itself and in case law. It is quite difficult for the average student to understand that there are certain restrictions that are specific to the educational charity context as opposed to the broader understanding of it being okay to promote or discuss political issues. It is a matter of understanding that there is a distinction between discussing political issues but not promoting a particular political objective.

Chair: Can I put another question to you? Your guidance in 2013 states: "All ... student unions can be challenged on whether they have given due consideration to ... associated risks when they, or one of their affiliated societies, invite controversial ... speakers to address students". Any student, even if they have the toolkit, the checklist and the guidance, would feel that that is saying, "Be careful, you can be challenged if there is a risk when you invite a controversial speaker". This is an inquiry into free speech in universities and we are trying to get to the bottom of what might be the inhibitions on free speech. From the point of view of students, toolkits, checklists and guidance from you, obviously emanating from legislation and case law, together with the other guidance I have quoted, surely is inhibiting them. As Detta said, it is an obstacle.

Michelle Russell: We do not want that to be the case. The guidance also says that it is absolutely fine to invite controversial speakers to charities. We know that there are charities—students' unions—that are holding thousands and thousands of events that do invite such speakers. Most of them go untouched and unpassed by us. We get some complaints. Where we have mainly intervened—I say "intervene" in a light sense—we have gone to the charities to say that we have had a complaint because it has breached something or it has interfered with someone's human rights or freedoms, and asked for a response.

Chair: You are raising with them the issue of controversial speakers. Do you not then come into the category of what I now know to be called "snowflakes"? You are urging them to avoid the risk of controversy. "Controversial" is in there. Is not "controversial" good for students? Why is it in here, alongside "extremism", which is obviously bad—albeit there is sometimes a struggle to know what the definition of "extremism" is?

Michelle Russell: I hope that when you read our guidance, you read it as a whole. We inserted text to say that it is absolutely fine

for charities to invite controversial speakers to get a debate going. Charity is about advancing education. Equally, we have to try to give some guidance to those charities that are dealing with the more difficult end of things. That is what we have tried to do. If we have not got that balance quite right in our guidance, we are open to hearing that criticism and to working with students' unions and the NUS to do so. To date, we have had a very positive relationship with the NUS on having that open dialogue.

Chair: Their engaging with you in positive dialogue and everybody acting in good faith is one thing, but that does not tell us whether the system is right. It just says that people are trying to work within it as best they can.

Alex Burghart: I certainly endorse what Harriet just said: the use of the word "controversial" here seems very peculiar. I seek clarification on whether you can cite any cases where students' unions have fallen foul of the law in this respect? That might give a tangible edge to it.

Michelle Russell: I had a look at our cases and, over the past two financial years, there have been about seven cases where we have had to engage with some charities, either on the basis of complaints or because there has been adverse public comment. Compared with the 120 registered students' unions that there are, it is a very small number. There is a bit of a themed issue at the moment that is affecting a number of students' unions, and we are looking into that. The number of cases in which we had specific engagement is relatively low.

Alex Burghart: Of those seven cases, can you tell us about one of them?

Michelle Russell: One of them followed a complaint we had about four different events that a student union held. One of the issues, for example, was that it was holding events that were segregated for men and women, and not on the basis of faith. We said that there were equality issues around whether or not that was permissible under the law. Some of the complaints were about what was said cutting across the human rights of other groups, particularly faith groups, and it being potentially anti-Semitic. It is those sorts of issues that cut across, rather than a controversial or extremist speaker.

Alex Burghart: In those cases, you were asked to comment because the student union might have been breaking the law because of equality issues; it was not necessarily that the student union had claimed anything that was outside its charitable remit.

Michelle Russell: No.

Chair: The things that you have just described, should they not go to the Equality and Human Rights Commission? I appreciate that the complaints came to you and therefore you did your job, but should they not go to the Equality and Human Rights Commission, which has all the expertise and is set up to deal with these issues? Is there duplication there?

Michelle Russell: We would refer matters ourselves. If it is an equalities issue, we will advise the complainant to report it there.

Chair: The ones you mentioned were exactly that.

Michelle Russell: It is not as simple as that. What tends to happen is that a package of things comes up, of which that is one element. If one element relates to equality issues, we will raise it, and we have had engagement with the Equality and Human Rights Commission. There are other issues: for example, a leaflet was handed out that said, in effect, that every Muslim should be a terrorist. In that situation—

Alex Burghart: Was that a students' union leaflet or just a leaflet that someone was handing out at a student union meeting?

Michelle Russell: My recollection was that it was one of the societies under the student union. In that particular case, the student union itself had already dealt with it and distanced itself because it was unhappy.

Chair: Why did they not call the police? Should it not be the police who deal with that rather than you?

Michelle Russell: I am sure they did that, and we would advise them to. This is about the public coming to us and reporting these concerns.

Chair: I appreciate that people come to you, whether it is the public or students. Heavens above, I have made loads of complaints to the Charity Commission myself over time. It is just something that people do, because you are there. But actually we have been discussing among ourselves the remit, and you are explaining how you exercise the remit.

Michelle Russell: Similar complaints are made. As I said, this is not peculiar to student-union charities. We have similar issues in faith societies and debating societies.

Chair: We are not dealing with that, so we will wish you all the best with that as well.

Michelle Russell: I suppose what I am raising is that there is consistency.

Alex Burghart: Apologies if you have already done so and I have not read it, but would you mind sharing the details of those seven cases with us?

Michelle Russell: To the extent that they are not ongoing. We have to be careful that, if there are other agencies involved, such as the police or others, we are not prejudicing anything.

Alex Burghart: Perhaps you might want to go back slightly further in time.

Michelle Russell: If we give you a flavour of some of the issues we are dealing with, would that be helpful?

Alex Burghart: I would appreciate that.

Q62 Ms Karen Buck: This flows very neatly into my line of questioning. We are currently dealing with controversy, how you respond to it and your guidance. In terms of what you say about charities having a duty to handle issues of terrorism, extremism, racial hatred or religious hatred, Harriet made the point about added value. What are your processes for those issues? To what extent do you guide people or refer them to other agencies, in particular the police? What is your capacity and skill set in the Charity Commission to define those issues and deal with them?

Michelle Russell: I will take the question in two parts. The first part is about how our processes work. We have a published risk framework, which is on our website. It explains to members of the public and to charities how we deal with every issue. Whether or not it comes from an MP or a member of the public, everything goes through a consistent, fair, objective assessment process to see whether or not there is an issue and whether or not we will take it forward. That is a really important part of both our independence and our integrity when it comes to taking issues forward or not.

Then it depends on how serious it was and who the source was. I should say that we are quite astute and alert to the fact that people may choose to make a complaint about a charity for a purpose that may be personal to themselves. We will decide how serious the complaint is. If it is a minor breach there will be advice and guidance. We try to stop complaints that are vindictive and have nothing in them. If it is a bit more serious, we need to take a look to assure ourselves. In the main it would be a compliance case or we might visit the charity. At the top end are powers which are reserved, but we have never used any of them in relation to a

student union. We have the power to open a statutory inquiry if things really are at risk.

Ms Karen Buck: That is very helpful. On the risk framework, who would consider the complaint or the reference against the risk assessment? Would it always be a lawyer? What skills would they have to make that determination?

Michelle Russell: They are our case officers, who undergo training to gain expertise in charity law. They are managed by their managers and receive support from lawyers and accountants. In such cases we would expect there to be very close liaison with the legal team, which is why Aarti Thakor is here today. If there is an equalities breach or what we think is a potential crime, we will immediately forward that to colleagues in the police. Sometimes we will wait to see whether the police are going to anything first. Sometimes, for whatever reason, the police may not take things forward. I suppose that this is where our added value comes in. It is not always about how the event is treated and what the breach was; it is about the support that we can provide to the charity and the charity trustees going forward if it is not a police or an Equalities and Human Rights Commission matter. That is where we as the regulator want to support the trustees.

The other thing I should say is that there is no definition of “extremism” for charity law purposes.

Ms Karen Buck: I was just going to come on to that.

Michelle Russell: What we are dealing with is trustee duties that are in common law. The only definition of extremism as a reference point is the Government’s definition. We simply use what the Government say. We do not necessarily say that it is the benchmark from which any breach of charity law may or may not flow. Our responsibility is about basic trustee duties and acting in the best interests of the charity. Are you managing undue risks, are you protecting charitable resources and are you alert to the reputation of the charity?

Ms Karen Buck: As far as the issues that are identified—terrorism, extremism, religious or racial hatred—you are saying that in respect of university students’ unions, there have not been any instances where you have had to intervene.

Michelle Russell: From a charity law perspective, have we had to say that something was in breach or should not have been held? No. We have been critical—this is the other area—in one of the examples. We have been critical where a charity has published its

procedures about how it has decided it is going to manage or invite speakers. Quite rightly, when we have had engagement—

Chair: Are you talking about a students' union?

Michelle Russell: If a student union has not followed the procedures as the public would expect, it is the right thing for a regulator to be saying. You are telling the public that this is how you are managing the situation but you are not following the procedures at all.

Ms Karen Buck: Going back to the point about extremism, have you seen any kind of trend in terms of complaints or referrals to you from the university student union area alleging extremism?

Michelle Russell: Do you mean from within the bodies themselves?

Ms Karen Buck: In the cases that you have dealt with, have you seen an upward trend, is it fairly consistent or has it changed in any way over time?

Michelle Russell: Apart from one exception which I will flag, I would not say that there has been any increase. As I have said, the number of cases where we have had complaints or have had to engage with the charity in any sense is quite low. The only exception to that is a particular issue recently in relation to the BDS Motion which has been affecting a number of student unions. We have been trying to engage on that.

Baroness Prosser: Can you explain what that is?

Aarti Thakor: It is the Boycott, Divestment, Sanctions movement. It is effectively about boycotting Israeli products and there have been Motions in that area.

Chair: I think that we are going to come on to that in a few moments.

Michelle Russell: That is the only thing I wanted to flag. We have tried to proactively engage with a number of student unions because it seems to be an issue that is affecting some of them. Otherwise, the number of cases would have remained relatively static.

Baroness Lawrence of Clarendon: When you talk about a member of the public coming to you to put in a complaint, once you have made your investigation, does that ever become public so that people can

understand what you are doing and see the results? Have you ever published your findings when something has not gone right?

Michelle Russell: That is a good question. I explained earlier that the pinnacle of our powers is something called a statutory inquiry, where we use the powers we have to protect a charity. In all of those cases, we will publish an inquiry report. Not many regulators actually publish that information.

Baroness Lawrence of Clarendon: Do you do that on your website?

Michelle Russell: Yes, and an important part of it are the wider lessons for other charities to share. But because we have never had a statutory investigation into a student union where we have needed to use our powers, there are no inquiry reports on the website. At the minute, we are trying to engage with the BDS issue. From our engagement we will look at whether we can highlight some areas of good practice and look at the issues.

Q63 Joanna Cherry: We have had some evidence from members of the student union at SOAS stating that the Charity Commission has questioned them five times in a single year. They also sent us a copy of a letter which the Charity Commission sent to the union. I wonder whether we can have a look at that letter and explore some of the issues that arise from it. It is available in Annexe 2. It is a letter dated 20 November, addressed to Mr Peter Baran. You might want to take a moment to read it. I had the benefit of looking at it prior to this session.

What prompts a letter like this? The author of the letter is looking for an update on a situation which has arisen in relation to a number of affiliated societies. What sort of report would prompt this? We have heard from SOAS that on occasion it has been newspaper allegations that have prompted this sort of inquiry.

Chair: Joanna, just for the record, could you refer to the particular point that is made in the letter?

Joanna Cherry: I will come to that in a moment.

Michelle Russell: In that individual case, this was a follow-up visit. In the previous year, or at least six months before, we had engaged with the charity and as a result of that we gave some advice and guidance.

Joanna Cherry: Do you know what prompted the initial engagement?

Michelle Russell: I think it was a variety of issues around noise in the newspapers, along with some complaints from members of the

public. But this was a follow-up visit about whether or not the trustees would comply with the advice and guidance that had been given previously.

Q64 Joanna Cherry: Can we look at paragraph 1 of the letter, which is at the bottom of the first page? It says, "Previously, the Commission was concerned about the Charity's processes for events that had been organised by the Charity's affiliated societies, in particular the Friends of Palestine Society and the Islamic Society. So that the Commission can assess the current position with regard to both societies, please now provide a list of all speakers and events that have been organised by both societies since the start of the 2017/18 academic year to 1 November 2017. With regard to the same two societies, please also submit for review, the associated room booking forms, risk assessments forms and any other documents of relevance (for example, due diligence checks, mitigation processes, complaints etc.) for each of the speaker/events organised in the time period provided".

At first blush, that seems like quite an onerous requirement. Is it common for institutions to be monitored as closely as this? Is there a particular problem with SOAS, or is it common for you to make requests of students' unions to produce this kind of information over the period of a whole academic year for a number of different societies?

Michelle Russell: I will refer you back to the context numbers that I gave previously. Of the 120 students' unions that are registered, we have had seven cases in the previous two financial years. In answer to your question, no, it is not common. There were particular complaints about SOAS, including that it did not follow the procedures that it has for how it deals with speakers. Parliament was previously very critical that the commission was not following up on assurances that charities had given to us. This is not endemic or widespread, but on particular occasions where we have engaged because there have been complaints, and where there has been something to follow up, we would go back and visit them. We would probably also look at a selection from the list they had given us to see whether or not they had followed the procedures that they told us they were now following.

Joanna Cherry: Of the seven cases you mentioned, can you tell us how many concern SOAS?

Michelle Russell: I do not have that information to hand.

Joanna Cherry: If you could get that information for us, it would be very helpful.

Michelle Russell: I think there is a breadth of different organisations across the seven.

Joanna Cherry: Look at the concerns of the author of the letter in paragraphs 2, 3 and 7. In addition to the issue of gender segregation that arises elsewhere, the word that is used repeatedly is “controversial”, not “extremist”. The Committee is concerned to understand what you mean by controversial. What is it about hosting a controversial speaker that is so reprehensible?

Michelle Russell: Just to give you the assurance again, we are not telling charities that they cannot host controversial speakers. Where the commission is quite rightly very careful, as you would expect, is that it is not for us to judge whether or not a particular speaker is extremist. Our conversation with charities is that at the very least the speaker might be controversial or raise issues about whether or not people think they are a suitable speaker for a charity to invite on to their premises or to speak. We are very careful, as you would expect us to be as a public authority, to make sure that we are raising the issues with the charity trustees and seeking their answer on it.

Joanna Cherry: I do not really understand, though. What does “controversial” mean? If I, as an SNP MP, went to St Andrews University and made a speech about Scottish independence, it might be seen as quite controversial there, whereas at Glasgow University I might be welcomed with open arms. Nobody is going to object to my discussing a current issue.

I am concerned to understand what is enough to tip into the concerns that lead to this sort of letter being written. Anyone would accept that, if they were the recipient of this letter, they would be under the impression that a very serious investigation was going on and they had to take it seriously and look to their laurels. I am just trying to understand what makes something so controversial that it becomes an issue for the Charity Commission, when something else, such as what I have just described, would not be.

Michelle Russell: Just to come up a little from this particular case, the type of situation in which we would engage and have discussions would be where jihad was being advocated or Zionist or anti-Semitic comments were being made. It is in that acute area where the debate potentially either veers into something that interferes with the human rights of other groups, and where we might have complaints—

Joanna Cherry: Advocating jihad or anti-Semitism are already covered by other laws: laws against incitement to hatred and laws against inciting violence.

Aarti Thakor: One difficulty is that, in a lot of these contexts, unless there is a transcript, it is very much dependent on the nature of the complaints received and information after the event. So often it is very difficult for us, as well as for other regulators, to make any determination about whether there have in fact been anti-Semitic, extremist or even controversial comments.

We become involved where there is clearly a risk of that or the risk of a perception of that, which goes back to the charity trustees' obligation to preserve the good name of the charity. That is a core trustee duty. It is really about making sure that the trustees understand that they at least have to apply their minds to it and have justified reasons as to why they have decided to host a particular speaker, for example. It is not about suggesting that they cannot host them at all, and in the context of what you are saying, controversial speakers could be allowed. It is simply about making sure that they have applied their minds to what has happened in that context.

Joanna Cherry: But if you have an allegation that someone made a racist or anti-Semitic statement, or incited violence, why not just say that, rather than "controversial"?

Aarti Thakor: Sometimes we might simply not have the evidence to say that with great specificity. It depends on the nature of the complaint that has been raised with us, and, again, perhaps on the concerns that that individual might have raised about what we can disclose at the time. It might depend on what we are aware of when the letter was written, relative to what we might know by the end of the case.

Lord Trimble: Would it help us to interpret this letter if the first letter were available to us, setting out your views and suggestions on the matter? As you say, this is a follow-up letter. Would it not be much better to give us the first letter?

Michelle Russell: It may well be. I understand that if you read it in isolation it looks quite heavy-handed, but it is the result of previous engagement that we had with the institution.

Lord Trimble: Presumably the first letter describes some of the events at SOAS that gave you cause for concern?

Michelle Russell: I would expect that to be in our opening letter on our original engagements, as well as in where we left things with the charity. Presumably the students' union would be happy to provide those to you.

Chair: I have a problem. On the one hand, if it is controversial, it is controversial but it is really none of your business, because controversy is not illegal. For jihad and incitement to terrorism, I would hope that it would be the police who would be involved. I would not like to think that it was left to you to deal with that. For racial hatred and discrimination, it would be the Equality and Human Rights Commission.

I am still struggling to work this out. I know that by law you have to do it, and nobody is saying that you are not doing your job, or not doing your job within the law. Bearing in mind that we are trying to have freedom of speech in universities and set young people free to explore every aspect of everything, I cannot see the justification for them to have to spend so much time reading the guidance, finding their way through the toolkits and engaging with you.

Michelle Russell: I have two comments. It sounds neat and straightforward that an issue will fall into the category of criminal or not, or discriminatory or not. In reality—and I am sure that if you spoke to the police, who we work very closely with, to the Department for Education and to other regulators, they would tell you this—you will find that some of the things that we are dealing with are not as simple as something being racist or not.

Chair: That is of course the case. The question is why you, rather than the Equality and Human Rights Commission or the police, are judging what is or is not racist, or what is or is not a criminal offence. The question is not whether something is difficult to discern; lots of things are difficult to discern. The question is: why are you discerning it in relation to students' unions that are trying to have meetings?

Michelle Russell: I know that you are looking at students' unions, but the same principles apply to other charities, faith organisations, debating societies and the rest of it. So there is that part of it.

The other part of it is that sometimes we get complaints where people say, "If this is what it is doing, this should not be a charity". But while it is a charity, whether it is registered with us or not, these are the principles that apply to the nearly 1 million trustee roles that there are. They are about acting in the best interests of the charity, including where it is controversial. It is about managing the reputation of the charity. That is not to say that you cannot do

it—but you need to be prepared for the public or your donors call you to account if they are not happy with what you are doing.

Aarti Thakor: Perhaps I may add a point, particularly in the educational context. There is an obligation in effect to be neutral and even-handed in the way that education is advanced. That is quite an important point, at least in the context of the cases that we have seen where there is a risk of controversy or extremism. It also suggests a broader point that perhaps only one-sided arguments are being put forward. Our role is to ensure that the educational aspect of charity law is also complied with, leaving aside whether in fact another offence may have been committed or whether there has been another breach of civil law.

Chair: Do we have any examples of that among the seven cases?

Aarti Thakor: Do you mean specifically in relation to the educational aspect?

Chair: In relation to students' unions.

Aarti Thakor: I think that we might be able to give you some examples after the event in terms of being specific about where we have had concerns in that regard. There might be one out of the seven cases where from recollection this may have been an issue.

Joanna Cherry: I want to go back to the guidance which you issued in 2013 and the chapter entitled, "Protecting charities from abuse for extremist purposes". Chair read from it earlier. It states that, "All ... student unions can be challenged on whether they have given due consideration to ... associated risks when they, or one of their affiliated societies, invite controversial or extremist speakers to address students". I wonder what the word "controversial" adds, when what the guidance is directed towards is protecting from abuse for extremist purposes. Why add the word "controversial"? Where has that come from? Is there not a risk that it could become a catch-all to stifle debate?

Aarti Thakor: It is very much to reflect the fact that, as Michelle said, there is a grey area around when you can call something extremist. It can hit the boundary where it is at the absolute upper end of what can be considered to be controversial and in fact it does damage the charity's reputation, which goes back to its core duties. There is no fine line or clear demarcation point where we can say that it definitely falls into one category and not the other. The practical reality is that sometimes it sits within the two boundaries. That is the way for us as the regulator to say that in fairness, whether or not it is controversial or extremist, what the charity

trustee needs to do and what they need to consider are effectively the same. Whether the end result is one or the other, you still need to think about balancing the risks related to whether the speaker may go off on a tangent or will stick within the remit that you have given them.

Alex Burghart: But why would it necessarily damage a union's reputation if someone turns up, gives a speech and says something that is controversial or indeed extremist? The individual who is giving the speech has broken the law or has stepped outside convention. The student union is just the body that asked to hear what the speaker had to say. I do not know why it would be considered that the union's reputation might be at risk under those circumstances.

Michelle Russell: I was going to say that the evidence from some of the public complaints that we get after the case would suggest to some people that it is an issue for them. Also, there is a difference between someone coming to speak where you do not expect anything to happen, or you think that it will be about X but something is said that is inappropriate—or the union wants to distance itself from that, which is absolutely fine—and when you have a speaker who is perhaps touring universities and you know from the university where they spoke before that they made statements in their speech which would make you feel uncomfortable and make you want to distance yourself from them. We are seeing different situations where there are some which are like that and some—

Alex Burghart: I can see that if somebody is going around inciting people to jihad or saying that, for whatever reason, people should be murdered in their beds, of course the universities or anybody should cease to give them a platform. But some people say things that are controversial and make some others feel uncomfortable, but they are within the bounds of the law. This is freedom of speech. Universities as seats of freedom of speech should be perfectly entitled to put such people on a platform.

Aarti Thakor: We accept that absolutely, but as you alluded to just now, your reputation may not be affected by the fact that you have had a controversial speaker. In very extreme instances, your reputation may well be enhanced by the fact that you have decided to bring on board a controversial speaker. But, as Michelle suggested, it very much depends on the complaints we have received in that context and how the statements have been taken by a member of the student union who attended at the time. The complaints we get tend not to suggest mere discomfort. They are more active: "I do not want to attend" or "I feel unsafe in this

particular context". That is why we would assess it against our risk framework and decide whether there was something for us to check after the event to make sure that the trustees had thought about it with the due consideration that it deserved.

Chair: Jeremy—and then we need to move on to Sir Michael, who has been waiting patiently, and give you guys a rest.

Jeremy Lefroy: Just to follow up on that, would you say that you see your role very much as almost an advisory one of offering a helping hand to prevent a situation where perhaps another statutory authority such as the Equalities and Human Rights Commission or the police would have to get involved? What we do not want to see is charities with the police all over them. Do you see your role as intervening before that and giving advice as to how they can operate without any fear of those other bodies coming in?

Michelle Russell: Absolutely. We have an advisory role so that, if at all possible, charities do not get into those kinds of situations involving the police or others. However, quite often the police are looking backwards at an event that has already happened. We are the only agency which can provide support to the charity going forward. I would say that sometimes we are quite helpful to charities in the sense that if there is noise or scrutiny from journalists, we are able to say that the charity has reported a serious incident to us and we think that it is handling it responsibly. There have been situations where that has helped the student union to manage the public noise that surrounds some of these situations.

Jeremy Lefroy: Thank you for that. Would it be possible for you to give us, obviously anonymously if necessary, some cases where your proactive stance has helped a student union to conduct, in effect, freedom of speech?

Q65 Chair: Thanks very much. Can we bring Sir Michael in at this point? The Government consultation in relation to the Office for Students stated that the Office for Students will be, "a staunch champion of freedom of speech, shining a light on any attempt to undermine it". Universities have a statutory duty to have codes of practice on free speech. We have seen many examples of that, some of which involve assessments, more advanced risk assessments, notice periods, appeals and application forms, even to the extent that they have had to be simplified by quite complex organograms.

Is not all this bureaucracy around these freedom of speech policies in effect inhibiting freedom of speech? Not so long ago we heard from Wes Streeting, who was the president of the NUS in 2000, saying that none of

this existed back then; they just had freedom of speech. Is not freedom of speech the absence of all these rules, guidance and procedures? Bearing in mind that you are the regulator for this, perhaps I may show you Southampton and Exeter and ask you what you think about it in terms of the bureaucracy. There are more than 100 codes of conduct for external speakers. The code for Newcastle states: "Speakers must be careful not to ... insult any person or group on the basis of their faith, race ... nationality".

We know what discrimination and harassment are because they have legal definitions, but does "not insulting" not come into the area of "controversial"? It seems from what we have heard and looked at that we have the requirement to promote freedom of speech, but it has been turned into a bureaucracy that is in fact inhibiting free speech. That is the proposition. I just wonder how you see it, since you are going to be in charge of it.

Sir Michael Barber: Thank you. That is a very good and important question. By the way, although the discussion with the Charity Commission was long, I found it very interesting and I welcome the inquiry.

Before I come to your specific question, Chair, may I make a couple of points of principle? We are a new regulator, just coming into being. We will inherit whatever HEFCE has been doing, but we can also think from first principles, and I want to set out a few of those before I come to your specific question about bureaucracy and codes of practice.

We are, as you said, in the middle of a consultation period that ends soon, so what I am saying is subject to that. I come at this, as do all my colleagues, from the perspective that free speech is fundamental. That is exactly where the Committee has been coming from for the last hour or so. It is important everywhere, but it is specifically important in universities, which are about testing ideas, research and development, and teaching and learning.

I read in the Times Higher Education Supplement that it is good to make people feel uncomfortable; that is what learning is about. Challenge and controversy are all good things. That is where we will start. I have also made a lot of visits to universities over the past year, and in each case talked with students as well as university administrators and staff. There are a lot of wonderful things going on. We have a fantastic university sector and a fantastic generation of students, probably the best-educated generation of students in British history. If we can get the context right, they are going to do amazing things.

We in the OfS will come at this issue from the same perspective as we come at all the issues. We are a new regulator. We are not a funding council, which is why a new regulator is coming in. We will take a student perspective, not just in the short term, but in the short, medium and long term. We will be a risk-based regulator and we are trying to create a landscape, not impose some model. It is very important that, as a regulator, we do not think that we know what a good university looks like: we create the circumstances in which universities themselves can be good. We will champion free speech, we will not be complacent about it, and we will encourage boldness.

In the evidence we gave you, we mentioned the thinking on this of Timothy Garton Ash from St Antony's College, Oxford. He has written a 500-page book on free speech, which I think is really good. He has also given a one-hour lecture on the very issue that we have been debating for the past hour: freedom of speech in universities. He talks about it being the lifeblood of the university and about never preventing speech that is lawful, but says that universities should set the rules for the conduct of debate. He talks about robust civility. If you were going to have an extremist or controversial speaker, who is nevertheless within the law, you have to ask think about some things. Will there be Q&A? How will Chair be prepared? Will there be a discussant, as there often is in universities? All these things need to be thought about.

To me that is where we come to the guidance. It is perfectly possible to have excessive guidance. While nobody enjoys being on the wrong end of an insult, insulting people is not against the law, and it probably happens all the time. Like Jeremy, I was president of a students' union in a college. I am sure we insulted each other fairly regularly. That should be controlled, as long as it is within the law. Some of the examples of codes of practice are too complicated and too bureaucratic. On the other hand, I do not want to be totally simplistic. There are issues about the rules of debate for the university in making its decisions. Some universities do a very good job of getting students' union people and university administrators together to make sensible decisions on these things. It will not be completely simple, but you can overcomplicate it, and you have given examples of that.

I noticed that in one of your previous sessions someone talked about having a single code of practice. I do not think that the Office for Students should be in that game at all, because I do not think you want any government-related agency making single codes of practice on freedom of speech. It feels altogether wrong. However, if a group of university leaders and students' unions got together

and came up with a simplified code of practice, that might be a very good idea.

I have looked at the Oxford one, which Timothy Garton Ash contributed to. I do not want to promote Oxford particularly, but, in that case, having one of the world's leading experts on freedom of speech involved in the drafting was helpful and sensible. There are some good examples, but, to go back to your question, yes, some of them are too complicated, and insulting people should not be something that you rule out.

Chair: But surely a good code of practice for free speech would say the following: we, X university, are strongly committed to free speech and want you to absolutely engage in it; do not breach the law, and here is what the law is; if you want to book a room, here is the number. Why can a tenants' association in my constituency, whose members, like students, are grown-ups—students are adults, after all—just book a room? They can book a tenants' hall in a neighbouring estate. The questions are these: is it free, have they booked it or has someone else booked it, have they paid for the booking? Why do students have to have all these processes? Why do the free speech policies not just do what they say on the tin: here is your freedom of speech and here is the number for the room booking?

Sir Michael Barber: It is not just students, by the way. It is those in the faculty too. We should not just take the student perspective; it might be professors or academics or others who are inviting people. But I take your main point. There are practical considerations here. That is why the 1986 Act talks about "reasonably practicable". If you have a speaker who is going to generate huge contention—I am trying to avoid the word "controversy"—there may be security issues, health and safety issues, or policing issues. The university administrators need to know about that.

We—I mean we generally, not the OfS—would consider them to be negligent if they had not thought about that. The codes of practice need to get into some of those practical issues. What they are trying to do through the codes of practice—and you can see why, given some of the major issues that we have had over the past 20 years—is to make sure that an event does not turn into violent conflict, a police incident and all the rest of it. You can see why university administrators would be worried about that.

Chair: But it seems to me that the default position that lies behind what you are saying is that there is a problem. The vice-chancellor of Edinburgh said that, of the 5,000-plus meetings they had had, they had

to ask a question about 0.1% of them. Is that not the same as the tenants' association and the council? The council could equally say that it does not want a riot in the tenants' hall, but it knows that most people are there to do bingo, dancing or flower arranging. Most of the student societies are doing stuff that is never going to go anywhere near violence. The default position is being armed to the teeth, with crash barriers and sirens blazing. That in itself is creating a repressive and inhibiting atmosphere. The assumption is that they are doing something wrong, so we need to arm ourselves against the risk that it might reflect badly on us.

Sir Michael Barber: I think your starting point is absolutely right. I am sure we will want to say that we want the maximum amount of freedom of speech within the law. I like the Garton Ash idea: you should never prevent speech that is lawful, but it is perfectly reasonable for a university to set rules concerning the conduct of debate. We are meant to have properly conducted debates in universities.

Chair: But this is students' unions. This is not the university,

Sir Michael Barber: I am not talking just about students' unions. I understand that your inquiry is just about students' unions, but it is about what happens on a campus. It might be in the students' union, it might be in the entire university, it might be in a lecture series. It might be any number of things. We are concerned with that freedom of speech.

Obviously, your debate with the Charity Commission was all about students' unions. Complexity is created because the 1986 Act applies to universities, not to students' unions, but under the 1986 Act a university is responsible for ensuring freedom of speech in the entire university, including the students' union premises. There is complexity. In the universities that do this best, the vice-chancellor, or his or her designate, works very well with the students' union to think through those issues. I am interested in freedom of speech in universities in total; not just in the students' union or anywhere else, but everywhere in the university.

Chair: But you are endorsing the idea that the university should set the terms of debate for a students' union. Should not the students' union set the terms of the debate?

Sir Michael Barber: In everything that I have said so far, I was not talking particularly about students' unions; I was talking about universities.

Chair: The two are separate.

Sir Michael Barber: Yes.

Chair: The justification for and the legitimacy of the university to impose its own remit is one thing, but what it would impose on the students' union is different by definition, because the question is the autonomy of the students union.

Sir Michael Barber: Yes. That is where there is an overlap in the law. You have talked to the Charity Commission. In the 1986 legislation, which applies to universities—so not to students' unions—it says that the university is responsible for the conduct of free speech on all the university premises, including the students' union building.

Chair: But I cannot see how being responsible for free speech ends up with the universities having a sense, if that is what you are saying, of being able to set the terms of debate in the students' union.

Sir Michael Barber: I am not saying that. But they do have a responsibility, if they thought that the students' union was restricting free speech, to promote, reasonably practicably, free speech. That is what the law says as I understand it. But you are all lawyers—there are great lawyers all around me—and I am not.

To go back to the beginning, everything I have said applies to the university as a whole. The students' union is one element of that. I realise that, with the Charity Commission, you were debating only the students' union itself. I am talking about universities as centres of free speech. Am I making sense?

Q66 Alex Burghart: The DfE consultation on behalf of the OfS stated that you will monitor institutions for compliance with freedom of speech. How do you think that will look on a day-to-day basis?

Sir Michael Barber: The reason, by the way, that it is a DfE consultation on our behalf is that we did not exist at all in law until 1 January. That is the only reason it is published under its name. We will respond as the OfS, because that part of our power is already established. We will, first of all, set out as a principle what I have just said: that we want maximum freedom of speech within the law. Secondly, for the first time ever in this country—it does not apply to Scotland, Northern Ireland or Wales—there will be a register of all the organisations that call themselves universities. Consultation will be completed some time in March, and between March and the end of August everything that calls itself a university will register with us. We have set out in that document the public interest principles that they will need to adhere to—one of which is

a commitment to freedom of speech. We can monitor that against the register.

We do not want to be interfering endlessly on this. We want universities to take care of this themselves. We would love to say, "We want maximum freedom of speech within the law, now you go away and do it". In order to register, they need to commit to signing up to that. Then, of course, they will have codes of practice, which Chair has raised. We may look at those codes of practice, but we will look at them with an interest in promoting freedom of speech, not restriction of speech.

Alex Burghart: So you will monitor the codes of practice. Will that be on an annual basis?

Sir Michael Barber: We have not decided that yet, but it will probably be on a sample, risk-based basis, as we are going to monitor everybody else. We do not want to be endlessly collecting bureaucracy and going through it and feeding back to people.

Alex Burghart: Then you will monitor complaints, I suppose.

Sir Michael Barber: We will have to look at complaints or controversies that come to us, but we will look at those with an eye to establishing whether people were trying to promote freedom of speech. When it is restricted, we may be more likely to ask questions.

Alex Burghart: Do you see yourself conducting on-site inspections?

Sir Michael Barber: No. As you know from the consultation document that you referred to, the Office for Students has a range of powers when the regulatory framework is not being followed. We would not expect to use those powers in relation to freedom of speech. It would be a very unlikely set of events. If we did, we would only ever exercise them to promote freedom of speech.

Alex Burghart: What will you do if you find a students' union that you see as clamping down on or restricting freedom of speech? What do you do next?

Sir Michael Barber: You are talking about students' unions as opposed to universities. In a university there should be a set of arrangements for dealing with that. You would hope that the university would resolve that itself. The Office for Students has no powers over students' unions—and nor do we want them.

Alex Burghart: So you would refer the students' union to its university, and you would expect the university to follow its own procedures and take over the issue.

Sir Michael Barber: If it was a major inhibition of freedom of speech that came up in a students' union, we would ask questions of the university. We would want to know how that had happened.

Alex Burghart: The DfE consultation said that the OfS will monitor institutions for compliance with freedom of speech and that non-compliance could result in formal sanctions against the provider, including monetary penalties, suspension from the register or deregistration? Yet you have also stated that you do not expect to have to intervene in issues of freedom of speech in universities. From what you have just said, what sort of behaviour might lead to deregistration of a university or institution?

Sir Michael Barber: As I said a few minutes ago, I think it would be very unlikely that we would use those powers. Those powers are general powers that are not specifically related to freedom of speech; they relate to the registration process in general. Leaving aside freedom of speech, I am hoping that we will rarely use those powers, but it is good to have them and there will perhaps be moments when we do need to use them. If we do need to use them, we will not shy away from it. On freedom of speech, it would have to be a flagrant breach of the idea of freedom of speech on campuses. It might be where there is no code of practice, or where there is a code of practice that is really clear and made public but which is not adhered to at all. It might be where some particular view that is within the law is hounded off a university. Even then, we would want to try to resolve it without using the powers, if we possibly could. The fact that we have the powers would give us the locus to have the discussion.

Q67 Baroness O'Cathain: HEFCE gets returns from universities on its implementation of the Prevent duty. We assume that this will be carried on by the OfS. Returns about individual institutions are not published, and the Information Commissioner has upheld a decision not to release them on security grounds. What expertise will your staff have in assessing the reports?

Sir Michael Barber: That is all correct. As I understand it, HEFCE has been monitoring Prevent since last August. The last time it reported, 95% of universities had adapted their codes of practice on free speech to take account of the Prevent guidance. On the whole, that seems to be working quite well. We will take over on 1 April. We want a smooth transition, so we are not going to make any

changes instantly to this, particularly as it seems broadly to be working well. On what is published, as a general point we want to come up with things in a spirit of transparency. Some of the information in the Prevent submissions that come in might be quite sensitive and relate to individuals, to people on the Channel programme or to student welfare referrals and so on. There may be some bits that you would not want to make public. There are also potential reputational issues. I think that we will talk again about what could or might be published from those, rather than necessarily adhering to not publishing them at all. We have not made a decision on that.

Baroness O'Cathain: What about security vetting?

Sir Michael Barber: Do you mean the security vetting of our staff? I do not know enough about the content of what is in a Prevent submission to know whether that is necessary or desirable. If somebody advises me that it is necessary, we would obviously look at it.

Baroness O'Cathain: It is the confidential nature of the information. If OfS staff can look at these returns, why cannot the general public?

Sir Michael Barber: As I said in the points I was making, it depends what information is in there. If, under Prevent, a university is worried about some students, and they are on the Channel programme or something, I imagine that that would be sensitive information that you would not want to make public. Those kinds of arguments have led HEFCE, quite understandably, to decide not to publish that information. I am saying that we will look again at that question in the spirit of transparency, and there may be some bits of information that you would never want to be published—but there may be others that could be published and that would be helpful. I do not want to make a commitment now, but that is my answer to your question.

Chair: Do you think that you are the right body to receive these reports if you do not have experts who are trained in security? One thing that they always say about leaks and which I take very seriously is that you as the leaker cannot tell whether you are jeopardising somebody's security, because you do not really understand all the interconnections. The point is that people who are not experts do not know what is or is not a security risk.

I just wonder why, therefore—this is a bit like why stuff is going to the Charity Commission—you are in the middle of the Prevent web. In what way are you experienced enough to receive them? You can get them sent

to you, but how can you evaluate them? Prevent is a very nuanced, complex, difficult thing. How come you are the right people to add another layer? Do you have the expertise? Do you not want somebody else who is properly engaged, either in the locality or in the security services, to deal with this?

Sir Michael Barber: Can we go back to a point of principle and then come to that question? One of the important parts of the Higher Education and Research Act of last year, and a principle in British history—everything I have been talking about applies to England, but this applies across Britain—is the institutional autonomy of universities. This is a fundamental reason why our universities across the United Kingdom have been very successful. If you thought that the Prevent stuff in universities should go somewhere else, where would it go? How would that relate to institutional autonomy?

As I understand it, HEFCE has a team that spent some time looking at this and no doubt has the expertise. I have not tested that fully, but it seems to have done a good job. It has the right relationship with universities and is respecting institutional autonomy, and the universities need to take responsibility for that. As I understand it, it has done well.

The risk, and this relates to the wider debate that we have been having this afternoon, is that people retreat to safe ground when it comes to who they invite and what they do because they do not want to fall foul of some of these other areas. That is what we have to guard against. But I think that we are as good as anybody in doing this. I do not think you would want universities sending their Prevent policy to a policing or other agency. I am not sure where else it would go. We are the agency that knows about universities—or we will be. We are the agency that is in dialogue with universities. We are the agency that has the interests of students at the heart of what we do. So in that sense we are the right agency to do it. If we need specific expertise, we can get it.

Chair: But are you neither one thing nor the other? You are not the security services, which can really understand what is in front of them and can protect people if something is brewing, but your engagement is enough to make students think that they have to look over their shoulder when they are inviting speakers, because otherwise their activities might form the basis of what remains a secret Prevent report.

I can see what you are saying: that you are in a good place because you are independent; you are not an arm of the state, which is good when it comes to regulating universities. But why is Prevent and the job of

preventing people from turning into terrorists the job of the independent regulator and not the job of an arm of the state? Should not the state be doing that, if the universities are presiding over something that is ending up encouraging terrorism?

Sir Michael Barber: University leaders, leaving to one side the IFS or any other agency at national level, take this very seriously. This is an issue for some of them. A very small minority of students are involved, but we know that it is an issue. They take it seriously, and they may well be in touch with the relevant arms of the state if they are worried about something. We are trying to make sure that, through the Prevent policy, they have thought about how this might work. But we are not an enforcement agency in this regard.

Chair: But thinking about how it might work entails controlling the way the debate happens, does it not? If it is not about stopping people being terrorists, it is about the controversy—who the speaker is and whether they are balancing their view with a different view. Is that not an inhibition of freedom of speech, which is the opposite of the free speech you are championing? Do you not feel slightly conflicted?

Sir Michael Barber: The real world has its complexities and tensions, so in that sense I agree with you. We will be a champion of freedom of speech within the law. The Prevent duty, which, by the way, according to the lawyers that came to your Committee in November or December, is trumped by the legal obligation in the 1986 Act. The law trumps guidance, to put it in their words, and I fully accept that. The Prevent duty is a duty on the universities and we want it to be as light-touch as possible, but we want it to help them do their job, which has its difficulties and complexities.

Baroness Hamwee: You have said that you are outcomes-focused, Sir Michael, and that has really come through this afternoon. Can I take you back to a comment that the Charity Commission made about ensuring that it does not tread on HEFCE's toes? Do you have ideas—perhaps you will after this afternoon—about how the agencies need to work together to ensure consistency, or at least be understood not to be in conflict by those who are affected by what you have to say?

Sir Michael Barber: The way you are all asking these questions, of me and my Charity Commission colleagues, shows that you respect the complexities of this, and I welcome that. It is not completely straightforward stuff, so we are all wrestling with it. The relationship between the Charity Commission and HEFCE has, on the whole, been very good, as Michelle said. The chief executive of the Charity Commission, Helen Stephenson, has already been in dialogue with

Nicola Dandridge, who is the chief executive of the Office for Students. That seems a rich dialogue.

Michelle and I talked in advance of this event about how, prior to that, work was already going on between some of the HEFCE staff who are going to transfer to the OfS on 1 April and their Charity Commission colleagues to develop a memorandum of understanding on how we might work together. We will give that attention as a board, the first full meeting of which is on Monday. In a forthcoming, but not too distant board meeting, we will look at where that memorandum of understanding comes out. It is important to get the collaboration right. The challenge is always to balance clarity about the principles, on which I think we all agree, with the practice of what a code of practice looks like, what actually happens in a university administration and all of that. So yes, we will do that.

Chair: We look forward to seeing the memorandum of understanding and to looking for the words “controversial”, “insult” and “snowflake” in it.

Sir Michael Barber: I just say in passing that the word “snowflake” will not appear.

Lord Woolf: The discussion has since moved on from my question.

Chair: Can I just ask one final question of the Charity Commission? We have been talking a lot about calling to account and inspections. There is one issue, in relation to the Charity Commission, being exercised on the Floor of the House today, and which a lot of MPs have asked about. It relates to the charity the Presidents Club, which organised a men-only dinner at the Dorchester, according to reports from the Financial Times, albeit that it was not actually men only. Men were there buying tickets and as guests, and there were women there, but they were there to be scantily clad, to be groped, to have the right colour knickers and to be generally propositioned. Much has been said about this being done by a charity. On the face of the report from the Financial Times, it sounds as though there was illegality going on—sexual assault and harassment. Is this something that anybody has complained about to you? If not, can I use this occasion to ask you to look into it? Are you already looking into it?

Michelle Russell: The first time we found out about this was in the Financial Times article. It is important to say that, like you and the public, we are absolutely dismayed. In no way should such alleged behaviour be done in the name of charity. There is a charity called the Presidents Club Charitable Trust. This morning, as soon as we saw the allegations that had been put into the public domain, as a

matter of urgency, and as you would expect, we as the regulator immediately made contact with the charity to find out the facts about its involvement, either as a recipient of funds or as an organiser of what went on. We have given it until the close of play today to come back to us urgently about what has gone on. Let me reassure you that if a charity has been involved in this, it would, as you would expect, be of serious concern to us and we would take very robust action to deal with it.

Chair: Could it be a charitable activity to organise a men-only dinner with scantily clad hostesses being groped? If not, and it is not the charitable thing to do, presumably it will be closed down as a charity? If its business is to run a men-only dinner once a year, with scantily clad, groped hostesses, it is quite hard to see how that could be regulated, is it not?

Michelle Russell: It is quite hard to see how a charity could be involved in such activity, not least because it raises equality issues. Charities have to comply with equality legislation in the same way that other organisations do. It seems quite unbelievable to us that this has happened. You will appreciate that, at the moment, all we have to go on are the allegations in the newspaper. We need to tread very carefully, as you would expect us to as the regulator, to make sure that we establish the facts as quickly as possible. Let me reassure you and repeat: that behaviour is not acceptable in the name of charity, both the organising of the event and the reputational issues that are raised if a charity is in recipient of funds as a result of such activity.

Chair: So basically it could be stripped of its charitable status?

Michelle Russell: We need to look at it. It is quite hard for us strip a charity of charitable status. Parliament has decided that it is for the commission to regulate it. If there is misconduct or mismanagement, Parliament has given us the powers to intervene and to deal with it.

Chair: Thank you very much for this evidence session. You have been extremely helpful, and we wish you well with your endeavours.