

Freedom of Speech in Universities

Monday, 31st October –

Tuesday, 1st November 2016

REPORT

In partnership with

Centre of Islamic Studies SOAS



Acknowledgements

St George's House would like to thank Alison Scott-Baumann, Professor of Society and Belief, School of Oriental and African Studies and steering group made up of Max Harris, Simon Perfect, Dr Aisha Phoenix, Hugh Tomlinson QC, Dr Judith Townend and Nizam Uddin. Full details of the steering group are given in the list of participants in Annexe 1.

The research on students' unions' relations with the Charity Commission (see Chapter 6) was funded by the SOAS Impact Acceleration Fund, and forms part of the AHRC-funded project 'Re/presenting Islam on Campus'.

This report was prepared by Simon Perfect.

Contents

1. Introduction	3
2. Legal frameworks in England and Wales	5
2.1 The law on freedom of speech and academic freedom	5
2.1.1 Freedom of speech	5
2.1.2 Academic freedom	6
2.2 The law on equality and discrimination	6
2.3 The Prevent strategy and counter-terrorism law	7
2.3.1 The Prevent strategy	7
2.3.2 The Counter-Terrorism and Security Act and the Prevent duty	8
2.3.3 The Channel programme	9
3. Attitudes to freedom of speech on campus	11
3.1 Student attitudes: HEPI survey data	11
3.2 Student attitudes: religious students on campus	12
3.3 Staff attitudes: academic freedom	14
4. No platforming and safe space policies	15
4.1 Criticisms of no platforming and safe space policies	15
4.2 Defences of no platforming and safe space policies	17
5. The Prevent strategy on campus	19
5.1 Radicalisation on campus	19
5.2 Criticisms of the Prevent duty	20
5.2.1 Social and political concerns	21
5.2.2 Legal concerns	23
5.2.3 Implementation concerns	26
5.2.4 Legal challenge to the Prevent duty guidance: Dr Salman Butt	27
5.3 Defences of the Prevent duty	28
6. The Charity Commission	31
6.1 Students' unions as charities: context	31
6.2 Students' unions as charities: impact	32

7. Ways to move forwards	35
7.1 Developing a framework for the promotion of freedom of speech	35
7.2 Undertaking new research	36
7.3 Improving the Prevent duty	36
7.4 Expanding the remit of regulatory or review bodies	38
7.5 Re-thinking counter-terrorism strategies: a grassroots approach	39
8. Areas of consensus and disagreement	41
8.1 Areas of consensus	41
8.2 Areas of disagreement	42
Annexe 1. List of participants	44
Endnotes	46

1. Introduction

Freedom of speech on university campuses has been a topic of major controversy in recent times. There has been considerable comment in mainstream newspapers, and the issue has been debated in Parliament in relation to the Higher Education and Research Bill¹ and by the Home Affairs Select Committee in their inquiry on countering extremism.² In much of this public discourse, there is a growing sense that freedom of speech and academic freedom in universities is under threat. There is also a sense that the rules of engagement regarding freedom of speech are becoming increasingly uncertain, and that clarity of definitions and protocols is much needed.

In this view, there are two main factors constraining freedom of speech: on the one hand, internal, student-driven activity such as no platforming and safe space policies; and on the other, externally imposed counter-extremism policies (the Prevent duty). These factors are said to act as a pincer movement which has a 'chilling effect' on freedom of speech. A key issue facing universities, then, is how to protect students from harmful views whilst upholding free expression.

This report records the proceedings of a private consultation which brought together 33 experts from the higher education sector to explore these issues. The participants came from diverse organisations and had a wide range of perspectives. The consultation was held on 31st October and 1st November 2016 at St George's House, Windsor.

Most of our discussion focused on the freedom of speech of students, staff and external speakers, but academic freedoms regarding teaching and research were also considered. Regionally, the focus was primarily on universities in England and Wales, which have different legal duties from universities in Scotland and Northern Ireland in several relevant respects.

"There may be a pincer movement that threatens freedom of speech in universities."

A helpful starting point to our discussion is to put the place of freedom of speech in British universities into an international context. It was argued by a participant that policies which constrain freedom of speech on campus seem "so toxic" because "we have a much deeper sense of the autonomy of our universities than other countries". In some countries, for example, universities need to secure permission from central government before running new courses.

More broadly, it was noted that the nature and use of the concept of freedom of speech is heavily contested. Some scholars in America now see the rhetoric of freedom of speech as a tool of the political right. In the UK freedom of speech is still a value claimed by all sides of the political spectrum, but people have very different views about what it means.

Universities are the primary places where the orthodoxies of wider society can be critically evaluated and new ideas developed – including ideas about what it means to have freedom of speech and to exercise it responsibly. Any constraint on the free expression of students, academics and guest speakers therefore has important implications for the rest of society.

Reading this report

This report summarises our discussions thematically, rather than chronologically. Key points are highlighted in bold, and phrases in italics are direct quotes from the consultation. Phrases in the text boxes are also direct quotes. A final summary of areas of consensus and disagreement is given in Section 8.

A full list of participants is given in Annexe 1.

Throughout this report, unless otherwise stated, the term ‘Prevent duty guidance’ refers to both the general guidance document issued for specified authorities in England and Wales,³ and the specific guidance issued for higher education institutions in England and Wales.⁴

2. Legal frameworks in England and Wales

This chapter sets out the legislation in England and Wales relevant to issues of freedom of speech on campus. It covers the law on freedom of speech, academic freedom, discrimination and counter-terrorism in relation to higher education providers. Finally, it summarises the general Prevent strategy and the Prevent duty as applied in universities.

2.1 The law on freedom of speech and academic freedom

2.1.1 Freedom of speech

In England and Wales, the duty concerning freedom of speech comes from section 43 of the Education (No. 2) Act 1986. This requires “Every individual and body of persons concerned in the government” of further and higher education institutions to “take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured” for staff, students and visiting speakers. The institutions must ensure, “so far as is reasonably practicable”, that use of the premises is not denied to anyone on any ground connected with their beliefs, views, policy or objectives.⁵ This is a positive and proactive legal duty on the governing body to uphold freedom of speech. The governing body must also maintain a code of practice setting out the procedures to be followed by members, students and employees for the upholding of freedom of speech, and must take “reasonably practicable” steps (including where appropriate “the initiation of disciplinary measures”) to ensure compliance with it.⁶

This duty does not apply in Scotland and Northern Ireland and there is no directly equivalent provision relating to Scottish and Northern Irish universities.

Further relevant requirements for freedom of speech, applicable in all four UK jurisdictions, come from the European Convention on Human Rights. Article 9 guarantees the right to freedom of thought, conscience and religion, including the right to manifest one’s religion or beliefs; Article 10 guarantees the right to freedom of expression, including the right to “impart information and ideas without interference by public authority”; and Article 11 guarantees the right to freedom of assembly and association. These three rights are qualified and their exercise can be subject to constraints, but only “as are prescribed by law and are necessary in a democratic society”. Such constraints may be, for example, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁷ Article 10 has been interpreted by the European courts as a positive obligation, meaning that the state must not only refrain from interfering with individuals’ right to freedom of expression (unless for the reasons given in Article 10(2))⁸, but in fact must take positive steps to ensure the protection of that right.

Section 6 of the Human Rights Act 1998 makes it unlawful for public authorities to act in a way which is incompatible with a Convention right. As public authorities, universities, as well as government departments, must therefore uphold Convention rights, including the right to freedom of expression.⁹

The duty to ensure freedom of speech is strengthened by section 31 of the Counter-Terrorism and Security Act 2015, which requires relevant higher and further education providers in England, Wales and Scotland to have “particular regard” for it when exercising the Prevent duty.¹⁰

Finally, the Charter of Fundamental Rights of the European Union requires member states to uphold the rights of citizens to freedom of thought, conscience and religion (Article 10), freedom of expression and information (Article 11), and freedom of assembly and association (Article 12). These articles have similar (though not identical) wording to the corresponding articles in the European Convention.¹¹

2.1.2 Academic freedom

As with freedom of speech, the law on academic freedom varies between UK jurisdictions. In general the different legal frameworks focus on the teaching activities of academic staff and the freedom of institutions to determine admissions criteria and course content.

In England, Wales and Scotland, the duty concerning academic freedom originates in section 202 of the Education Reform Act 1988. This requires higher education institutions to have “regard” to the need to “ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions” without endangering their jobs or privileges at their institutions.¹² It should be noted that this applies to academic staff but not to other staff, students, visitors or the institution itself.¹³

Academic freedom is also referred to in section 32 of the Higher Education Act 2004, applicable to England and Wales, in relation to the duties of the Director of Fair Access to Higher Education. The Director has a duty to protect academic freedom including, in particular, the freedom of institutions to determine course content and “the manner in which they are taught, supervised or assessed”, and the freedom of institutions to determine and apply admissions criteria.¹⁴

As with the freedom of speech duty, the duty to ensure academic freedom is strengthened by section 31 of the Counter-Terrorism and Security Act 2015, which requires relevant higher and further education providers in England, Wales and Scotland to have “particular regard” to it when exercising the Prevent duty.¹⁵

Finally, Article 13 of the Charter of Fundamental Rights of the European Union requires member states to respect academic freedom and ensure that “arts and scientific research shall be free of constraint”.¹⁶

Beyond legislation, various higher education institutions have published their own definitions of academic freedom, including the University and College Union (UCU) and Universities UK.¹⁷

2.2 The law on equality and discrimination

Higher education institutions are also subject to equality and discrimination law.

Article 14 of the European Convention on Human Rights requires member states to ensure that individuals’ enjoyment of the other Convention rights shall be secured without discrimination on any ground, including on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or any other status. Protocol 12 of the Convention (ratified in 2000) extends the prohibition on discrimination to cover any right set forth by law, including legal rights not protected under the Convention but protected by the national law of member states.¹⁸ Under section 6 of the Human Rights Act 1998, universities as public authorities must uphold Article 14.

The Equality Act 2010 (applicable in England, Wales and Scotland) prohibits direct and indirect discrimination against, and harassment and victimisation of, individuals on grounds of age, disability,

gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.¹⁹ Universities have duties under the Act as education providers, employers and service providers, while students' unions have duties under it as associations, and sometimes as employers and service providers. In some circumstances student societies will be considered service providers and / or associations and so will also have duties under the Act.²⁰

The Equality Act confers on higher education employees and students the right to be free from discrimination by their university in relation to employment, in applications for employment or admissions, and in the provision of education and services where relevant.²¹ It should be noted that Article 14 of the European Convention extends protections from discrimination (in relation to the enjoyment of other Convention rights, including freedom of expression) to "political or other opinions". This extends beyond the protections offered by the Equality Act, which does not cover opinions (distinguished from religions or beliefs) or affiliations to a political party (though case law has suggested that belief in an underlying political philosophy may be covered).²²

Under the Equality Act, direct discrimination is where an individual is treated less favourably than others are because of his or her protected characteristic(s).²³ Indirect discrimination occurs when a policy which applies in the same way for everyone has an effect which particularly disadvantages people with a protected characteristic. It can also occur when a person is deterred from doing something, such as applying for a job, because a general policy which would be applied would result in his or her disadvantage. The body imposing the policy may be able to justify the indirect discrimination if it can be shown to be "a proportionate means of achieving a legitimate aim".²⁴

Harassment occurs when an individual is subjected to unwanted conduct (including speech) which is "related to a relevant protected characteristic" and which has the purpose or effect of violating the individual's dignity, or creating "an intimidating, hostile, degrading, humiliating or offensive environment" for him or her. Harassment also occurs when an individual is subjected to unwanted conduct of a sexual nature; and when an individual is treated less favourably because they submitted to or rejected sexual harassment or harassment related to sex or gender reassignment.²⁵ It should be noted that individuals can make complaints of unlawful harassment regardless of whether or not they share the relevant protected characteristic themselves – for example, a claimant can complain about offensive remarks relating to a particular religion or belief even if he or she does not share that religion or belief. In some circumstances, universities can be held liable for acts of harassment committed by their employees or students.²⁶

Additionally, section 149 of the Equality Act introduces the Public Sector Equality Duty. This places on public authorities (including universities) the general equality duty, which requires them to "have due regard" to the need to eliminate discrimination, harassment and victimisation, and to the need to advance equality of opportunity and good relations between people with a protected characteristic and people who do not share it.²⁷

2.3 The Prevent strategy and counter-terrorism law

2.3.1 The Prevent strategy

Terrorism is defined by the Terrorism Act 2000 as "the use or threat of action" which involves serious violence against a person and damage to property, endangers a person's life, and creates a serious risk to the health or safety of the public; or is designed to interfere with or seriously disrupt an electronic system (acts which may not be violent in themselves but which may have devastating consequences for other people). Such activities (or the threat of such activities) count as terrorism if they are motivated by the advancement of a political, religious, racial or ideological cause, and are

designed to influence the government or an international governmental organisation, or to intimidate the public. (However, the use or threat of action as described above which involves the use of firearms or explosives will be considered terrorism whether or not it is designed to influence government or intimidate the public; so assassination of individuals will be considered terrorism).²⁸

The government's strategy for countering international terrorism is known as CONTEST. This was launched in 2003. It is divided into four strands: Prevent, Pursue, Protect and Prepare.²⁹

In its early form, set out in a 2006 strategy document, Prevent was "concerned with tackling the radicalisation of individuals". It sought to prevent people from being drawn to violent extremism by: addressing structural problems in the UK that may contribute to radicalisation, including inequalities and discrimination; deterring those who facilitate terrorism and those who encourage others to become terrorists; and challenging extremist ideologies justifying the use of violence, "primarily by helping Muslims who wish to dispute these ideas to do so".³⁰

The Prevent strategy was revised a number of times, most importantly in 2011 under the Coalition government. This was in response to various criticisms of the strategy, including that the co-opting of local authority and voluntary sector workers into the strategy was creating a system of government surveillance; and that Prevent funding was distributed to local authorities in proportion to the numbers of Muslims in the area, which cast Muslims as a suspect community.³¹

The 2011 Prevent strategy said that previous government policy had confused the promotion of integration with the prevention of terrorism, and had "failed to confront the extremist ideology at the heart of the threat we face".³² The 2011 strategy separated out responsibility for Prevent and for integration, with the Home Office managing the former and the Department of Communities and Local Government managing the latter.

The 2011 strategy aimed "to stop people becoming terrorists or supporting terrorism". It focused on the concept of extremism, including non-violent extremism: "preventing terrorism will mean challenging extremist (and non-violent) ideas that are also part of a terrorist ideology". It defined extremism as "the active opposition to fundamental British values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs", and also as "calls for the death of members of our armed forces, whether in this country or overseas".³³

2.3.2 The Counter-Terrorism and Security Act and the Prevent duty

The Counter-Terrorism and Security Act 2015 introduced a number of important measures. These include temporary exclusion orders, which prevent an individual from returning to the UK when they are suspected of involvement in terrorism-related activity abroad; the extension of the use of Terrorism Prevention and Investigation Measures (TPIMs), which involve placing individuals under electronic tagging, restricting their travel and requiring them to report regularly with the police; the requirement that communications service providers should retain information which could identify individuals using their services at any given time; and the stipulation that local authorities must establish panels for identifying and supporting individuals who are "vulnerable to being drawn into terrorism" (see below).³⁴ These measures are applicable in England and Wales, Scotland and Northern Ireland, except for the last which is not applicable in Northern Ireland.

The Act also introduced the Prevent duty, which is applicable to England and Wales and Scotland only. Section 26 places a duty on specified authorities to **"have due regard to the need to prevent people from being drawn into terrorism"**.³⁵ The specified authorities to which this duty applies include most further and higher education bodies, schools and NHS trusts, local authorities, prisons

and the police.³⁶ Section 31 softens this duty by requiring relevant further and higher education institutions to have **“particular regard” to “the duty to ensure freedom of speech”** when exercising the Prevent duty. Higher education institutions and other degree-granting institutions must also have **“particular regard” to “the importance of academic freedom”** when exercising the duty.³⁷

The Act gives the Secretary of State powers concerning the Prevent duty. Section 29 gives the Secretary of State the power to issue guidance to specified authorities about the exercise of the Prevent duty, and the specified authorities “must have regard to any such guidance” when carrying out the duty.³⁸ Section 30 gives the Secretary of State the power to “give directions” to a specified authority for the purpose of enforcing the exercise of the Prevent duty, if he or she considers that the authority has failed to discharge the duty. Such a direction may be enforced by a mandatory order.³⁹

When issuing guidance, or giving directions, concerning the exercise of the Prevent duty, the Secretary of State must have “particular regard” to “the duty to ensure freedom of speech” and to “the importance of academic freedom” in the case of institutions to which those duties apply.⁴⁰

Section 32 gives the Secretary of State (or another body nominated by him / her) the power to monitor the exercise of the Prevent duty by further and higher education bodies in England or Wales. The relevant education bodies must provide the Secretary of State / other nominated monitoring authorities with any information the monitoring authorities need for this.⁴¹ In the case of higher education bodies in England and Wales, the monitoring authorities for the Prevent duty are currently the Higher Education Funding Council for England (HEFCE) and the Higher Education Funding Council for Wales (HEFCW). HEFCE has produced guidance for universities on the implementation of the Prevent duty. This includes the stipulation that universities must provide HEFCE with annual reports giving evidence of the active and effective implementation of the duty.⁴²

The Higher Education and Research Bill, which is going through Parliament at the time of writing, proposes the abolition of HEFCE and the creation of an Office for Students for the English sector, which will take on many of HEFCE’s responsibilities including the monitoring of compliance with the Prevent duty.⁴³

The Prevent duty is applicable in England, Wales and Scotland but not Northern Ireland. In 2015 the government issued both general guidance on the implementation of the duty and specific guidance to higher and further education institutions. **In the following chapters, unless otherwise stated, ‘the Prevent duty guidance’ refers to both the general guidance document issued for specified authorities in England and Wales,⁴⁴ and the specific guidance issued for higher education institutions in England and Wales.⁴⁵**

2.3.3 The Channel programme

The Channel programme is a de-radicalisation scheme which uses multi-agency partnerships between the police, schools, local authority representatives and local community groups to identify individuals at risk of being drawn to radicalisation and to support them through community-based interventions. It was piloted in 2007 and implemented across England and Wales in 2012. In a 2009 strategy document, it was described as identifying and supporting “those at risk from violent extremism”.⁴⁶ In the 2011 Prevent strategy, emphasis was placed on Channel’s role as identifying and supporting people at risk of radicalisation – referred to as “the process by which a person comes to support terrorism and forms of extremism leading to terrorism”.⁴⁷

The Counter-Terrorism and Security Act 2015 expands Channel by requiring all local authorities to establish such a panel to identify and support individuals who are “vulnerable to being drawn into terrorism”.⁴⁸ The Channel Police Practitioner (CPP) is responsible for coordinating Channel in his / her area. When referrals from frontline public sector workers are received, the CPP will lead in assessing whether the individual’s vulnerability is terrorism-related; if it is, then the Channel panel will undertake a thorough assessment of the individual’s vulnerabilities.⁴⁹

3. Attitudes to freedom of speech on campus

Bodies representing universities, such as Universities UK, those representing students, including the NUS and students' unions, and other interest groups frequently express views about freedom of speech on campus. One organisation, *Spiked*, an online current affairs magazine, has ranked 115 British universities using its own freedom of speech index since 2015. In January 2017, it ranked 63.5% of institutions in its sample as 'Red', meaning that they are "hostile to free speech and free expression, mandating explicit restrictions on speech".⁵⁰ This was an increase from 39% of institutions ranked in this way in 2015.⁵¹

However, the views of students themselves are heard less often. This chapter outlines students' opinions on this topic as gathered by a survey for the Higher Education Policy Institute (HEPI) in 2016. It also sets out the findings of a major research project on the opinions of a particular group of students – self-identifying Christians. Finally, it summarises our reflections on academic staff attitudes to freedom of speech.

3.1 Student attitudes: HEPI survey data

In March 2016, HEPI gathered the views on freedom of speech of 1,006 full-time undergraduates studying at publicly-funded higher education institutions across the UK.⁵² Out of the respondents:

- 83% agreed to some extent when asked whether they felt free to express their opinions and political views openly and without any restriction⁵³
- 60% agreed to some extent that universities should never limit freedom of speech⁵⁴
- 43% agreed to some extent that protection from discrimination and ensuring the dignity of minorities can be more important than unlimited freedom of expression⁵⁵
- When asked which approach, when in doubt, should their university favour as an overall policy:
 - 27% said the university should focus on ensuring unlimited free speech on campus, although offence may occasionally be caused
 - 37% said the university should ensure that all students are protected from discrimination rather than allow unlimited speech
 - 3% said the university should not get involved in such matters
 - 27% could not decide because it is "a complicated matter"
 - 5% said they did not know⁵⁶
- 76% agreed to some extent with the NUS' No Platform policies⁵⁷
- 27% said that UKIP should be banned from speaking at events held at higher education institutions⁵⁸
- 45% agreed to some extent that academics should be free to research and teach whatever they want. 25% disagreed and 35% opted for the neutral option⁵⁹
- 48% agreed that universities should adopt safe spaces policies⁶⁰

- 68% supported the idea that lecturers should use ‘trigger warnings’ to warn students in advance of controversial or offensive subjects. 25% said that trigger warnings should always be used to protect students from offence; 43% said that they should be used if a topic is especially controversial or shocking⁶¹
- When asked what measures are reasonable for universities to undertake to prevent terrorism:
 - 52% said working closely with the police and security services to identify students at risk was reasonable
 - 52% said training staff to recognise people that might support terrorism was reasonable
 - 43% said monitoring societies or student groups that are believed to be a risk was reasonable
 - 37% said referring students believed to be a risk to the authorities was reasonable
 - 27% said banning certain events with external speakers was reasonable
 - 26% said personal in-depth monitoring of individual students believed to be a risk was reasonable
 - 25% said monitoring and filtering online material was reasonable
 - 5% said none of the options was reasonable
 - 20% said they did not know⁶²

In their analysis of the results, HEPI suggests that students’ attitudes to freedom of speech on campus are not straightforward and contain apparent contradictions. Despite popular stereotypes to the contrary, the survey showed that **students have “considerable support for the *principle* of free speech”** (emphasis added). Nonetheless, there is **a tension between this and their support for “relatively strict limits on free speech” when asked questions about *practical* policies**. HEPI also suggests that some students may see policies which censor views they find offensive (such as no platforming policies) as being mechanisms for protecting the freedom of speech of others (for example, by creating ‘safe spaces’ for minorities to express their views freely). Thus “there are some grounds for thinking that some students believe censorship protects freedom”.⁶³

“Students actually support both Prevent and no platforming.”

The findings of this survey were presented during our discussion. One participant summarised the results as showing that **“students actually support both Prevent and no platforming”**. He also pointed out that *“lots of students think academics shouldn’t be free to research what they like”*. Another said that he was *“horrified”* that over a quarter of respondents thought that UKIP should be banned from campuses. For him, this indicated that no platforming policies can have a major chilling effect on freedom of speech (see Section 4.1).

3.2 Student attitudes: religious students on campus

An important part of the discussion about freedom of speech on campus concerns students’ religions or beliefs and their freedom to manifest them as they wish to. The most commonly discussed constraints on freedom of speech on campus are said to arise from the *“pincer movement”*

of external policy pressures (such as the Prevent duty) combined with internal pressures from student representative bodies (such as no platforming policies of the NUS or students' unions). These are discussed in Chapters 4 and 5. **A third source of pressure on freedom of speech (a different kind of internal pressure) may arise from the internal dynamics of student groups on campus** – including religious groups and societies.

We discussed this sort of pressure in the context of Christian students. One participant presented to us the findings of a major three-year research project called 'Christianity and the University Experience in Contemporary England', which was funded by the AHRC / ESRC Religion and Society Programme.⁶⁴ The project included a survey in 2010-11 of about 4,500 undergraduate students based at 14 universities across England, around half of whom identified as Christian; and interviews at five universities with 75 self-identified Christian students and 25 staff members and student leaders working with them.⁶⁵

The project found that self-identifying Christians are more prevalent in universities than may be generally assumed, with about 40-50% of students identifying as such. Christian students are highly diverse in terms of national and ethnic origin, denominational affiliation and practice. Only about one third of respondents to the national survey attended church regularly while at university; they were more likely to practice their faith individually. About half said they prayed at least weekly. 60% of the Christian respondents volunteered, for example with a homelessness group run by a church, compared to 40% of non-religious students.

Regarding the impact of the university experience on their faith, about 70% of Christian respondents said their perspective on religion was broadly the same as it had been when they began university, with the rest becoming either more or less religious in equal measure. As the participant put it, *"university does not generally secularise students, as the old wisdom went"*.

The participant emphasised that Christian Unions, and the Universities and Colleges Christian Fellowship (UCCF) to which many are affiliated, do not represent the views of most self-identifying Christian students. Only about 10% of the Christian students surveyed said they were involved in their university's Christian Union. Christians who were not involved were often concerned that the Unions' *"overzealousness"* could be counterproductive, giving Christianity *"a bad name"*. Most Christian students were *"wary of evangelism"* and of offending others: *"some want to share their faith but they want to do it through deeds, rather than or as much as through their words."* The project also found that even among members of the Christian Unions, many disagreed with the UCCF's position on particular issues (for example, two thirds of Christian Union members said that men and women should be equal in church leadership, whilst the Unions themselves tend to select men as the majority of their speakers, following the UCCF's conservative position on women in leadership).

It should not be assumed, therefore, that the positions of bodies claiming to represent religious students are always reflective of those students' views. This may include the positions of those bodies concerning freedom of speech. The participant suggested, for example, that **if such a body as the UCCF complains that the Prevent duty is curbing freedom of speech, it is likely that their main concern is about *"protecting their own right to evangelise"*** in ways they see fit.⁶⁶ Many Christian students, however, may not be as concerned as the UCCF by possible constraints on evangelism.

The project found that most Christian students wanted their universities *"to be friendly to faith"* and indeed tended to see their universities as already so. They saw two factors as being important for making a university *"faith-friendly"*: the provision of campus-based religious activities, including

religion-based societies, chaplaincies and spaces to pray; and an environment of respect for freedom of religious expression. The project found that a minority of Christians had encountered hurtful behaviour on campus, including students and lecturers ridiculing their beliefs. Overall, therefore, **Christian students wanted universities to protect their rights to freedom of expression and also to protect them from harmful or mocking speech on the part of others.** This seems to reflect the sentiments of the student populace as a whole, as captured in the 2016 HEPI survey, with students wanting universities to uphold freedom of speech whilst simultaneously restricting speech that may be offensive, particularly to minority groups (see Section 3.1).

3.3 Staff attitudes: academic freedom

Refer to Section 2.1.2 for the relevant legislation

Academic freedom is a broad concept which refers to the rights of academic staff to challenge orthodoxies and present controversial ideas in their teaching and research without endangering their positions at their institutions; and the rights of higher education institutions to determine course content and admissions criteria. As with freedom of speech, some commentators have expressed **concern that academic freedom is being encroached on from various angles.**

We considered this briefly in our discussion. Some participants argued that there is a **growing climate of self-censorship constraining what academics can teach and research.** In part, this was said to be due to particular policies introduced by universities in their exercise of the Prevent duty. Where policies are poorly implemented, **researchers of extreme content may come under unwarranted suspicion.** This occurred, for example, at Staffordshire University in 2015, where a postgraduate student was reading a book on terrorism studies in the library and was questioned by university security after being accused of being an extremist. The university subsequently apologised to him and said that the Prevent duty was “underpinned by guidance... [that] contains insufficient detail to provide clear practical direction” in the university environment.⁶⁷

Participants also noted the Prevent duty guidance issued for relevant higher education bodies advises university management to expand their internet filtering policies and “consider the use of filters as part of their overall strategy to prevent people from being drawn into terrorism”.⁶⁸ Some warned that filtering technology can be “*very heavy-handed*” and can generate “*many false positives*”, again leading to suspicion of researchers of extreme content.

Beyond this, there are other factors which may constrain academic freedom. Ethics committees play an important role in determining what research methodologies are acceptable. It was suggested that **some committees pressure researchers to refrain from asking particular questions,** due to “*cultural concerns*” about the subject matter. Participants generally agreed that it is dangerous to limit the scope of research activity.

“There are people who will use the claim of academic freedom to justify all sorts of things.”

While participants agreed about the great importance of protecting academic freedom, some expressed **concerns that the principle can be abused.** For example, in 2014 the Rugby Society at the London School of Economics was suspended from playing after distributing leaflets which used sexist and homophobic language.⁶⁹ A participant said that some academics objected to the ban, saying that it was contrary to the principle of academic freedom. The participant saw this as both a misunderstanding and an abuse of the concept of academic freedom (which protects the rights of academic staff, not students, to put forward controversial views “within the law”).⁷⁰ Another participant emphasised that academic freedom is not

absolute, and “the courts have made it clear that academic freedom is not whatever the academic thinks”.

4. No platforming and safe space policies

The NUS and many students’ unions have no platforming’ and safe space policies. No platforming policies prevent particular individuals or groups from speaking at events hosted by the NUS or the unions. The NUS’ national policy prohibits “individuals or groups known to hold racist or fascist views” from speaking at its events. Some policies, including the NUS’, also prevent representatives of the NUS or the relevant unions from sharing a public platform with the named individuals or groups. The NUS’ policy is voted on by the annual National Conference, and currently lists six organisations.⁷¹

Broadly, safe space policies offer guidelines for creating environments on campus where all students feel safe and able to engage in discussions and activities free from intimidation and judgement. The policies may require individuals who breach the guidelines to leave the discussion space.

In our consultation, we debated whether these policies create constraints on freedom of speech on campus, and if so, whether such constraints are legitimate or not. This chapter sets out the various arguments made by participants in criticism or defence of these policies.

It should be noted at the outset that **there is confusion about these two concepts in public discourse**. The distinct concepts are often conflated. Additionally, the NUS’ national no platforming policy is often conflated with the no platforming policies of local students’ unions, and vice versa.

4.1 Criticisms of no platforming and safe space policies

A number of participants in our discussion were critical of no platforming and safe space policies. They agreed that students should feel safe and free from intimidation on campus. But they warned that safe space policies, which might be beneficial on an informal “micro level”, may create major issues when “translated into formal policy at the institutional level”.

A. No platforming and safe space policies can constrain free expression among external speakers and students

Some participants felt that **these policies can have a chilling effect on freedom of speech** on campus. This point was made both by participants who defended the Prevent duty and by participants who saw the duty as constraining freedom of speech. They argued that some unions, by preventing particular external speakers from addressing students, are restricting the free expression of views which are acceptable under the law (though they may be offensive to some).

External speakers’ free expression could be constrained even if they are allowed to speak on campus. Some students **may use safe space policies as justification for disrupting events**. One participant recalled cases where speakers had been “bullied and shouted down”. This was deemed to be an unacceptable abuse of the safe space concept.

It was also suggested that the policies **can constrain the freedom of speech of students as well as external speakers**. There was a concern that the extreme effect of safe space policies may be to

“No platforming policies and safe spaces are just as important an issue as the government Prevent strategy in chilling free expression in universities.”

*“Challenging ideas
should not be
considered unsafe and
dangerous.”*

create a **“tyranny of the majority”**, where dissenting views are dampened down (including in the classroom). One participant feared that in debates about a particular minority group or experience, safe space policies may hinder students not of that group from commenting. She cited conversations in the classroom about colonialism, where white students were discouraged from commenting.

B. No platforming and safe space policies can hinder the development of critical thinking and tolerance

There was broad agreement among participants that **exposure to a range of ideas, including ideas that challenge or cause discomfort, is essential for developing critical thinking** among students. Some participants said that there is a danger that safe space policies may undermine this by restricting students’ exposure to different views. It was also suggested that such exposure is a key way to promote *“civic stability, tolerance and [to] reduce the likelihood of extremism”*.

While some participants thought that safe space policies help to foster thinking which challenges society’s ‘orthodoxies’, others warned that they **may create new, campus-based ‘orthodoxies’ and blasphemy lines**. A participant argued that this must be resisted: *“ideas should never be safe in universities and should never be privileged”*.

C. Defenders of no platforming and safe space policies have double standards and may be facilitating the growth of extreme views

Supporters of no platforming policies were said by one participant to have **double standards when it comes to freedom of speech** – prohibiting far-right extremism and xenophobia but permitting Muslim extremism. He suggested that if a potential external speaker states that *“Muslims should be banned in an ideal state”*, the NUS and some students’ unions would *“call this fascism and ban it”*; but that if a speaker states that *“in my ideal state apostates should be killed”*, the same groups would see this *“as a conservative religious belief”* that does not foster extremism and should be respected.

The participant feared that such decision-making **may contribute to the growth of extreme views on campus**. Similarly, he raised the prospect that safe spaces could be used as fora *“to legitimise views that would not be expressed in public”*.

*“Why is one form of
Fascism bad and one
form good?”*

D. No platforming and safe space policies have made it possible for the Prevent duty to be introduced

Evidently no platforming and safe space policies and the Prevent duty are connected, through the possibility that they may constrain freedom of speech on campus. One participant, however, suggested a closer link between the union policies and the Prevent duty. He argued that by tacitly accepting no platforming policies in the last few decades, universities have become used to the idea that speakers with views deemed too controversial can be banned from campus. This may have **“created an intellectual environment which has helped create the conditions for Prevent”**.

This view was contested by another participant, who argued instead that **“Prevent leads to no platforming”**. He argued that by implementing the Prevent duty, universities restrict freedom of speech and do not demonstrate its importance to students. In this context, students may be less inclined to prioritise freedom of speech over protecting themselves from harm and offence.

4.2 Defences of no platforming and safe space policies

Despite the criticisms expressed above, there is a case to be made that no platforming and safe space policies are necessary for ensuring that all students have the most enriching educational experience possible.

A. No platforming and safe space policies are necessary to protect students and to enhance freedom of speech for minority groups

Some participants were strongly supportive of these policies. Concerning the NUS' no platforming policy, they argued that not choosing to invite representatives from the six organisations to NUS events does not amount to an infringement on those representatives' freedom of speech. An organisation is free to invite who it likes to its events within the boundaries of the law.⁷²

A different situation is where a students' union has refused to accept a society's request for a particular speaker, or has proactively banned a speaker, on the grounds that the speaker's presence may breach a safe space environment. Some participants, particularly student voices, argued

"This is people coming together and realising the damage in having speakers from these organisations."

strongly that such actions are **justifiable because making students feel safe and free from intimidation is of paramount importance**. They also noted that such actions can be **necessary to deny potentially harmful speakers the legitimacy** that may be conferred on them by a public platform.

Moreover, both no platforming and safe space policies were seen as ways of **enhancing freedom of speech on campus**, by creating spaces where minority groups can discuss issues they may not feel comfortable discussing elsewhere. Creating safe spaces on campus was understood as an equality issue, addressing power imbalances between students of different backgrounds.

B. No platforming and safe space policies empower disenfranchised students

It was also suggested that no platforming and safe space policies are linked to issues of power on campus. One participant argued that *"on the whole students lack power"*, but noted that there are huge disparities between different students in this regard, often due to economic factors. Poorer students are more likely to have to do paid work alongside their studies and so may have less time to become involved in formal student politics, including through their students' union. The tuition fee rises may have exacerbated this. In this context, it is arguable that no platforming and safe space policies, voted in democratically by students (including by those not heavily involved in their union), are **mechanisms by which students can reassert power and control over their own learning environments**.

C. Students' unions are not required to adhere to freedom of speech law

Refer to Section 2.1.1 for the relevant legislation

According to the NUS, **students' unions are not required by law to uphold freedom of speech, so their no platforming and safe space policies cannot be said to contravene freedom of speech law**. In its guidance to students' unions, the NUS points out that the Education (No. 2) Act 1986 places a duty to uphold freedom of speech on university governing bodies, rather than on students' unions themselves, which are separate entities.⁷³

It should be noted, however, that the duty on a university governing body covers premises occupied by its students' union.⁷⁴ This means that there is the **potential for conflict if a students' union decides that an external speaker event should not proceed** (for example, to comply with a no

platforming policy or with charity law) **but the parent institution considers that this would conflict with its duty to secure freedom of speech.** Universities are required to maintain a code of practice setting out how freedom of speech should be upheld and must take “reasonably practicable” steps to ensure compliance with it.⁷⁵ If the university considers that the students’ union has failed to comply with the code, it would need to consider what reasonably practicable steps can be taken to ensure compliance.⁷⁶

The NUS also argues that **students’ unions do not need to comply with human rights law** in relation to the upholding of freedom of speech. It has received legal advice about whether the courts would consider students’ unions to be public authorities subject to the Human Rights Act, and thus whether they must uphold the right to freedom of expression guaranteed by Article 10 of the European Convention (see Section 2.1.1). The legal advice concludes that it is “extremely unlikely” that a students’ union would be bound to act in a way that is compatible with Convention rights.⁷⁷ Universities UK also does not consider students’ unions to be public bodies for the purposes of the Human Rights Act and the Public Sector Equality Duty.⁷⁸

5. The Prevent strategy on campus

Much of our discussion focused on the general Prevent strategy, and on the Prevent duty as applied to relevant higher education institutions. Prevent was said by many participants to be the main external factor creating a “chilling effect” on freedom of speech on campus. Some participants rejected this argument, however, or emphasised that the threat of radicalisation on campus is sufficient to justify any such chilling effect.

This chapter sets out the participants’ criticisms or defences of the Prevent duty in higher education institutions.

5.1 Radicalisation on campus

This section outlines the context of concerns about terrorism, including on campuses.

A. The international terrorism threat

The nature of the terrorist threat to Britain today is very different to the threat in 2001. It was emphasised by some participants that Daesh poses the greatest terrorism threat to the UK rather than Al-Qaeda. Whereas Al-Qaeda is “small, cellular and secretive”, Daesh calls Muslims to travel to its territory to fight and to build a state, and also calls on Muslims who cannot travel to “attack at home”. In July 2016 the government estimated that about 850 individuals have travelled from the UK to join Daesh in Iraq and Syria since the conflict began, and that just under half have returned.⁷⁹

Daesh produces propaganda on an industrial scale, “designed to appeal to the masses”. A participant explained that at one point the group had 46,000 Twitter accounts. They produce videos which are designed to appeal to Western Muslims – in December 2015, for example, they produced over 50 videos per week in a variety of languages. **They play on dissatisfaction among some young Muslims with secular society, and also try to present a vision of their territory as a thriving, viable alternative.** Documentary videos deploy motifs modelled on familiar aspects of Western societies, such as the Islamic State Health Service logo which is based on that of the NHS.

The participant noted that about seven to ten plots to commit terrorist acts in the UK had been foiled in the previous 18 months. If any of these plots had succeeded, the “*impact on community cohesion would have been devastating, especially to visibly Muslim people and women and mosques*”. **Far-right extremists would take advantage of a terrorist attack to perpetrate crimes against Muslims.**

B. The threat of radicalisation on campus

The extent to which British universities are a ‘hotbed’ of radicalisation is disputed. Some participants in our discussion, for example, insisted that in most terrorist attacks involving former British students, the perpetrators had been radicalised through networks outside of the universities.

Others, however, insisted **that a number of students who have gone on to commit terrorist acts were attracted to violent extremism whilst at university.** They warned against “downplaying the threat of radicalisation” on campuses, and noted that various organisations have published reports setting out the extent of this threat.⁸⁰

These participants also noted that a number of terrorists have had previous links with Islamic Societies in British universities. Infamously in 2009, for example, Umar Farouk Abdulmutallab, a

former president of the Islamic Society at University College London, attempted to detonate a bomb on a plane. More recently, in 2016 Suhaib Majeed, formerly the head of King's College London's Islamic Society, was gaoled for plotting drive-by shootings.

There have also been **attempts by far-right groups to recruit members on campuses**. For example, activists from National Action (proscribed as a terrorist organisation in December 2016) are reported to have appeared on various campuses in recent years, disseminating literature.⁸¹

C. Referrals to the Channel programme

Referrals to the Channel programme from the higher education sector are small compared to other sectors. Statistics from the National Police Chief's Council (NPCC) indicate the breakdown of referrals made to the Channel programme (from across the public sector). Between April 2012 and April 2016:

- There were 8,340 referrals in total. Of this, 5,733 (69%) were classified as 'International (Islamist) Extremism' and 1,368 (16%) were classified as 'Far Right Extremism'⁸²
 - (It should be noted that there is some discrepancy between different statistical releases by the NPCC concerning the total number of referrals)⁸³
- In the 'Islamist' category, 2,566 out of 5,733 referrals were for children under the age of 18 (45%); 346 were for children under the age of 10 (6%)⁸⁴
- In the 'Far Right' category, 619 out of 1,368 referrals were for children under the age of 18 (45%); 19 were for children under the age of 10 (3%)⁸⁵
- 119 referrals were recorded as originating in the higher education sector. This compares to 1,494 recorded as originating in schools, 1,447 originating with the police, and 357 originating in the health sector
 - (It should be noted that recording the 'source' of the referral is not mandatory so these figures may not represent the total in each category)⁸⁶

It should be noted that a large majority of individuals referred to the Channel programme are assessed as not being vulnerable to being drawn into violent extremism, and are therefore guided to other services more appropriate to their needs.⁸⁷ Some commentators see this as showing that the process of identifying people at risk of radicalisation is flawed and may be counter-productive for social cohesion and cooperation between communities and the police.⁸⁸

5.2 Criticisms of the Prevent duty

Participants in our discussion raised a range of criticisms of the Prevent duty as applied in universities. These include social and political issues, legal issues, and issues concerning the practical implementation of the policy.

"The strong perception arose that some ISOCs were radicalising students and bringing students to extremism and fostering conditions to allow terrorism to flourish."

5.2.1 Social and political concerns

A. The Prevent duty is shaped by an Islamophobic environment and contributes to further Islamophobia

For a number of participants, a principal allegation against the Prevent duty in universities, and to the Prevent strategy more broadly, is that it is **shaped by, and indeed feeds, “a climate of acute Islamophobia”**. Prevent was said to be **focused particularly on Muslims**, problematizing them and contributing to “stereotypical views” about Muslims as “enemies”. Indeed, Section 5.1.C shows that 69% of people referred to the Channel programme between 2012 to 2016 were classified under ‘International (Islamist) Extremism’.⁸⁹

“The common thread in all these stories is that the person in question is a Muslim acting in a normal manner.”

One participant described situations where, in her view, Muslims had been disproportionately targeted in universities under the Prevent duty. She felt that an unfair amount of scrutiny had been placed on Islamic Societies and political societies headed by Muslims. For example, she spoke about one university where a uniformed police officer, who was also a Prevent officer, frequently attended activities and events held by Muslim societies (including Friday prayers), though did not attend the activities of other religious groups. The Prevent officer began to inquire about the details of Muslim students who were involved in student politics on the campus,

which led to some of those students disengaging from political activity. Other examples mentioned in our discussion included universities installing cameras in prayer rooms to monitor Muslim activities; and the incident at Staffordshire University in 2015 where a terrorism studies student was questioned under the Prevent duty (see Section 3.3).

The same participant also argued that Muslims are judged against different standards of morality than others. She noted that Muslim students would be held accountable for expressing conservative social views, such as on homosexuality, whereas “a Tory politician or a member of the DUP in Northern Ireland” might say similar things but would not face similar detrimental consequences.

From this, several participants argued that the Prevent duty has a “**disproportionate impact on the freedom of speech of Muslim students**”.

B. The Prevent duty may undermine critical thinking and perpetuate government power to define ‘orthodoxy’

Some participants argued that the counter-extremism strategy, including the Prevent duty as applied by specified authorities, has the potential to **undermine the development of “independent, critical and radical thinking”**. From this perspective, this effect may occur because the strategy seeks to discourage views and speech which are considered to be going too far beyond “mainstream opinion”. One participant suggested, for example, that the effect of the strategy may be to discourage vocal criticism of British foreign policy among particular individuals, even though such criticism would not be unlawful. In the university context, such discouragement may manifest when universities or students’ unions feel obliged by the Prevent duty guidance to balance out a panel with a speaker considered to have extreme views.

Against this **perpetuation of mainstream or ‘orthodox’ thinking**, it was argued that the vitality of democracy, and the institutions of civil society, depends on freedom of speech, which involves the “inviting of dispute”. One participant emphasised that we should not be surprised by, and in fact should welcome, speech which “causes hurt feelings, discomfort, public

“Free speech works best when it induces a condition of unrest, dissatisfaction and even when it stirs people to anger.”

inconvenience and annoyance". He argued that such expressions of minority opinion should be protected in a liberal democracy rather than discouraged.

Concerns were also expressed about **the power the Prevent strategy may give to government to define acceptable opinions**, and to identify individuals who dissent from them. One participant warned that when governments *"attempt to tell us what to think and to believe"*, their policies should be subject to stringent scrutiny from the public. A failure to do this *"allows a clumsy, pre-emptive strike on behalf of certain enemies of democracy"*.

C. The Prevent duty lacks transparency and accountability

There was a strong feeling that there is **a lack of transparency and accountability with regard to the Prevent duty** and the counter-extremism strategy in general. Scrutiny of the strategy is not part of the formal remit of the Independent Reviewer of Terrorism Legislation. The Home Affairs Select Committee recognised this lack of accountability in their 2016 report and called for an independent reviewing panel.⁹⁰

In addition, concerns were expressed about the lack of transparency in relation to the framework used by the Prevent strategy and the Channel programme to identify and respond to extremism. The Channel programme's 'Vulnerability Assessment Framework' assesses individuals' vulnerability to being drawn into terrorism based upon 22 factors, known as the Extremism Risk Guidance (ERG 22+). Participants noted that the underlying government document relating to the ERG 22+ is not publicly available, despite calls for this to be publicised.⁹¹ Various groups have criticized the ERG 22+ framework as lacking a robust evidence base.⁹²

D. The label 'extremist' is fixed and inescapable

The ambiguity of the concept of extremism for legal purposes is discussed in Section 5.2.2.A. A related issue which emerged in our discussion is the apparent immutability, and yet simultaneously the opacity, of the label 'extremist'. A participant argued that **the counter-extremism strategy treats speech "as if it was fixed in time"**. Individuals may be labelled extremist because of comments

made years ago, regardless of whether those comments reflect their current opinions. It is also **unclear how an individual or organisation can escape this label** once a government department (or the media) has imposed it. (This issue forms part of the background in the legal case of Dr Salman Butt. See Section 5.2.4).

It was also argued that it is often difficult to know how the government decides which individuals, organisations or views should be considered extremist. One participant pointed out that the government is not the only party involved in making these decisions – *"campaigning groups"* often have a major influence over who government (or the media) considers to be extreme.

"Do we get to see a list of bad speakers? Does the creator of a bad list ever come forward to justify it?"

E. The Prevent duty undermines the purpose of university and breaks down trust between staff and students

Discussion about freedom of speech in universities raises the important question: *"is the role of the university to impose balance or promote enquiry?"* It was argued by one participant that the latter should be the primary role. In some circumstances the imposition of balance (for example, during external speakers' debates) may facilitate the promotion of enquiry and critical thinking, but in others it may hinder it.

Several participants were concerned that the Prevent duty **may damage the climate of trust between university staff and students**. Such trust is vital for freedom of speech on campus and for a productive learning process.

5.2.2 Legal concerns

A number of participants expressed concerns about the Prevent duty on legal grounds. Issues were raised about potentially problematic wording in particular parts of the Prevent duty guidance (both the general guidance and the specific guidance for higher education). Other issues involved the compatibility of the Prevent guidance, and strategy as a whole, with existing law concerning equality and freedom of speech.

A. The Prevent duty relies on ambiguous concepts

Refer to Section 2.3.2 for relevant legislation

The general Prevent guidance asserts a link between terrorist activity and “extremist ideology”. It states that “non-violent extremism” can “create an atmosphere conducive to terrorism and can popularise views which terrorists then exploit”, and that “preventing people becoming terrorists or supporting terrorism requires challenge to extremist ideas where they are used to legitimise terrorism and are shared by terrorist groups.”⁹³ Extremism is not defined in statute but in the Prevent Strategy 2011 as “vocal or active opposition to fundamental British values”.⁹⁴

“Prevent makes too many of us ‘extremist.’”

Many participants felt that this definition of extremism, and more specifically **the concept of non-violent extremism, is ambiguous, too broad, and is being interpreted inconsistently** by different institutions. It was noted that non-violent views which could be considered ‘extreme’ are not necessarily dangerous or undesirable in a democratic society. One participant commented that there is a “long, proud history of non-violent extremism in universities, changing the world for good.”

Beyond this, the vagueness of the concepts underpinning the Prevent strategy could be said to run against important principles in a democratic society. A participant argued that the conceptual ambiguity “**diverges from the rule of law**”; the rule of law requires clarity and predictability so that the public can know what is and is not acceptable behaviour.

The Counter-Extremism Strategy, published in 2015, states that there is a process by which individuals are radicalised and drawn to extremism, and that in general a number of factors are usually present: a “radicalising influencer”, typically “an extremist individual”, who introduces “an extremist ideology” to a vulnerable person lacking protective factors like a supportive network of family or friends or a fulfilling job.⁹⁵ The Strategy rejects the idea that there is a “single model of radicalisation”. Nonetheless, in our discussion some participants were concerned that **the government’s approach to counter-terrorism continues to be underpinned by a “conveyor belt**

theory”, which assumes “causal connections” between traditional religious devotion, non-violent extremist views and “the decision to become a terrorist”. It was argued that this model is discredited and lacks sufficient evidence.

“I don’t know how universities are going to read the guidance when there is no clarity on anti-British values – it’s so hopelessly vague.”

B. The Prevent duty guidance goes beyond its statutory basis

Refer to Section 2.3.2 for relevant legislation

Some participants argued that the Prevent duty guidance is problematic because **its focus on extremist views goes beyond the focus of the statute** which the guidance is based on. Section 26 of the Counter-Terrorism and

Security Act places a duty on specified authorities to prevent people from being drawn into terrorism (defined in statute as action, or the threat of action, involving serious violence or damage to property or risk to public health or safety),⁹⁶ but does not refer to extremist views.

It was argued by some participants that by focusing on the concept of extremism, rather than terrorism, the Prevent duty guidance goes beyond the meaning of the Counter-Terrorism and Security Act. This was considered problematic because **“guidance cannot alter the meaning of the statute”** but can only advise on how the statute should be applied. Any guidance going beyond this is *ultra vires* (‘beyond the powers’). It was argued that *“If there are things in the guidance which are inconsistent with statute, then the guidance doesn’t have any effect”*.

C. Higher education institutions must take the Prevent duty seriously but the guidance is not binding

Under the Counter-Terrorism and Security Act, specified authorities must have “due regard” to the need to prevent people from being drawn in to terrorism. One participant argued that a requirement to have “due regard” to something means *“careful conscious consideration of the issues involved”*. He argued that under the duty, **authorities need to demonstrate that they have assessed the risk** of people being drawn into terrorism, but **are not required to take any specific action to prevent that possibility**.⁹⁷

A similar argument could be made concerning the weight of the Prevent duty guidance. Section 29 of the Counter-Terrorism and Security Act requires specified authorities to “have regard” to such guidance as issued by the Secretary of State,⁹⁸ but this should not be interpreted as meaning that full implementation of the guidance by the specified authorities is compulsory.⁹⁹

More broadly, the discussion also involved the relative authority of guidance issued by the Secretary of State in comparison to statute. It was argued that while guidance is something which must be considered carefully by the bodies it addresses, it *“doesn’t set you on an unbreakable path which you have to follow”* and that the **bodies “can depart even substantially from guidance if there is a cogent reason to do so”**, such as practical issues that would make its implementation very difficult.¹⁰⁰

D. Implementation of the Prevent duty may contravene freedom of speech law and human rights law

Refer to Section 2.1.1 for relevant legislation

A major area of discussion focused on **the compatibility of the Prevent duty with the duties on higher education institutions to uphold freedom of speech and academic freedom** on their premises. These duties are imposed on relevant higher education institutions by the Education (No. 2) Act 1986, the Education Reform Act 1988, the Counter-Terrorism and Security Act 2015, and the European Convention on Human Rights. Several participants were concerned that if an institution followed the Prevent duty guidance rigidly, then it would be in danger of contravening its legal requirements in these other areas.

The Education (No. 2) Act 1986 imposes a positive duty on university governing bodies to take practicable steps to secure freedom of speech in their institutions. Furthermore, public authorities, including universities, are required by the Human Rights Act to uphold individuals’ right to freedom of

“Even what the government considers are activities they would like the Prevent guidance to restrict are protected by Article 10.”

expression (as guaranteed by the European Convention on Human Rights). One participant emphasised that the European Court of Human Rights has made it very clear that the right to freedom of expression not only covers ideas or information “favourably received or regarded as inoffensive”, but also those which “**offend, shock or disturb**”.¹⁰¹ Indeed, the fact that an individual has a view which is offensive or marginal is precisely a reason for protecting his / her right to express it – “*that’s exactly where protection is needed*”. It was argued that this protection covers some ideas that the UK government considers to be counter to British values and therefore extreme.¹⁰²

Participants stressed that the justifications given in the Convention for placing constraints on the right to freedom of expression are narrow, and that **if an institution places constraints on speech which cannot be justified under Article 10(2), then it is likely that the institution will have breached its legal requirement under the Convention** (as well as under the Education (No. 2) Act).¹⁰³ Universities, then, must be very careful when implementing the Prevent duty to ensure that they are not unlawfully curtailing freedom of speech. In the participant’s view, “*rigid adherence*” to the Prevent duty guidance (including to the expectation that all risk associated with external speakers must be “fully mitigated” – see Section 5.2.3.A), may not only be “**unwise, but probably unlawful**”.

Participants also discussed whether the Prevent duty guidance itself, rather than actual policies implemented by an institution, could amount to a contravention of Article 10 on the part of the state. It was argued that the courts can quash guidance issued by the government if it is likely (not just inevitable) that the guidance will lead public authorities to act unlawfully, including acting in a way which breaches Convention rights. The European Court of Human Rights may decide that Article 10 has been interfered with if it can be demonstrated that the Prevent duty guidance is likely to have a chilling effect on freedom of speech.

“If you have an offensive speaker, the public authority ought to do its best to ensure the offensive speaker gets the time to speak.”

There was general agreement that universities’ approaches to the Prevent duty must take into account their other duties, including the duties to uphold freedom of speech and academic freedom. But there was some discussion about the relative weight universities should give to the different duties when considering their approach. A participant noted that in the Counter-Terrorism and Security Act 2015, universities are required to have “**due regard**” to the need to prevent people from being drawn into terrorism, and “**particular regard**” to the need to uphold freedom of speech and academic freedom when implementing the Prevent duty.¹⁰⁴ It was argued by the lawyers present that, in legal terms, “particular” may trump “due”. Thus the “particular” regard required by the Act in relation to those two duties could be interpreted by universities as being of as much, if not more, weight for their considerations than the “due” regard required in relation to the Prevent duty.

E. Implementation of the Prevent duty may be indirectly discriminatory

Refer to Section 2.2 for relevant legislation

Some participants argued that **the Prevent duty as applied by higher education institutions could be breaching equality legislation**. The relevant pieces of legislation here are the Equality Act 2010 and the European Convention on Human Rights.

As public authorities, universities are required to uphold Article 14 of the European Convention on Human Rights, which prohibits any discrimination which may prevent individuals’ enjoyment of

other Convention rights, including the right to freedom of expression. This means that when implementing the Prevent duty, universities must avoid discrimination in line with Article 14.

Concerns were raised in our discussion that the Prevent duty, as applied in higher education institutions, may lead to unlawful discrimination as set out in the Equality Act. One participant argued that, whilst the duty could not be said to constitute direct discrimination as it is a general policy targeting all forms of extremism, it **could lead to unlawful indirect discrimination** on grounds of a particular protected characteristic – in this case, religion or belief. This could be the case, for example, **if it was found that Muslims are treated with disproportionate scrutiny on grounds of their religion or belief** by an institution applying the Prevent duty. It could also be the case if a Muslim speaker was deterred from putting him or herself forward as a possible external speaker on campus, out of concern that he or she would be subject to such disproportionate scrutiny. Such consequences would amount to unlawful discrimination unless the institution applying the Prevent duty could demonstrate to the court that the policy is a necessary and “proportionate means of achieving a legitimate aim”.¹⁰⁵ It was suggested that institutions may find it difficult to justify such indirect discrimination as meeting “a pressing social need” in a proportionate way.

5.2.3 Implementation concerns

There was considerable discussion about practical difficulties that may arise when higher education institutions attempt to implement the Prevent duty, following the guidance.

A. It is impossible to “fully mitigate” risk involved with external speakers

Several of the lawyers participating in our discussion were concerned that the specific Prevent duty guidance issued for higher education institutions places **an unreasonable expectation on those institutions when it comes to managing risks associated with external speakers**.

The specific guidance states that universities must consider whether views being expressed, or likely to be expressed, by speakers “constitute extremist views that risk drawing people into terrorism or are shared by terrorist groups”. It also states that universities should not allow an event to proceed if they “are in any doubt that the risk cannot be fully mitigated”.¹⁰⁶ Several participants argued that, in practice, **it is impossible to mitigate fully any such risk without cancelling events**; and that the guidance would be interpreted inconsistently across different institutions. While some institutions may adopt a pragmatic approach when interpreting the guidance, others may follow it more strictly or cautiously, feeling obliged to cancel events where any doubts about the risk remain. A number of participants said **such scenarios amount to self-censorship and demonstrate the “chilling effect”** of the Prevent duty.

“How can I fully mitigate the actual risk? There is a risk any speaker might do something which is viewed as extremist.”

B. The need to secure a balanced panel can create problems and be a constraint on freedom of speech

The specific Prevent duty guidance issued for higher education institutions suggests that, in order to mitigate the risks associated with external speakers, organisers of events should ensure that “speakers with extremist views that could draw people into terrorism are challenged with opposing views as part of that same event”. Universities (and students’ unions) are expected to put in place policies for assessing and mitigating risks associated with all planned events involving external speakers.¹⁰⁷ It should also be noted that, as charities, universities in England and Wales can be challenged by HEFCE / HEFCW, and students’ unions by the Charity Commission, on whether they

give “due consideration to the public benefit and associated risks” when inviting controversial speakers (see Chapter 6).¹⁰⁸

Where an external speaker is identified as posing a possible risk, different institutions adopt a range of policies to mitigate the risk whilst allowing the event to continue. This may involve ensuring the presence of sufficient security, having an impartial moderator, recording the event, or trying to ensure a balanced panel where a speaker with potentially controversial or extreme views is joined by other speakers with alternative views. At events at some institutions, the audience is encouraged actively by the organisers to engage with and challenge the speakers – though it was noted in our discussion that “*student apathy*” and reluctance to stand out from the crowd can render this approach ineffectual.

A number of participants reported that their institutions had faced **difficulties when trying to organise balanced panel debates** in line with the specific Prevent duty guidance. In some situations, no speaker could be found to present an opposing view to the main speaker who had been deemed to be controversial. Some institutions may permit such an event to go ahead, but others **may decide to postpone or cancel it**. One participant recounted incidents where students’ requests for external speakers had been put on hold repeatedly because of the difficulty of finding speakers with opposing viewpoints. She felt that **this problem disproportionately affected Muslim students**, as some students’ unions may be particularly cautious about hosting controversial Muslim speakers in an unbalanced setting due to worry about media scrutiny.

“The Prevent duty does not call for a ban for speakers, but does make it much harder to hold events. Balance is hard to achieve.”

This points to a wider issue: that the **process of deciding whether a speaker poses a risk may be quite arbitrary or inconsistent**, with the speaker requests of some students or societies receiving greater scrutiny by union staff than others. As one participant put it, “*presumably you don’t need a balanced panel for a debate about climate change?*”

Other policies introduced by universities and students’ unions in order to comply with the specific Prevent duty guidance may also have a constraining effect on freedom of speech. Some institutions require speaker requests to be submitted several weeks in advance. It was suggested that increasingly rigorous bureaucratic processes for requesting speakers may actually discourage students from submitting requests – such a **feeling of “why bother” may curb freedom of expression**.

Participants felt that where planned speaker events do not go ahead, as a result of the institution or union’s concerns about mitigating risk in line with the Prevent duty, this **could be considered a constraint on freedom of speech**.

5.2.4 Legal challenge to the Prevent duty guidance: Dr Salman Butt

Our discussion took place a month before a legal challenge to the Prevent duty guidance was due to be heard in the High Court, in December 2016.¹⁰⁹ The judgment is to be published in 2017. One participant described the case:

Dr Salman Butt, a Muslim activist and editor of islam21c.com, was named in a Downing Street press release in September 2015 as an example of an external speaker hosted by British universities who had expressed views contrary to British values. The press release was issued on the day before the specific Prevent duty guidance for higher and further education institutions came into effect. It also referred to the Extremism Analysis Unit, established by the Home Office “to support all government

departments and the wider public sector to understand extremism so they can deal with extremists appropriately”.¹¹⁰

Butt submitted a subject access request under the Data Protection Act 1998¹¹¹ to the Extremism Analysis Unit, to find out how it had assessed Butt as an extremist. In the view of the participant, the information returned by the Unit “*contained very little of what one might consider to be extremist views*” – “*a couple of blog posts*” where Butt had discussed a range of different views on issues like FGM and homosexuality and religion, rather than expressing any particular point of view. Butt claims that the Prevent duty guidance has interfered with his right to freedom of expression – firstly, because since being named in the press release introducing the duty, he has seen a decline in requests for him to speak at universities; and secondly, because he has “*self-censored to a considerable extent*” in order to avoid tarnishing by association the reputation of other speakers at panel events.

The legal case has two main aspects. Firstly, there is a challenge to particular aspects of the Prevent duty guidance. The challenge argues that the guidance, with its focus on non-violent extremism, goes beyond its statutory base (section 26 of the Counter-Terrorism and Security Act 2015) which requires specified authorities to have due regard to the need to prevent people from being drawn into terrorism (see Section 5.2.2.B). The challenge also argues that the guidance contravenes the duty on universities to have secure freedom of speech on campus, as required by the Education (No. 2) Act 1986 and section 31 of the Counter-Terrorism and Security Act, and so is unlawful. Finally, the challenge argues that the guidance discourages universities from hosting speakers with views which are “*objectionable or different or unsettling*” but not illegal; this may constitute a disproportionate (and therefore unlawful) interference with speakers’ rights to manifest their religion or belief and to freedom of expression, as guaranteed by the European Convention on Human Rights (see Section 5.2.2.D).

Secondly, the case challenges the lawfulness of the collection and storage of data about Butt by the Extremism Analysis Unit. Butt argues that he was “*subject to surveillance*”. Personal information about him was gathered, largely from publicly accessible sources including his blog posts, social media profiles and records of his lectures. The participant also said that this information was supplied to the Extremism Analysis Unit by the charity the Henry Jackson Society.

It should be noted that the legal case is not challenging the lawfulness of Prevent duty itself, as imposed by section 26 of the Counter-Terrorism and Security Act, but only the aspects of the guidance outlined above.

5.3 Defences of the Prevent Duty

Despite the criticisms laid out in Section 5.2, other participants argued that the Prevent duty is necessary in higher education institutions. They sought to challenge some myths about the duty and argued that **any problems that arise are primarily caused by poor implementation rather than problems inherent in the strategy itself.**

They also stressed that Prevent should not just be seen as an offence against dangerous ideas and beliefs. The objects of Prevent also include supporting vulnerable people and building social cohesion through local groups and civil society organisations.

A. Constraints on freedom of speech are due to poor implementation and misunderstandings about the Prevent duty rather than to its design

A major concern concerning the Prevent duty is that **some institutions may ‘over comply’ and try to implement the guidance rigidly**. As discussed in Section 5.2.3.A, a number of participants were concerned that some institutions may be too quick to cancel events with speakers deemed to be controversial. Whereas some participants concluded from this that the Prevent duty is inherently flawed, others argued that **any resultant chilling effect on freedom of speech is due to poor implementation of the duty**, which can be remedied by better training.

These participants emphasised that institutions should apply the duty with a *“pragmatic and sensible approach”* that is tailored to their own environments. Indeed, the specific Prevent duty guidance for higher education institutions states that the duty should be implemented *“in a proportionate and risk-based way”*,¹¹² with each institution taking into account their own estimation of the risk and their particular needs and issues. Furthermore, one participant noted that the Prevent training for university staff often includes a reminder of the importance of the duty to uphold freedom of speech, and examples of views that should be protected under that duty, including that terrorism is a consequence of Western foreign policy. Such training can be found online at the Safe Campus Communities website.¹¹³

Moreover, participants argued that **many universities have in fact been implementing the duty successfully in a pragmatic way**. One participant said that it was *“a good news story”* that *“so many institutions have been able to comply with the duty”*.

Misunderstandings about **the Prevent duty may also constrain freedom of speech on campus by facilitating a culture of self-censorship**. One participant was worried that *“too many students are self-censoring”* because *“they’ve been told they will be referred to Channel if they wear a hijab or talk about foreign policy”*. The participant insisted that this was a false narrative, and that **universities can combat such self-censorship by increasing students’ understandings of the duty**, rather than by opposing it.

B. The Prevent duty’s broad concepts can be interpreted pragmatically

As shown in Section 5.2.2.A, several participants were concerned that Prevent relies on concepts that are too ambiguous and which may be implemented inconsistently by different institutions. Despite such criticisms, other participants argued that **the broadness of terms like non-violent extremism and British values could actually be viewed as an advantage**, because it allows institutions to use their *“common sense”* and interpret the concepts pragmatically in ways that suit the particular context.

To demonstrate this **‘common sense’, localised approach**, one participant offered examples of what could be understood by these terms. He recalled a head teacher who had defined British values in their school’s context as meaning *“tolerance, respect for others, community, family”*. He also suggested that saying that *“you cannot be British and Muslim”* could be interpreted as a non-violent but extreme view depending on the situation. Another participant commented that it is more helpful to conceive of non-violent extremism as a spectrum *“from hard to soft”* rather than as part of an extremism / non-extremism binary; such a conception may help institutions to determine whether the expression of particular views is acceptable or not in their context.

“I don’t see why people see these broad terms like British values as half full. I see this as meaning that people can interpret them pragmatically.”

C. The Prevent duty may help to promote freedom of speech on campus

Much of our discussion focused on how the Prevent duty may be creating a “chilling effect” on freedom of speech in universities. However, some participants insisted that there is little evidence that the duty had produced such an effect. They pointed out that one of the “*unintended consequences*” of the introduction of the duty has been to stimulate a major debate about freedom of speech on campuses, with students in a number of campuses taking part in discussions about the duty. Even if much of this discussion is critical of Prevent, it could be said that “*perhaps there isn’t a chilling effect on campus freedom of speech if students are talking about it*”.

Furthermore, it was suggested that **the Prevent duty may even be a mechanism for securing freedom of speech** in some circumstances. Despite the issues discussed in Section 5.2.3.B about the difficulties of securing balanced panels for external speaker events, some participants insisted that this remains a key way for universities to uphold freedom of speech whilst implementing the Prevent duty, as well as fostering an environment where students feel comfortable challenging the speakers. One participant pointed out that **freedom of speech needs to be protected not only for external speakers but also for their audiences**. He recalled events where students in the audience had been “shouted down” for “challenging the views of extremist organisations like Hizb ut-Tahrir”, and said that some student journalists had been “targeted for bringing up a speaker’s previous history of intolerance or bigotry”. The suppression of such voices, and voices critical of campaigns against the Prevent strategy, could be considered a chilling effect on freedom of speech “which is often overlooked”. The participant argued that by implementing the Prevent duty, for example by ensuring that panels are balanced and that audiences can challenge speakers, universities can in fact uphold freedom of speech.

“There is a problem with organisations writing reports calling for Prevent to be abolished based on a small number of cases – there is a lack of balance here.”

D. Critics of the Prevent duty generalise from exceptional problem cases

In our discussion, a number of situations were cited as evidence of the problematic nature of the Prevent duty (see Section 5.2.1.A). Some participants argued that these are “*a small handful of cases*” which **campaigners against the Prevent strategy use to form unwarranted generalisations**. A participant insisted that such “exceptions” must not be used to discredit the entire Prevent strategy– “*I don’t use my own experiences of being stopped by the police on a train to indicate institutional police racism*”. Another emphasised that **the discourse about Prevent is shaped by “false claims or exaggerations” which must be challenged** – such as claims that the strategy targets people (especially Muslims) “showing increased religiosity” or that cameras have been placed in prayer rooms to monitor students. The participant said that such claims provide unwarranted support for the narrative that Prevent has a chilling effect on freedom of speech.

E. The Prevent duty should be seen as a safeguarding issue and is compatible with other duties on universities

Rather than seeing the Prevent duty as competing with other statutory duties on university management, some participants argued that **it is entirely compatible with other such duties**, including the requirement to secure freedom of speech for staff, students and visiting speakers. They also emphasised that it **should be seen as part of the general safeguarding responsibilities** of university staff and other public sector workers.¹¹⁴ The Prevent duty was said to be bringing

“consistency across the sector” and *“giving universities a consistent policy”* to be followed when staff have concerns about particular individuals.

However, some participants doubted that it was appropriate to see Prevent as a particular aspect of the safeguarding duties of university staff. One participant argued that *“the Prevent duty goes beyond safeguarding duties of universities”* because it requires staff to assess whether exposure to particular views might draw someone towards violence.

Some participants also suggested that a model of Prevent as a safeguarding issue, as understood in schools and further education colleges, could not be transposed easily into the university setting in relation to adults. It was noted that there is a significant difference between the Prevent duty in schools, where teachers have to look out for signs of radicalisation among children, and the duty in universities, where the focus is on managing risks posed by external speakers.

6. The Charity Commission

Beyond the Prevent duty, there are other pressures external to universities which may contribute to a *“chilling effect”* on freedom of speech on campus. **One such pressure may arise from the Charity Commission.** The Commission is the principal regulator for those students’ unions which are registered as charities (the vast majority).

This chapter outlines the preliminary findings of a research project undertaken by one of the participants, which explores the relationship between the Charity Commission and students’ unions. The project examines the impact charity registration has had on unions in the last decade, with a particular focus on the unions’ structures, political activities, and freedom of speech.

6.1 Students’ unions as charities: context

The main statutes relevant to this discussion are the Education Act 1994 and the Charities Act 2006:

- The Education Act 1994 defined the relationship between a students’ union and its university (the governing body), and outlined the responsibilities of the university towards the union. Most students’ unions at this time were subject to charity law as exempt charities.¹¹⁵
- The Charities Act 2006 made major changes in charity law, including requiring exempt charities to have a principal regulator to ensure their compliance with charity law. Under the Act, universities retained their status as exempt charities, with HEFCE being the principal regulator. However, students’ unions that were established for wholly charitable purposes and were above a certain income threshold (most unions) lost their exempt status and were required to register with the Charity Commission, coming directly under the Charity Commission’s regulation. They were required to register by June 2010.¹¹⁶ The Charities Act 2011 consolidated the various charity statutes.

The participant recounted some of the recent developments to do the Charity Commission in the wider context of concerns about extremism. In 2013, the National Audit Office *“slammed”* the Commission for being ineffective and for not doing enough to tackle abuse in the charity sector.¹¹⁷ Since then, the Commission has undergone major changes, *“turning itself into a rigorous and proactive regulator and concerning itself with the enforcement of Prevent”*. In 2014, it received £8

million in funding to help it tackle abuse, including to help it prevent charitable money being used to fund “extremist or terrorist activity”.¹¹⁸ The Charities (Protection and Social Investment) Act 2016 granted the Commission new powers, such as the power to issue official warnings to charities and to make its warnings public.¹¹⁹

The participant noted that one of his interviewees had referred to the “*semi-politicization*” of the **Charity Commission** in recent years, with new figures coming onto the Commission board who view students’ unions as being troublesome and causes for concern. In 2015, the Commission audited ten students’ unions;¹²⁰ supposedly these were randomly selected, but some of the interviewees doubted this, since the ones selected had high proportions of Muslim students. In the audits, the Commission staff were concerned especially with the unions’ external speakers’ policies and implementation of the Prevent duty, as well as issues like the CEOs’ accountability and the responsibility of the trustees. Some of the CEO interviewees commented that the Commission was particularly interested in the Islamic Societies and the unions’ policies to combat the threat of extremism.

6.2 Students’ unions as charities: impact

The research project involved a number of interviews with Chief Executive Officers of students’ unions around the country, discussing the impact of charity registration on the unions’ structures, activities and freedom of speech. The participant noted that his reflections are based on the CEOs’ perspectives and narratives, which were not necessarily objective accounts. They also varied widely; a particular divergence was between CEOs who saw their student body as relatively ‘politicized’ and CEOs who did not.

Prior to 2006, most students’ unions had been subject to charity law as exempt charities, but had been without a regulator to enforce compliance. **The effect of registration was to bring the issue of compliance with charity law to the forefront.**

A. Impact on structures

The requirement to register as charities led to major changes in many unions’ structures. Most of the participants’ interviewees saw these changes as necessary for ensuring good governance and the professionalization of the unions (some of which had faced severe financial difficulties in previous years).

A major area of debate after the 2006 Act concerned the establishment of trustee boards to manage the union as a charity, as required by charity law,¹²¹ and the introduction of external trustees. Though most unions ultimately incorporated external trustees, as advised by the NUS, many experienced a period of considerable controversy among the student body over the matter, and some chose not to have them. The ongoing tension is between **the need for “administrative effectiveness”**, provided by external trustees with experience of financial management, and **the importance of “democratic representation”** – trustee boards being led by students who have been elected to represent the views of the student body.

“Who leads students’ unions – is it the students or the external trustees?”

The CEOs interviewed for the research had differing views about whether external trustees weakened or strengthened student influence over decision-making. Some argued that the pool of potential trustees for small unions can be relatively small, meaning that sometimes they are stuck with ineffectual external trustees. Other CEOs felt that there could be a “*hierarchy of influence*

within trustee boards”, with experienced external trustees dominating debates about important issues, which raises questions about who leads the unions in practice. However, other CEOs argued that external trustees are *“able to hold the CEO to account”*, thereby giving student trustees greater influence over decisions by ensuring that the CEO’s personal perspective is not dominant.

According to the participant, all his interviewees questioned how appropriate it is to integrate students’ unions into the charity sector. They noted that the unions have very different sizes, structures and activities to other charities; and *“many felt that the Charity Commission does not understand students’ unions”* and lacks the resources needed to increase the knowledge of its staff.

B. Impact on activities

Charities can only devote resources to, and campaign on, issues which further their charitable objects. Under charity law, charities are able to express ‘political’ positions, and campaign on ‘political’ issues, as long as these activities are legitimate and reasonable means of furthering the charitable objects. Political activity should not dominate the activities of charities, should not be undertaken as an end in itself, and should be undertaken only with due regard to the overall financial position of the charity and its other commitments.¹²² Many unions adopted the NUS’ Model Constitution when registering as charities, which recommends that unions’ charitable objects should include the advancement of education of students, the promotion of their interests and welfare, and the provision of recreational and debating activities for their personal development.¹²³

This *“raises questions about what kinds of activity are acceptable and what kinds of activity are ultra vires [‘beyond the powers’]?”* The Charity Commission’s guidance for students’ unions indicates that it would consider it acceptable for charitable students’ unions to comment on “street lighting near the campus” or “more public transport at night”, because these issues fulfil the unions’ charitable objects and affect “students as students”. **Yet the Commission would consider it unacceptable for students’ unions to comment publicly on issues which do not directly affect the welfare of “students as students”** – such as “campaigns to outlaw the killing of whales” or “the treatment of political prisoners in a foreign country”.¹²⁴

The participant noted that this has **created tensions for “highly politicized” students’ unions**. Coming under the Charity Commission’s direct supervision after 2006 forced the unions to pay closer attention than they had before to the limits on political activity under charity law.

The participant stressed that most CEOs he had interviewed insisted that students on their campuses were still able to engage in all the activities they wanted to. The CEOs reported that whilst some unions, and some sabbatical officers, are *“politicized”* and may feel constrained by charity law, in most places the students have little real desire to be involved in ‘political’ campaigning at a national level. They *“need to focus on their studies and pay off their tuition fees”*.

“How does the Charity Commission decide what is acceptable political activity?”

Legal questions remain, however. **Unions may find it difficult to know what the Charity Commission understands by ‘political’**, and whether a particular activity would be considered too ‘political’ and beyond the charitable objects by the Commission. There may also be situations where any decision could be considered ‘political’. For example, the participant noted that in 2013 the (former) University of London Union had made a policy that none of their officers could attend a Remembrance Day service representing the union (though they could attend in a personal capacity).

The President of the union commented that this was a choice between two political activities – going to, or conversely avoiding, Remembrance Day events.¹²⁵ Unions may also

find it difficult to know where the boundary lies between forming a policy on something which is *ultra vires*, and campaigning on it (the former would be acceptable under charity law, the latter not).

C. Impact on freedom of speech

According to the participant, most of his interviewees **did not think that their unions' charitable status had created much of a chilling effect on freedom of speech** on campus, nor had restricted student activity. They noted that most student societies understood the restrictions on 'political' activity placed on charities and did not find this problematic. Furthermore, most of the CEOs said that they had not had to cancel any external speaker events.

However, the CEOs indicated that the Charity Commission could well contribute to a chilling effect on freedom of speech and a closing down of controversial voices on campuses which have highly politicized student bodies or have connections to alleged extremist students or external speakers. One interviewee from such an institution said that his parent university *"would like us to push more than we do. But sadly I've got to be risk averse... It's led to some speakers being talked about and being stopped before they're even presented as potential candidates"*. The interviewee was concerned in this case about protecting the union's reputation from damage (a key responsibility of the trustees under charity law),¹²⁶ out of fear of sanction from the Charity Commission. In order **to adhere to charity law and avoid risking damage to the charity's reputation, some students' unions are choosing to disallow external speakers** who may be deemed 'controversial'. The participant implied that this could be seen as a constraint on freedom of speech.

Charity rules on political activity and statements may also have a censorial effect on student trustees. The participant recalled one student trustee who said she had tweeted a political message about the 2016 US election, and then worried whether she was allowed to do so under charity law. It was pointed out that student trustees are elected to unions *"to have a political opinion"*; but upon election, they become charity trustees, and therefore *"they can't express a political opinion if it goes beyond education"*.

7. Ways to move forwards

Through our discussion, participants came to a **broad consensus on the problem: freedom of speech on campus is under threat**, from various angles. They disagreed on where the primary cause of the problem lies. There was also a **broad consensus on what an ideal future for the sector would be: a sector where freedom of speech and academic freedom are protected, but also where students are protected from harmful behaviour or views**. They disagreed on what the balance between these two positions should be and on where the line should be drawn between harmful speech which is permissible and harmful speech which is not (see Chapter 8).

This chapter sets out the range of approaches suggested by participants to move the higher education sector forwards.

7.1 Developing a framework for the promotion of freedom of speech

In general, the participants agreed **that a major initiative is needed which would stimulate coordinated discussion across the sector** about these issues, and which would ultimately **develop practical policies** to help universities to protect and promote freedom of speech and academic freedom.

An initiative of this kind would need to be **driven by the sector** rather than government and be **inclusive of the views of a wide range of stakeholders** – including students, academic staff, university management, regular external speakers, higher education bodies including the NUS, Universities UK and the University and College Union, the Office for Students, the Department for Education and the Home Office. In particular, a wide range of student voices would need to be heard and taken account of. Those leading the initiative would need to develop strategies for building sector consensus, managing disagreement, and securing parliamentary and government support for any final recommendations.

A major problem that currently inhibits productive debate on these issues in the sector is **a tendency among all parties to caricature the position of their opponents and to generalise from exceptional situations**. Any initiative moving forwards must be careful to avoid this and be willing to listen to different perspectives and priorities.

One outcome could be the **creation of a model framework for universities to deploy**, produced collaboratively by students, universities and other stakeholders. Such a framework should be rooted in the principle that universities should proactively encourage freedom of expression; but it should also take into account the concerns underlying safe space policies, that there are structural inequalities which can constrain the freedom of speech of minority groups and these need to be tackled. Where restrictions on freedom of speech need to be made, the framework would need to set out clearly the reasons for this and should include a mechanism by which people can challenge any such restrictions.

7.2 Undertaking new research

There is an **urgent need for large-scale research** on freedom of speech issues, radicalisation and counter-extremism policies in universities. Our discussion highlighted the major problem where policies (and criticisms of policies) are based on anecdote rather than a robust evidence base.

A. Empirical research

Participants suggested several key areas where more empirical research is needed:

- The extent of radicalisation on campuses and the processes by which this may happen
 - This includes assessing the relative importance of different factors in driving radicalisation, including the role of external speakers with ‘extreme’ views
- The extent of harassment and hate crime on campuses
- How freedom of speech and academic freedom are understood and protected at a policy level, including:
 - By government
 - By higher education bodies like HEFCE / the Office for Students, Universities UK, the NUS
 - By individual universities
- The impact of policies affecting freedom of speech and academic freedom (including the Prevent duty, no platforming and safe space policies) on the experiences of students, staff and external speakers, including:
 - Students, staff and speakers who may be particularly marginalised by these policies (including speakers with ‘controversial’ views)
 - Religious students, and students involved in religion-based or belief-based societies (including atheist and humanist societies)
- These issues in further education colleges, which have very different contexts to higher education institutions (including a greater emphasis on the Prevent duty as part of overall safeguarding responsibilities)

These issues need to be explored with consideration to the wider context of the counter-terrorism strategy as applied across society. Multidisciplinary approaches are needed which incorporate philosophical, legal, political and sociological studies.

B. Conceptual research

At the same time, we need conceptual inquiries into freedom of speech and academic freedom. Such inquiries need to be forward-looking and articulate what it *could* look like for a university to have an ideal balance between protecting freedom of speech and protecting students from harm.

In addition, studies are needed which bring greater clarity to the terms underpinning the counter-extremism strategy – including concepts like ‘extremism’ and ‘British values’.

7.3 Improving the Prevent duty

A. Assessing the impact of the duty

There is a need for continued discussion about the impact of the Prevent duty on the experiences of students, staff and external speakers. Some participants called for **universities to facilitate open**

discussions with students about the operation of the duty on campuses in order to make it transparent, to empower students to have a say on its implementation, and to rebuild trust between students and staff.

Participants also suggested that **universities should undertake Equality Impact Assessments as part of their implementation of the Prevent duty**, in order to understand the potential effects of policies on different groups of people. Such assessments are important for helping public authorities to comply with their general equality duty under the Equality Act 2010 to have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between people with protected characteristics and people without them (see Section 2.2).¹²⁷

It was noted that the government failed to carry out an Equality Impact Assessment of the Prevent strategy when the equality duty was introduced. It is now carrying out such an assessment (prompted by the legal challenge to the Prevent duty – see Section 5.2.4).

B. Legal strategies

Some participants felt that any problems to do with the Prevent duty are primarily due to poor implementation, whilst others thought that the issues are inherent in its design (including a lack of sufficient evidence base for it). These starting points led to alternative suggestions for moving forwards.

Advocates of the first position suggested that the Prevent duty guidance needs to be interpreted by relevant higher education institutions in a *“more liberal way, which is compatible with free speech”*. This would involve a **common sense, pragmatic approach** (see Section 5.3.B). For example, references to non-violent extremism could be interpreted narrowly as speech or behaviour which has a tendency to encourage violence. The requirement in the specific guidance for universities that risk around external speakers must be *“fully mitigated”* could be *“read down”*, so that in practice such risk would only need to be *“partially mitigated”* (a more realistic aim. See Section 5.2.3.A). It was suggested that a legal group should be commissioned to issue guidance to university governing bodies and staff about how the Prevent duty can be implemented pragmatically.

Advocates of the second position could **pursue direct legal challenges** to the Prevent duty. There has been a challenge to certain aspects of the duty guidance, on the grounds that these are incompatible with statute and should be struck down (see Section 5.2.4). At the time of writing, the judgment in this case is yet to be released. The government’s defence in this case is that universities can implement the guidance in a pragmatic way that is compatible with their duties regarding freedom of speech. Critics of the Prevent duty pointed out that even if the guidance is not struck down, a very helpful outcome could be that the courts would clarify that the guidance can be interpreted pragmatically.

C. Improving the accountability of Prevent

On several occasions participants argued that the Prevent strategy in general lacks accountability and transparency. They emphasised that **making the strategy transparent is critical for rebuilding good relationships** between the NUS, students’ unions and the Home Office. This point was also made in the Home Affairs Select Committee’s report arising out of its 2016 inquiry into countering extremism. The Committee recommended that the government should publicise its engagement activities through Prevent and provide updates on the outcomes.¹²⁸

The participants also **called for an independent body which could provide scrutiny of the strategy’s implementation in universities**. One approach may be to expand the remit of the Office of the

Independent Adjudicator for Higher Education (see Section 7.4.A). The Home Affairs Select Committee also called for greater scrutiny, recommending that the Home Office should appoint an independent panel to review the Prevent training being provided to public sector workers, and to report on the advantages and disadvantages of placing the Prevent duty on a statutory basis and on which institutions should be subject to it.¹²⁹

7.4 Expanding the remit of regulatory or review bodies

There are a number of bodies which regulate higher education providers or review their decisions. Participants considered how the responsibilities of certain bodies could be modified in order to promote freedom of speech on campus. Much of the current system will be changed by the Higher Education and Research Bill, which is going through Parliament at the time of writing.

A. The Office of the Independent Adjudicator for Higher Education

The Office of the Independent Adjudicator provides an independent scheme which reviews complaints by students against higher education providers in England and Wales. Where the Office finds a complaint to be justified or partly justified, it may make recommendations which the provider is expected to comply with.¹³⁰

Some participants suggested that the **remit of the Office could be expanded to cover complaints relating to the Prevent duty**. This would provide a mechanism by which students could appeal decisions made by universities in the course of their implementation of the duty.

B. The Quality Assurance Agency for Higher Education

The Quality Assurance Agency is an independent body that monitors and advises on academic standards and quality in UK higher education providers. One participant suggested that **the remit of the Agency could be expanded to cover the duties on universities to uphold freedom of speech and academic freedom**. This would mean that providers would be assessed on their adherence to these principles as part of the Agency's monitoring service.

C. The Office for Students

The Higher Education and Research Bill proposes the creation of an Office for Students for the English higher education sector, to be created from a merger of HEFCE and the Office for Fair Access. The Office will have a wider remit than HEFCE, taking on responsibility for the English sector's quality assurance regime and also for the granting of degree awarding powers and university title. It will also take on HEFCE's responsibility for monitoring the compliance of higher education institutions with the Prevent duty.¹³¹

Participants were broadly **hopeful that the new Office for Students will have a positive impact on the place of freedom of speech and academic freedom** in universities. They noted that the Higher Education and Research Bill places a duty on the Office for Students to "protect academic freedom", including, in particular, the freedom of institutions to determine course content and the manner in which they are taught, supervised and assessed; to determine and apply criteria for selection, appointment and dismissal of academic staff; and to determine and apply criteria for the admission of students.¹³² The Secretary of State would be required to have "regard" to the need to protect academic freedom (defined in the same terms) when issuing guidance, directions or grants to the Office.¹³³ The Bill would place a "public interest governance condition" on English higher education providers. This means that the providers' governing documents would need to be consistent with a list of principles published by the Office for Students which should guide providers to "perform their functions in the public interest". One of these principles must be that academic staff at English

providers have freedom within the law to “question and test received wisdom” and to “put forward new ideas and controversial or unpopular opinions” without placing themselves in jeopardy of losing their jobs or privileges.¹³⁴

The participants also suggested that the Office for Students would have **greater independence from the higher education sector** than HEFCE currently does, which will be important for creating trust in the new regulator. There was also hope that the Office will **give students a greater voice in the regulation of the sector** than they do now. Since our consultation, an amendment has been added to the Bill stipulating that at least one of the “ordinary members” of the Office (to be appointed by the Secretary of State) must have “experience of representing or promoting the interests of individual students, or students generally, on higher education courses provided by higher education providers”.¹³⁵

7.5 Re-thinking counter-terrorism strategies: a grassroots approach

One participant who was critical of the general Prevent strategy set out a possible process for creating an alternative, grassroots strategy for dealing with the threat of terrorism. This involved several steps:

A. Rebuild people’s trust in the government and security services

The participant argued that this will require government officials to be honest about situations where the implementation of the Prevent strategy has had problematic effects. They should be transparent on their policies and open to engaging with all perspectives on counter-terrorism policies and not just those who agree with the government’s perspective. The government should also demonstrate that it understands the concerns of Muslims in particular, both about the Prevent strategy and about other challenges facing them, including widespread Islamophobia.

B. Improve the evidence base on the effects of the Prevent duty in universities

This is needed so reliable assessments can be made about how successful the Prevent duty has been in preventing radicalisation and how it has impacted on students, particularly Muslims. More research is needed on the processes which may drive radicalisation on campus; and also on the legal duties on freedom of speech and academic freedom, in order to evaluate whether they are sufficient. All research inquiries into these matters should draw on best practice from elsewhere in the world, including from Northern Ireland’s experiences of countering terrorist activity.

C. Create a framework of principles to guide a new strategy

As discussed in Section 5.2.2.A, many participants were concerned about the assumptions underpinning the Prevent strategy, including the government-derived definitions of extremism and British values. The participant suggested that we need to find inclusive, community-based mechanisms for producing frameworks of principles which could underpin counter-terrorism strategies – both on a national scale and locally within institutions like universities. Alongside a commitment to safety and security, such principles could include commitments to freedom of expression; transparency; pragmatism; freedom from discrimination; and community cohesion.

“Those who are considered ‘non-violent extremists’ can be those who can reach out to vulnerable people who may be at risk of radicalisation.”

The process of deriving such a framework must involve bringing together a variety of stakeholders and people of different perspectives, in order to establish consensus and trust in the final policy outcomes.

D. Evaluate counter-terrorism policies against the framework of principles

Once an institution has produced a community-derived framework of principles, this can be used as a standard against which institutional policies to counter the threat of terrorism can be measured.

The participant showed how this could be applicable for university management when deciding upon an external speakers' policy. He evaluated three possible policies:

1. All plans for external speaker events must be shared with the university / students' union at least two weeks before the event. Events deemed to be controversial will be investigated and may be cancelled.
 - **Assessment:** This approach may deter students from requesting external speakers and so may constrain freedom of expression. It is unclear whether external speakers are real drivers of radicalisation, so it is not certain that this approach will increase safety and security. Banning particular speakers may lead to resentment on the part of particular groups of students, such as Muslims, if they feel that their requests for speakers are treated differently than other students' requests. As such this approach may not uphold the principle of community cohesion.
2. All plans for external speaker events must be shared with the university / students' union at least two weeks before the event. Events deemed to be controversial will be investigated. Policies are put in place to mitigate any potential risk; for example, the university / union will require the event to be recorded and a controversial speaker to be balanced out by an alternative voice on the panel.
 - **Assessment:** This approach adheres to the principle of freedom of expression more than the first one, because it permits speakers with controversial views to attend. However, the approach may be problematic for student societies wishing to advocate for a particular, controversial perspective, because the societies would be forced to engineer a balanced panel. In this way, freedom of expression may actually be constrained. The approach may also fail to uphold the principle of pragmatism due to the requirement for speaker requests to be submitted well in advance; this may hinder students' abilities to hold the events they want.
3. All plans for external speaker events must be shared with the university / students' union a few days before the date. All events must be advertised transparently on the university / union's website in advance. An appeals system will enable people to raise complaints about proposed speakers in advance, in which case the university / union must assess whether the proposed speakers pose a risk. The event organisers must be able to explain their rationale for inviting the speakers. Unless there is a very serious problem, all events will go ahead as the event organisers want them to.
 - **Assessment:** Using his framework of principles, the participant judged this to be the best approach. It is pragmatic and reduces to a minimum potentially off-putting requirements such as the need to secure a balanced panel. It maximises freedom of expression whilst ensuring there is a mechanism for upholding safety and security.

8. Areas of consensus and disagreement

Our discussion brought together people with very different perspectives on the issues around freedom of speech on campus. We identified some important areas of consensus. At the same time major divisions remain, particularly around the Prevent duty.

If progress is to be made, different stakeholders in higher education will need to identify and build on areas of agreement, and develop a strategy for managing areas of disagreement.

8.1 Areas of consensus

- There is much to be gained from bringing together experts with different views to debate controversial issues in a private, safe environment. This was seen as a model for future progress.
- Students need to feel safe and free from intimidation on campus. Universities need to protect students from being drawn into terrorism.
 - There was disagreement about the extent of the threat of radicalisation on campus. There was also disagreement about whether the Prevent duty is the best mechanism for combatting this threat.
- Universities are places where the orthodoxies of society can be interrogated critically and where radical ideas can be explored. Students need to be exposed to a wide variety of ideas and views, including ones they disagree with, as part of their university education.
- Freedom of speech within the law, and academic freedom, are essential in universities and must be upheld strongly. Universities should be proactive in promoting these principles and should also stimulate inclusive discussion about them on campus, involving students and staff.
- Freedom of speech on campus is under threat, from multiple angles. One cause of this is when policies like the Prevent duty or no platforming or safe space policies are implemented badly (including without a pragmatic approach that deals with each case flexibly).
 - There was disagreement on the extent of this threat, its prime cause, and the required solutions.
- The right to freedom of speech requires clearer definition. It must be upheld for all students. Particular attention needs to be given to protect the free expression of students from minority backgrounds; students with views dissenting from the orthodoxies of wider society; and students with views dissenting from the orthodoxies of their own student bodies.
- The exercise of one person's right to free expression may cause offence to someone else. This is acceptable since there is no right to be free from offence. There are, however, legitimate restrictions on a person's right to free expression, as set out in law.

“The two positions may seem polarised but we’re trying to get to same end – providing a space where people feel able to express their views and to discuss safely. It’s how universities do that in an open and transparent manner.”

- There was disagreement about whether speech which is lawful but which could be considered offensive should be restricted; and about the point at which ‘offensive’ speech becomes harmful or intimidating speech.
- The responsible exercise of one’s right to free expression involves respecting other people’s rights to free expression and being willing to listen to other people’s views.
- Cancelling events with external speakers out of concern that they may say something extreme (though within the law) should only be a last resort. The best way of dealing with views deemed problematic is to create a space where they can be debated and challenged in public.
- The concepts underpinning the Prevent duty – especially non-violent extremism – are ambiguous and can lead to inconsistencies in the implementation of the duty.

8.2 Areas of disagreement

- **The extent of the threat to freedom of speech on campus.** Some participants felt strongly that there is a “*crisis*” of freedom of speech. Others agreed that there is a “*chilling effect*” on free expression but felt that more research is needed before the term ‘crisis’ can justifiably be used.
- **The prime cause of the threat.** Some participants argued that both the Prevent duty and student actions like no platforming and safe space policies are constraining freedom of speech on campus. Meanwhile, others placed prime emphasis on either the Prevent duty or the student policies as the main source of the problem. There was also disagreement about whether the problem with the policies was the policies themselves, or implementation or design.
- **The required solutions to the threat.** Since there was disagreement on the extent to which the Prevent duty or student policies constrain freedom of speech, there was also division on the proposed solutions. In broad terms, there were three possible approaches to the policies (both the Prevent duty and the student policies):
 - The problem is in the policy’s implementation; better training is needed for those people carrying it out.
 - The problem is in the policy’s design; the policy needs to be reformed.
 - The problem is the policy itself; the policy needs to be dropped. Either:
 - The policy needs to be replaced; or:
 - The pre-existing duty of care mechanisms are sufficient for keeping campuses and students safe.

- **The appropriate balance between freedom of speech and freedom from harm.** Some participants emphasised the harm that can be done by speech which is lawful but which intimidates or is offensive to particular groups of students. In this view, restricting such speech and creating safe spaces will enable all students to flourish and to express their own views freely. On the other hand, other participants were concerned that safe space policies can protect particular ideas from critical challenge and can

“Universities have an obligation to uphold free speech but also have a duty to acknowledge inequalities among students.”

reduce students' exposure to a wide range of views. In the balance between freedom of speech and freedom from harm, they placed especial emphasis on the former.

Annexe 1. List of participants

Ms Samayya Afzal	Executive Councillor National Union of Students
Mr Abu Ahmed	Head, Training and Engagement Home Office, Prevent Directorate
Ms Yasmine Ahmed	Executive Director Rights Watch (UK)
Ms Kate Allan	Head of Legal Services Kingston University
Mr David Anderson, QC	Independent Reviewer of Terrorism Legislation
Dr Kristin Aune	Senior Research Fellow, Centre for Trust, Peace & Social Relations Coventry University
Mr Robert Behrens	Visiting Professor UCL Institute of Education
Mr Paul Bowen, QC	Barrister, Queen's Counsel Brick Court Chambers
Ms Amanda Brown	Assistant General Secretary: Advice, Policy and Campaigns National Union of Teachers
Ms Shenaz Bunglawala	(Formerly) Head of Research MEND
Mr David Corke	Director of Education and Skills Policy Association of Colleges
Professor Ian Cram	Professor of Comparative Constitutional Law School of Law, University of Leeds
Ms Jo Ferris	South East Region HE/FE Prevent Coordinator Department for Education
Ms Laura Gibbs	Chief Operating Officer Queen Mary University of London
Ms Rachel Hall	Public Policy Journalist HE at Research Fortnight
Mr Max Harris	Examination Fellow All Souls College
Mr Nick Hillman	Director Higher Education Policy Institute

Lord Macdonald, QC	Warden Wadham College
Mr Aadam Muuse	Black Students' Officer National Union of Students
Mr Simon Perfect	Teaching Fellow School of Oriental and African Studies
Dr Aisha Phoenix	Postdoctoral Researcher: Re/presenting Islam on Campus project School of Oriental and African Studies
Ms Rachel Robinson	Policy Officer Liberty
Mr John Ryan	Key Associate (Leadership Foundation for Higher Education); former University Secretary and Pro Vice Chancellor (Students) University of Worcester
Professor Alison Scott-Baumann	Professor of Society and Belief School of Oriental and African Studies
Ms Amrit Singh	Senior Legal Officer Open Society Justice Initiative
Miss Rebecca Skellett	Senior Programme Manager Institute for Strategic Dialogue
Mr Rupert Sutton	Research Fellow The Henry Jackson Society
Mr Hugh Tomlinson, QC	Queen's Counsel Matrix Chambers
Dr Judith Townend	Lecturer in Media and Information Law University of Sussex
Mr Nizam Uddin	Trustee, School of Oriental and African Studies; Head of Communications, HRH The Prince of Wales's Mosaic Initiative
Mr Miqdaad Versi	Assistant Secretary General Muslim Council of Britain
Professor Julius Weinberg	President Kingston University
Mr Haydar Muntadhar (Zaki)	Outreach Officer and Events Quilliam Foundation

Endnotes

1. Introduction

¹ In January 2017 the House of Lords inserted an amendment at the beginning of the Bill, declaring that “UK universities are autonomous institutions and must uphold the principles of academic freedom and freedom of speech.” Higher Education and Research Bill (2016-17) 97. As amended in Committee, 30th January 2017, s. 1(1). <https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0097/17097.pdf>

Freedom of speech in universities was discussed in the House of Lords during its debate on the Higher Education and Research Bill on 25 January 2017 – see <https://hansard.parliament.uk/Lords/2017-01-25/debates/B510EEDD-43EC-4FA9-8222-865249D8A3D2/HigherEducationAndResearchBill>.

² House of Commons Home Affairs Committee (2016) *Radicalisation: The Counter-Narrative and Identifying the Tipping Point*. Eighth Report of Session 2016-17. London: HMSO.

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/countering-extremism/>

³ Home Office (2015) *Revised Prevent Duty Guidance: For England and Wales*. London: HMSO.

<https://www.gov.uk/government/publications/prevent-duty-guidance>

⁴ Home Office (2015) *Prevent Duty Guidance: For Higher Education Institutions in England and Wales*. London: HMSO. <https://www.gov.uk/government/publications/prevent-duty-guidance>

2. Legal frameworks in England and Wales

⁵ Education (No. 2) Act (1986). London: HMSO, s. 43(1, 2).

⁶ *Ibid*, s. 43(3-4).

⁷ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) arts. 9-11.

⁸ “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” *Ibid*, art. 10(2).

⁹ For the purpose of this Act, a “public authority” includes a court or tribunal and “any person certain of whose functions are functions of a public nature”. Human Rights Act (1998). London: HMSO, s. 6(1, 3).

Some bodies are ‘pure’ public authorities, such as government departments. Other bodies are considered ‘hybrid’, or ‘functional’, public authorities by virtue of the fact that they are performing a public function.

¹⁰ Counter-Terrorism and Security Act (2015). London: HMSO, s. 31.

¹¹ European Union (2010) *Charter of Fundamental Rights of the European Union*, arts. 10-12.

¹² Education Reform Act (1988). London: HMSO, s. 202(2). The higher education institutions this duty applies to are set out in s. 202(3).

¹³ The Education Reform Act imposes the obligation concerning academic freedom not on higher education institutions directly but on the University Commissioners, who functioned from 1988 to 1996. The principle of academic freedom has become enshrined in the constitutions of many universities, including some post-1992 institutions. Universities UK (2011) *Freedom of Speech on Campus: Rights and Responsibilities in UK Universities*. London: Universities UK, p. 45. <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/freedom-of-speech-on-campus.aspx>

¹⁴ Higher Education Act (2004). London: HMSO, s. 32.

¹⁵ Counter-Terrorism and Security Act (2015) s. 31.

¹⁶ European Union (2010) *Charter of Fundamental Rights of the European Union*, art. 13.

¹⁷ For the University and College Union’s statement on academic freedom, see <https://www.ucu.org.uk/academicfreedom>. For Universities UK’s statement, see Universities UK (2011) *Freedom of Speech on Campus*, p. 9.

¹⁸ Convention for the Protection of Human Rights and Fundamental Freedoms [1950], art. 14; [2000], art. 1.

¹⁹ Equality Act (2010). London: HMSO, s. 4.

²⁰ Student societies will be considered to be acting as associations if they have more than 25 members and admit their members under a selection process in accordance with their rules. Equality and Human Rights

Commission (2014) *Gender Segregation at Events and Meetings: Guidance for Universities and Students' Unions*. Manchester, EHRC, pp. 3-4. <https://www.equalityhumanrights.com/en/publication-download/gender-segregation-events-and-meetings-guidance-universities-and-students>

²¹ Universities UK (2011) *Freedom of Speech on Campus*, p. 55.

²² For a discussion of the problematic definition of 'belief' for the purposes of the Equality Act, including political belief, see Equality and Human Rights Commission (2016) *Religion or Belief: Is the Law Working?* Manchester: EHRC, pp. 20-1. <https://www.equalityhumanrights.com/en/publication-download/religion-or-belief-law-working>

²³ Equality Act (2010) s. 13. Unlawful direct discrimination can also occur on the basis of a perception that a person has a protected characteristic, even if that perception is wrong; or on the basis of a person's association with someone else who has the relevant protected characteristic. See also Equality and Human Rights Commission (2014) *Equality Act 2010: Technical Guidance on Further and Higher Education*. Manchester: EHRC, pp. 48-66. <https://www.equalityhumanrights.com/en/publication-download/equality-act-2010-technical-guidance-further-and-higher-education>

²⁴ Equality Act (2010) s. 19. See also Equality and Human Rights Commission (2014) *Equality Act 2010*, pp. 67-81.

²⁵ Equality Act (2010) s. 26(1-3).

²⁶ Equality and Human Rights Commission (2014) *Equality Act 2010*, pp. 119-26.

²⁷ For the purposes of the Act, a "public authority" is either a body listed in Schedule 19 of the Act, or any other body which carries out a public function (in the case of private or voluntary bodies, the duty applies only when they are carrying out public functions). The protected characteristics covered by the Public Sector Equality Duty are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Equality Act (2010) s. 149(1, 7).

²⁸ Terrorism Act (2000). London: HMSO, s. 1-3. See also Explanatory Notes to the Terrorism Act 2000, para. 10.

²⁹ For an in-depth discussion of the development of the Prevent strategy, see Open Justice Society Initiative (2016) *Eroding Trust: The UK's PREVENT Counter-Extremism Strategy in Health and Education*. New York, NY: Open Society Foundations. <https://www.opensocietyfoundations.org/reports/eroding-trust-uk-s-prevent-counter-extremism-strategy-health-and-education>

³⁰ Home Office (2006) *Countering International Terrorism: The United Kingdom's Strategy*. London: HMSO, pp. 1-2. <https://www.gov.uk/government/publications/countering-international-terrorism-the-united-kingdoms-strategy>

³¹ Open Justice Society Initiative (2016) *Eroding Trust*, p. 23.

³² Home Office (2011) *Prevent Strategy*. London: HMSO, p. 1.

<https://www.gov.uk/government/publications/prevent-strategy-2011>

³³ Ibid, pp. 23-24, 107.

³⁴ Counter-Terrorism and Security Act (2015) ss. 2, 16-20, 21, 36.

³⁵ Ibid, s. 26(1).

³⁶ For the list of specified authorities, see *ibid*, sch. 6.

³⁷ Ibid, s. 31(2).

The duty to have regard to the need to uphold academic freedom applies to higher education institutions indicated in the Education Reform Act (1988) s. 202(2).

³⁸ Counter-Terrorism and Security Act (2015) s. 29(1, 2).

³⁹ Ibid, s. 30(1, 2).

⁴⁰ Ibid, s. 31(3).

⁴¹ Ibid, s. 32(2, 3).

⁴² Higher Education Funding Council for England (2016) *Updated Framework for the Monitoring of the Prevent Duty in Higher Education in England*. London: HEFCE, p. 9. <http://www.hefce.ac.uk/pubs/year/2016/201624/>

⁴³ Higher Education and Research Bill (2016-17) 97. As amended in Committee, 30th January 2017.

<https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0097/17097.pdf>

⁴⁴ Home Office (2015) *Revised Prevent Duty Guidance: For England and Wales*.

⁴⁵ Home Office (2015) *Prevent Duty Guidance: For Higher Education Institutions in England and Wales*.

⁴⁶ Home Office (2009) *Pursue Prevent Protect Prepare: The United Kingdom's Strategy for Countering International Terrorism*. London: HMSO, p. 15.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228644/7547.pdf

⁴⁷ Home Office (2011) *Prevent Strategy*, p. 108.

⁴⁸ Counter-Terrorism and Security Act (2015). London: HMSO, ss. 2, 16-20, 21, 36.

⁴⁹ Open Justice Society Initiative (2016) *Eroding Trust*, p. 29.

3. Attitudes to freedom of speech on campus

⁵⁰ <http://www.spiked-online.com/free-speech-university-rankings/how-we-rank#.WLTZOzuLRdg>

⁵¹ <http://www.spiked-online.com/free-speech-university-rankings/analysis#.WLTaVDuLRdg>

⁵² The survey was conducted between 16th and 22nd March 2016 using YouthSight Monitor's OpinionPanel community. The respondents were from all years of study. There were 449 male and 557 female respondents. Quotas were set on gender, university type and the year of study and weighting was added to ensure a balanced sample. Nick Hillman (2016) *Keeping Shtum? What Students Think of Free Speech*. Wave 2 of the HEPI / YouthSight Monitor. Oxford: Higher Education Policy Institute, p. i.
<http://www.hepi.ac.uk/2016/05/22/keeping-shtum-students-think-free-speech-wave-2-hepi-youthsight-monitor/>

⁵³ 41% responded 'yes, completely'; 42% responded 'yes, somewhat'. Ibid, pp. 6-7.

⁵⁴ On a five point scale ranging from 1 ('Completely disagree') to 5 ('Completely agree'), 27% chose 5 and 33% chose 4. There was a disparity between male and female students, with 33% of men choosing 5 compared to only 22% of women. Ibid, pp. 10-11.

⁵⁵ On a five point scale ranging from 1 ('Completely disagree') to 5 ('Completely agree'), 14% chose 5, 29% chose 4 and 40% chose 3 (neutral). Ibid, pp. 16-17.

⁵⁶ Male respondents slightly preferred prioritising unlimited free speech to prioritising protection from discrimination (37% to 34%). Female respondents, however, were twice as likely to favour prioritising protection from discrimination to prioritising unlimited free speech (40% to 20%). Ibid, pp. 24-5.

⁵⁷ 36% said that the NUS should refuse a platform to those that may cause offence to particular student groups. 40% said that, to some extent, they agreed with some of the people / organisation the NUS ban but not all. 11% said that the NUS should not limit free speech or discussion. Ibid, pp. 38-9.

⁵⁸ Respondents were given a list of political parties (also including the English Defence League). 27% of respondents said that none of the groups should be banned and 23% said they did not know. Ibid, pp. 40-1.

⁵⁹ Male respondents were more likely to agree with the statement than female respondents (53% to 38%). The statement did not distinguish between teaching and research; it is possible that splitting these issues would have elicited different responses. Ibid, pp. 46-7.

⁶⁰ Respondents were given the following description of the safe spaces concept: "There have been calls for universities to be run as safe spaces, so that debate takes place within specific guidelines in order to ensure people do not feel threatened because of their gender, sexual orientation or ethnicity. This might include anti-discrimination and anti-harassment measures in official university missions, value statements in universities' official communications and staff training. However, opponents of safe space policies fear free speech might be suppressed and differing political views stifled as a result of safe space policies." Ibid, pp. 50-1.

⁶¹ Respondents were given the following description of the trigger warning concept: "In many higher education courses, such as English literature or Law, difficult issues are sometimes discussed that some people may find uncomfortable – for example, issues around sexual consent. It has been suggested that lecturers should use 'trigger warnings' to warn students in advance so that those who wish to leave can do so." Ibid, pp. 52-3.

⁶² Ibid, pp. 56-7.

⁶³ Ibid, pp. 3, 60.

⁶⁴ For details of the project, see Mathew Guest, Kristin Aune, Sonya Sharma and Rob Warner (2013) *Christianity and the University Experience: Understanding Student Faith*. London: Bloomsbury. See also Kristin Aune and Mathew Guest (2017) 'The contested campus: Christian students in UK universities' in Kristin Aune and Jacqueline Stevenson (eds.) *Religion and Higher Education in Europe and North America*. Abingdon, Oxon: Routledge, pp. 71-89.

⁶⁵ The 14 universities in the 2010-11 survey were Durham, Cambridge, UCL, Leeds, Newcastle, Sheffield, Kent, Salford, Derby, Kingston, Staffordshire, Canterbury Christ Church, Chester and Winchester. These universities were selected in order to cover five different categories of higher education institutions: 'traditional elite universities'; 'inner-city red-brick universities'; '1960s-campus universities'; 'post-1992 universities'; and 'Cathedrals Group universities'.

⁶⁶ For a critical statement issued by the UCCF in response to the draft Prevent duty guidance, see <https://www.uccf.org.uk/news/potential-threat-to-freedom-of-speech-in-university-cus.htm>

⁶⁷ <https://www.theguardian.com/education/2015/sep/24/student-accused-being-terrorist-reading-book-terrorism>. See also Rania Hafez (2016) 'Faith in the Academy: Religion at University' in Cheryl Hudson and

Joanna Williams (eds.) *Why Academic Freedom Matters: A Response to Current Challenges*. London: Civitas, pp. 118-20. <http://civitas.org.uk/publications/why-academic-freedom-matters/>

⁶⁸ Home Office (2015) *Prevent Duty Guidance: For Higher Education Institutions in England and Wales*.

⁶⁹ See <http://www.bbc.co.uk/newsbeat/article/29530810/sexist-rugby-team-banned-over-leaflet-mocking-women>

4. No platforming and safe space policies

⁷⁰ Education Reform Act (1988) s. 202(2).

⁷¹ The NUS first introduced this policy in 1974. As of 13 February 2017, the six organisations on NUS' list are Al-Muhajiroun, the British National Party, the English Defence League, Hizb ut-Tahir, Muslim Public Affairs Committee, and National Action. NUS (2017) *NUS' No Platform Policy*. London: NUS.

<http://www.nusconnect.org.uk/resources/nus-no-platform-policy-f22f>

⁷² See NUS (2015) *Freedom From Harm, Freedom of Speech: Implementing 'No Platform' Policies*. London: NUS, p. 4. <http://www.nusconnect.org.uk/resources/implementing-no-platform-policies>

⁷³ Ibid. The section 43 duty applies to "every individual and body of persons concerned in the government" of the university. Whether that definition includes a students' union may be open to legal argument, taking into account, for example, the legal status of the union and its relationship with the institution. See Universities UK (2013) *External Speakers in Higher Education Institutions*. Revised 2014. London: UUK, p. 13. <http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Pages/external-speakers-in-higher-education-institutions.aspx>

⁷⁴ This includes premises occupied by students' unions but not owned by the universities. Education (No. 2) Act (1986) s. 43(8).

⁷⁵ Ibid, s. 43(3-4).

⁷⁶ See Universities UK (2013) *External Speakers in Higher Education Institutions*, pp. 12-13.

⁷⁷ NUS (2015) *Freedom From Harm, Freedom of Speech*, pp. 6-8.

⁷⁸ Universities UK (2013) *External Speakers in Higher Education Institutions*, p. 12.

5. The Prevent strategy on campus

⁷⁹ Home Office (2016) *CONTEST: The United Kingdom's Strategy for Countering Terrorism*. Annual Report for 2015. London: HMSO, p. 7. <https://www.gov.uk/government/publications/contest-uk-strategy-for-countering-terrorism-annual-report-for-2015>

⁸⁰ See, for example, Quilliam Foundation (2010) *Radicalisation on British University Campuses: A Case Study*. London: Quilliam. <http://www.safecampuscommunities.ac.uk/resources/quilliam-foundation-radicalisation-on-university-campuses>; Rupert Sutton (2015) *Preventing Prevent?: Challenges to Counter-Radicalisation Policy On Campus*. London: The Henry Jackson Society.

http://www.studentrights.org.uk/article/2287/preventing_prevent_challenges_to_counter_radicalisation_policy_on_campus

⁸¹ Sutton (2015) *Preventing Prevent?: Challenges to Counter-Radicalisation Policy On Campus*, p. 16.

⁸² '043 16 Channel Referrals attachment 01 of 01' (2016) NPCC. FOI number 000043/16.

<http://www.npcc.police.uk/FreedomofInformation/counterterrorism/2016.aspx>

⁸³ This source states that, between April 2014 and April 2016, there were 6,300 total referrals. However, another statistical release by the NPCC indicates that between 31st March 2014 and 31st April 2016, there were 6,418 referrals. The cause of this discrepancy is unclear. For the first data set, see '043 16 Channel Referrals attachment 01 of 01' (2016); for the second data set, see '097 16 Channel Referrals' (2016) NPCC. FOI number 000097/16. <http://www.npcc.police.uk/FreedomofInformation/counterterrorism/2016.aspx>

⁸⁴ '043 16 Channel Referrals attachment 01 of 01' (2016).

⁸⁵ Ibid.

⁸⁶ Additionally, sometimes the originating source may be misattributed – for example to the 'Police' rather than to the original site of referral (such as a school). '097 16 Channel Referrals' (2016) NPCC. FOI number 000097/16. <http://www.npcc.police.uk/FreedomofInformation/counterterrorism/2016.aspx>

⁸⁷ <http://www.npcc.police.uk/FreedomofInformation/NationalChannelReferralFigures.aspx>. Note that there is a discrepancy between the figures for referrals listed on this webpage and the figures released in the Freedom of Information request cited above, '043 16 Channel Referrals attachment 01 of 01' (2016).

⁸⁸ Open Justice Society Initiative (2016) *Eroding Trust*, p. 18.

⁸⁹ '043 16 Channel Referrals attachment 01 of 01' (2016).

⁹⁰ House of Commons Home Affairs Committee (2016) *Radicalisation: The Counter-Narrative*, p. 19.

⁹¹ See for example <https://www.theguardian.com/politics/2016/sep/29/anti-radicalisation-strategy-lacks-evidence-base-in-science>

⁹² For a discussion of the ERG 22+ and criticisms of it, see Open Justice Society Initiative (2016) *Eroding Trust*, pp. 38-41.

⁹³ Home Office (2015) *Revised Prevent Duty Guidance: For England and Wales*, pp. 2-3.

⁹⁴ Home Office (2011) *Prevent Strategy*, p. 107.

⁹⁵ Home Office (2015) *Counter-Extremism Strategy*. London: HMSO, p. 21.

<https://www.gov.uk/government/publications/counter-extremism-strategy>

⁹⁶ Terrorism Act (2000) s. 1.

⁹⁷ For a discussion of the meaning of 'due regard' in the Prevent duty, see <https://www.cloisters.com/blogs/prevent-duty-part-4-practical-operation-of-a-due-regard-duty-lessons-from-the-equality-act-2010-for-the-application-of-the-prevent-duty-by-universities>

⁹⁸ Counter-Terrorism and Security Act (2015) s. 29(1, 2).

⁹⁹ The specific Prevent duty guidance for higher education institutions states that "This guidance does not prescribe what appropriate decisions [for the implementation of the duty] would be – this will be up to institutions to determine, having considered all the factors of the case." Home Office (2015) *Prevent Duty Guidance: For Higher Education Institutions in England and Wales*, p. 3.

¹⁰⁰ See Alison Scott-Baumann and Hugh Tomlinson (2016) 'Cultural Cold Wars: The Risk of Anti-'Extremism' Policy for Academic Freedom of Expression', *Research Professional*, 5 April. Publicly available at <http://representingislamonscampus.co.uk/cultural-cold-wars/>

¹⁰¹ The phrase originates in the judgment of *Handyside v United Kingdom*, no. 5493/72, Series A no. 24.

¹⁰² For example, in *Gündüz v Turkey*, no. 35071/97, ECHR 2003-XI, Müslüm Gündüz, a leader of an Islamist group, described democratic and secular institutions in Turkey as "impious" and called for the introduction of *shari'a* law during a television debate. The Turkish courts found him guilty of incitement to hatred and hostility on the basis of a distinction based on religion and he was sentenced to two years' imprisonment. The European Court of Human Rights concluded that the Turkish authorities' interference with his right to freedom of expression violated Article 10 of the Convention. The Court viewed that the Convention protects information and ideas that shock, offend and disturb, and that Gündüz's comments during the television debate could not be regarded as a call to violence or as hate speech based on religious intolerance.

For a summary of the judgment, see <https://globalfreedomofexpression.columbia.edu/cases/gunduz-v-turkey/>

¹⁰³ For the constraints on the right to freedom of expression considered justifiable under the Convention, see note 8.

¹⁰⁴ Counter-Terrorism and Security Act (2015) s. 26(1), 31(2).

¹⁰⁵ Equality Act (2010) s. 19(2).

¹⁰⁶ Home Office (2015) *Prevent Duty Guidance: For Higher Education Institutions in England and Wales*, p. 4.

¹⁰⁷ Ibid.

¹⁰⁸ Home Office (2011) *Prevent Strategy*, p. 72.

To be considered a charity, an institution must be established for 'charitable purposes' only. A charitable purpose is one which falls within section 3(1) of the Charities Act 2011, and is for the 'public benefit'. A charitable purpose is for the public benefit if it is clearly beneficial (or if its benefit can be demonstrated by evidence), and if it benefits the public in general or a sufficient section of the public. The charitable purposes of universities and students' unions usually include "the advancement of education". Charities Act (2011). London: HMSO, ss. 1-4. See also Charity Commission for England and Wales (2013) *Public Benefit: The Public Benefit Requirement (PB1)*. London: Charity Commission.

<https://www.gov.uk/government/publications/public-benefit-the-public-benefit-requirement-pb1>

¹⁰⁹ *R on the application of Dr Salman Butt v Secretary of State for the Home Department*, CO/6361/2015. For details of the case see <https://www.bindmans.com/news/r-on-the-application-of-dr-salman-butt-v-secretary-of-state-for-the-home-de>. For Butt's account of the case, see <https://www.islam21c.com/politics/summary-legal-case-against-prevent/>

¹¹⁰ <https://www.gov.uk/government/news/pms-extremism-taskforce-tackling-extremism-in-universities-and-colleges-top-of-the-agenda>

¹¹¹ Data Protection Act (1998). London: HMSO, s. 7.

¹¹² Home Office (2015) *Prevent Duty Guidance: For Higher Education Institutions in England and Wales*, p. 3.

¹¹³ See, for example, 'Section 1 Powerpoint – The Prevent duty, academic freedom and freedom of speech', 'Module 4 – Implementing the Prevent duty and upholding the principles of academic freedom and freedom of speech', Safe Campus Communities. <http://www.safecampuscommunities.ac.uk/training/module-4-implementing-the-prevent-duty-and-upholding-the-principles-of-academic-freedom-and-freedom-of-speech> (registration required).

¹¹⁴ The view that the Prevent duty should be aligned with "ordinary student safeguarding and welfare procedures" is set out in online Prevent training materials for higher education professionals. See 'Section 1 Trainer's notes', 'Module 1 – An introduction to the Prevent Duty as it affects Higher Education', Safe Campus Communities. <http://www.safecampuscommunities.ac.uk/training/module-1-an-introduction-to-the-prevent-duty-as-it-affects-higher-education> (registration required).

6. The Charity Commission

¹¹⁵ Education Act (1994). London: HMSO, ss. 20-22.

¹¹⁶ Charities Act (2006). London: HMSO, s. 11(9)(2). See also the Charity Commission's Operational Guidance for students' unions at <http://ogs.charitycommission.gov.uk/g048a001.aspx>

¹¹⁷ National Audit Office (2013) *The Regulatory Effectiveness of the Charity Commission*. London: HMSO. <https://www.nao.org.uk/report/regulatory-effectiveness-charity-commission-2/>. See also the National Audit Office's evaluation of the Charity Commission's progress in 2015: National Audit Office (2015) *Follow-Up on the Charity Commission*. London: HMSO. <https://www.nao.org.uk/report/follow-up-on-the-charity-commission/>

¹¹⁸ <https://www.gov.uk/government/news/new-funding-and-powers-to-tackle-abuse-in-the-charity-sector>

¹¹⁹ Charities (Protection and Social Investment) Act (2016). London: HMSO.

¹²⁰ The NUS noted that the Charity Commission "reported no causes for concern to us with any of the unions that were examined and published no negative findings". NUS (2016) *Quality Doesn't Grow on Fees: NUS' Response to the HE Green Paper*. London: NUS, p. 43. <http://www.nusconnect.org.uk/resources/quality-doesn-t-grow-on-fees-nus-response-to-he-green-paper>

¹²¹ See Charity Commission for England and Wales (2015) *The Essential Trustee: What You Need to Know, What You Need to Do (CC3)*. London: Charity Commission. <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

¹²² See Charity Commission for England and Wales (2008) *Speaking Out: Guidance on Campaigning and Political Activity by Charities (CC9)*. London: Charity Commission. <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>

¹²³ The NUS Model Constitution has been approved by the Charity Commission as acceptable for charitable registration. See NUS (2011) *NUS Model Constitution for Unincorporated Students' Unions*. Version 2. London: NUS, p. 4. <http://www.nusconnect.org.uk/resources/nus-model-constitution-for-unincorporated-students-unions>

¹²⁴ Charity Commission for England and Wales (2000) *Operational Guidance: The Activities of Charitable Students' Unions*. OG 48 B3. <http://ogs.charitycommission.gov.uk/g048a001.aspx>

¹²⁵ <http://www.telegraph.co.uk/education/universityeducation/10409794/Student-leaders-impose-restrictions-on-Remembrance-service.html>

¹²⁶ Charity Commission for England and Wales (2015) *The Essential Trustee*, pp. 4-6.

¹²⁷ Equality Act (2010) s. 149. For advice about equality impact assessments in England, see <https://www.equalityhumanrights.com/en/advice-and-guidance-faq/specific-duties-faqs-england-only>

¹²⁸ House of Commons Home Affairs Committee (2016) *Radicalisation: The Counter-Narrative*, p. 19.

¹²⁹ Ibid, p. 22.

¹³⁰ See Office of the Independent Adjudicator for Higher Education in England and Wales (2016) *The OIA's Approach to Remedies and Redress*. Reading: OIA. http://www.oiahe.org.uk/media/42902/oia_remedies_and_redress_leaflet.pdf

¹³¹ HEFCW will remain the monitoring authority for ensuring compliance with the Prevent duty among higher education institutions in Wales.

¹³² For the Bill at the time of the consultation, see Higher Education and Research Bill (2016-17) [78], cl. 35(1). As amended in the Public Bill Committee, 18th October 2016.

<https://www.publications.parliament.uk/pa/bills/cbill/2016-2017/0078/17078.pdf>

¹³³ Ibid, cls. 2(3), 67(3), 70(2).

¹³⁴ Ibid, cl. 14.

¹³⁵ Higher Education and Research Bill (2016-17) 97, sch. 1, cl. 2(3). As amended in Committee, 30th January 2017. <https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0097/17097.pdf>