

THE FREE SPEECH NETWORK

Students' unions and the Charity Commission: Advice to student free speech societies



SPEAKERS' CORNER TRUST

Author: Bryn Harris

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Executive summary

The purpose of this note is to summarise the current position of the Charity Commission regarding students' unions (SUs) and the extent of their obligation, as charities, to protect freedom of speech.

It points out passages in the guidance that are helpful to students and student societies seeking to protect freedom of speech on campus, and gives advice on how students can hold their SUs to account in fulfilling their freedom of speech obligations.

It also points out ambiguous and problematic passages in the guidance, and gives advice on how to prevent exploitation of those ambiguities for purposes of restricting campus free speech.

The advice can be summarised as follows:

- Free speech societies should be vigilant and put pressure on their SUs to make sure that policies and decisions on speaking events serve to advance educational purposes.
- The Charity Commission advises that freedom of speech is crucial to the educational purpose of SUs.
- Students should be vigilant when SUs use Charity Commission guidance to restrict freedom of speech – they should remind SU trustees of their duty to protect the SU's reputation as a charity advancing education.
- Unless an SU can put forward a strong case for why a speaking event would harm its reputation, or thwart its charitable objects, they should be reminded that any ban would probably not be justified under charity law.
- Students should resist attempts by SUs to cherry-pick the Commission's guidance – it should be read in the round, and the Commission's emphasis on the importance of freedom of speech should be borne in mind at all times.
- Controversy is not a good enough reason on its own to ban a speaker.

This note describes and comments on some of the legal issues surrounding campus free speech. However it is not, and is not intended to be, legal advice. If you need legal advice you should consult a lawyer.

Introduction

This note summarises the Charity Commission's recently updated guidance to students' unions.

It explains the key parts of the guidance relating to freedom of speech on campus, and offers advice to student groups and societies on how to work with the guidance so as to produce the best outcome for campus free speech.

The Commission's guidance is just that – guidance. It is not a statement of the law, as the law is stated by Parliament and the courts. The guidance does, however, give you an idea of when the Commission would be likely to use its regulatory powers to take action against an SU for not following the rules. If an SU were taken to court, it would be able to argue, probably convincingly, that actions and decisions taken in accordance with Commission advice were reasonable.

The note begins with a brief bit of background.

Background

Students' unions are, like the universities they are affiliated to, charitable bodies. Whereas universities are, despite their charitable status, regulated by the Office for Students, SUs are regulated by the Charity Commission. The law has regarded SUs as charities for some time, but it was only with the Charities Act 2006 that SUs came directly under the supervision of the Charity Commission.

The campaigning and political interests of many SUs pose difficulties for the Charity Commission. Organisations cannot use their charitable status to pursue political ends, though, as discussed below, the rule is nuanced. So it is perhaps no surprise that some have criticised the Commission's advice to SUs as ambiguous and confusing.

Those criticisms came to a head in evidence given to the [Parliamentary Joint Human Rights Committee](#) in early 2018, when three principal bones of contention emerged:

1. Does hosting controversial speakers fall within SUs' charitable purpose of advancing education?
2. Does hosting controversial speakers breach officers' charitable duty to protect their SU's reputation?
3. To what extent do political motions and campaigning by SUs exceed the limitations imposed on them by law as charities?

SU officers from various universities testified to the Committee that they felt that Charity Commission advice on these matters was either unclear or, on the other hand, that it required them to take a restrictive approach to freedom of speech.

The star witness for the latter case was Frida Gustafsson, President of the Students' Union at University of Sussex, who told Parliamentarians:

We very much based the [external speaker] procedure ... on guidance given by the Charity Commission. ... I would love it if my student union were able to decide that for itself, but the Charity Commission guidance has been very strict about what we should be considering as risk in the context of our external speakers. ... [The Charity Commission] should be helping us and

enabling us to do that well and enabling everyone's free speech and right to feel not discriminated against or harassed, rather than limiting us in doing that.

Ms Gustafsson's testimony was forceful and eloquent, and the Committee seemed to listen. Its report, published on 27 March 2018, recommended that the Charity Commission ensure that its advice must:

- be proportionate
- be understood by student unions, and
- not unintentionally inhibit lawful free speech.

The Committee also welcomed an offer from the Charity Commission to reassess whether its advice placed 'due weight on the fact that inhibiting lawful free speech can do as much damage to a student union's reputation as hosting a controversial speaker.'

The Charity Commission listened and on 14 May 2018 it issued a [response](#) to the Committee's recommendations, pledging to publish revised guidance that would achieve the following:

- stress what charities *can* do if they mitigate risk, rather than encourage risk-aversion by stressing what they *can't* do;
- make a clearer distinction between on the one hand SU officers, who have specific duties as charity trustees, and, on the other hand, individual students and societies; and
- accurately explain the Commission's position on the importance to SUs of lawful free speech, and how it extends to inviting controversial speakers.

The first question, then, is whether the Commission's revised guidance makes good on those pledges.

In sum – they certainly give it a very good shot. However we must keep in mind the particular context in which this guidance will be used. Some SUs, it seems certain, have used the ambiguities and alleged restrictiveness of the Commission's previous advice as cover to justify free speech restrictions which had little to do with charity law, and much to do with the union's political disposition. One example, which has garnered its fair share of notoriety, is the claim of the SOAS students' union that a comedian was asked to sign a contract binding him to tread on eggshells because of an ['over-zealous' application of Charity Commission guidelines](#).

Even the more nuanced critique of the guidelines, such as that made by Frida Gustafsson to Parliament for instance, raises questions of its own.

Was it mere coincidence that the interpretation of the guidance adopted by some SUs tended to veer towards the political and campaigning stances that those SUs anyway favour?

If the problem with the old guidance was its ambiguous balance, between protecting free speech on the one hand and managing risk on the other, we might ask why SUs tended, with notable consistency, to resolve the ambiguity in favour of restrictiveness rather than openness. How many students would be persuaded that, but for the restrictions of charity law, their SUs would be fearless protectors of controversial and heretical free-thinking?

So, as well as asking whether the new guidance will strip out the ambiguities that led to excessive risk aversion (a task which the Charity Commission set for itself), we must also

ask a slightly more confrontational question – is the new guidance sufficiently clear and unambiguous in its protection of lawful free speech that SUs won't be able to use it as a tool to justify restrictive policies?

Does the new guidance mean that future unions will have to say openly 'we ask comedians to sign restrictive contracts because we think free speech should be limited' rather than 'we were just doing what the Charity Commission recommends'?

Assessment

Two Charity Commission guidance documents have been updated:

[**Operational Guidance 48 \(OG48\)**](#), the Commission's internal guidance about Students' Unions, gives general guidance to Commission staff and students' unions as to how the Commission will apply charity law obligations to students' unions.

[**Protecting charities from abuse for extremist purposes**](#), forming chapter 5 of the Commission's guidance to charity trustees, this document advises charities generally on how to avoid involvement with extremist groups, and how to handle other potential challenges to a charity's reputation and independence. It now contains some advice specifically directed at students' unions.

Both documents are attached as appendices to this note.

It is important to note that both guidance documents, and especially Chapter 5, are intended to apply to a wide and unpredictable range of potential circumstances. As such, they are not designed to, and cannot, prescribe what SUs should do in any given situation. Students looking to hold their SU to account, and SU officers themselves, will therefore need to use their judgment in deciding how the broadly stated advice of the guidance applies in a given situation.

There are three key limitations on students' union activities, which this note deals with: the need to advance education; limitations on political motions and campaigning by SUs; and SU officers' responsibilities as trustees.

Advancement of education

To constitute a charity in law, an organisation must pursue a purpose which is for the public benefit, and which is recognised by the law as a charitable purpose.

The charitable purpose of students' unions is invariably the 'advancement of education'. An SU's founding document, usually its 'Articles of Association' as a charitable company, will state this purpose explicitly.

It is settled law that the advancement of education is a recognised charitable purpose and for the public benefit. An SU with an educational purpose is obliged by law to direct its actions towards this purpose, and to avoid actions that would defeat this purpose.

The Charity Commission gives a broad and non-exhaustive definition of education, taking its lead from judgments by the courts:

Education in this context is a broad term, which includes promoting, sustaining and increasing collective knowledge and understanding of specific areas of study, skills and expertise, in a meaningful way. Education extends beyond classroom education and can include research, training,

development of political awareness or to acquire knowledge of and to debate or form views on political issues. [OG 48, 2.5]

There is no definitive statement here of what would *not* count as education. However there is a clear drift towards activities that somehow *augment* knowledge, understanding and awareness. It is likely, and strongly arguable, that any decision or motion by an SU to *limit* debate on specific topics (for instance abortion or transgenderism) would not meet this definition of education, unless there were some other lawful reason for limiting debate (e.g. to prevent disorder).

The OG 48 guidance goes on to make a positive, and very welcome, statement that freedom of speech is fundamental to SUs' educational purpose:

Freedom of speech should form part of the fundamental consideration of the activities of an SU in furthering its educational objects. SUs provide students with opportunities to learn, debate and challenge their own views and perceptions to facilitate educational and personal development. This could be through the SUs hosting debates, or supporting clubs, societies or individual students in doing so. This may involve dealing with issues which may be considered political, controversial, irritating, contentious, heretical, unpopular or provocative. [OG 48 7.1.2]

The wording of the final sentence is taken from a leading freedom of speech case in the High Court – it has a sound legal basis. The significance of this advice is that an SU will fail to follow the best practice laid down by the Charity Commission if it does not actively pursue freedom of speech in organising activities such as talks and debates.

Furthermore, union members looking to hold their SU to account should be prepared to argue that active attempts by the SU to suppress open debate of controversial issues would be a breach of its charitable commitment to advance education. Put simply, freedom of speech is so fundamental to the educational aims of learning, personal development, and increase of knowledge, that education cannot be meaningfully advanced without freedom of speech.

The advice OG 48 then goes on, again helpfully, to clarify that:

- universities (and, indirectly, SUs) have a statutory duty to secure freedom of speech on campus;
- unlawful speech – such as incitement to racial or religious hatred, or the encouragement of terrorism – is not protected by this duty;
- however the category of unlawful speech cannot be expanded to include 'speakers with controversial or offensive views' (OG 48, 7.2.2(i)).

This note will return to some of the problems in the guidance, but for now this gives students a clear, firm footing for arguing to their SU that a speaker's controversial or even offensive views are not, on their own, good enough reason under charity law to disallow him or her from speaking.

One type of unlawful speech that *could* prevent an SU from hosting a speaker would be a violation of the Equality Act 2010. A serious case where a speaker's views created 'an intimidating, hostile, degrading, humiliating or offensive environment' for members in relation to their sex, race, religion etc. would constitute unlawful harassment.

The Charity Commission guidance notes, however, that the Equality Act could also limit SU policy-making, including regarding speaking events:

It is the responsibility of trustees, if a motion can properly be passed, to implement it only so far as is permitted under charity law and other relevant legal obligations (such as the Equality Act 2010). [OG 48, 5.1.8]

As the Equality Act protects against discrimination on grounds of religion or belief, students should be alive to the possibility that an SU policy restricting freedom of speech might constitute an infringement of the Equality Act. Restrictions on anti-abortion student groups are examples of such potential infringements. While it was not tested in court, Strathclyde Students for Life [won a long campaign](#) against their students' association's ban on pro-life groups by arguing that it constituted discrimination on grounds of belief.

Political motions and campaigning by SUs

There has been in the past plentiful confusion about the extent to which SUs can adopt positions and expend resources on political campaigning, especially regarding political positions that do not directly relate to the education or welfare of its student members. The old formula, which seemingly restricted SUs' freedom to speak out on political issues, was that SUs 'should not comment publicly on issues which do not affect the welfare of students as students.'

The updated guidance helpfully does away with the 'affecting students as students' rule, and imposes a much clearer test – does the campaign or motion further the SU's charitable purpose of (among other things) advancing education?

Most SUs will include a clause in their governing document to the effect that that they will seek to pursue their aims and objectives independent of any political party. However, they can make public comments on social, economic and political issues, **if it furthers the educational objects of the SU**. [OG 48, 6.2.2]

Trustees of the SU will be expected to be satisfied that any campaigning is a reasonable activity in furthering the educational objects, as well as identify and manage risks associated with campaigning. [6.3.4]

SUs should not use their resources to campaign on issues that do not further their charitable objects, and in their decision making process the trustees should have the governing document in the front of their mind. [6.3.5]

The purpose of this restriction is important. Charities are granted certain benefits, regarding tax for instance, because their activities are held to benefit the public. The courts ultimately decide whether a charity meets the public benefit test. A court is competent to judge whether education, for instance is of benefit to the wider public. A court would not be competent, however, to judge whether a Conservative government, rather than a Labour government, would benefit the public – that is a political question to be tested and decided by voters, not by judges. For this reason, all charities, not just students' unions, must not abuse their charitable status to pursue purely political ends. A union could, however, take a position on e.g. tuition fees, and could even advocate for a change in the law, as long as that position was in pursuit of the advancement of education.

Student members of unions should therefore be aware of their own role, alongside the Charity Commission's, in holding union officers to account. SUs are, [by law](#), democratically governed institutions. Members should be vocal and fearless in reminding officers that the union's limited time and resources must not be misused in pursuit of unlawful goals, however politically desirable or just they may seem.

Trustee duties

The most difficult aspect of SUs' charitable status is the duty of union officers as trustees to protect the resources, including the reputation, of the union.

It is trustees' duty to make sure that the purpose of benefiting the public is met, and that the charity is fit for that purpose.

A charity that has been hijacked for extremist purposes, or which has compromised its reputation by associating itself with objectionable opinions, would not be able to perform the public role entrusted to it.

SU officers' duty to advance education by safeguarding freedom of speech is subject at all times to the duty to look after the union's interests as a charity. At times, the obligation to look after the union's charitable interests will outweigh other goals. This is a judgment call for union officers as trustees, and the Charity Commission can only advise trustees how to use their discretion – it cannot make the decision for them.

This aspect of campus free speech is dealt with mainly in the Chapter 5 guidance, *Protecting charities from abuse for extremist purposes*. This guidance applies to charities generally, not just SUs.

The Commission has clearly, to some degree, heeded the concerns of the Parliamentary report, and much of the guidance will help students concerned that charity law inhibits campus free speech:

This guidance should not be used, and **is not intended ever to be used**, to prohibit those with lawful, albeit unpopular, views. Nonetheless, you and your co-trustees must be clear about how this will further the charity's objects and take active steps to manage any resulting risks. [Ch. 5, 10.5]

Many of those risks are those that any prudent students' union or student society would mitigate, or avoid altogether – radicalisation, denigration of followers of certain religious faiths, segregation by race or gender.

The guidance is also helpful in stating that trustees should be 'alert to, rather than averse' to the risks presented by inviting external speakers (Ch. 5, 10.3). Being alert to the risk of inviting highly partisan speakers would mean ensuring balance through inviting opposing speakers, or through adversarial audience participation. The risk-averse approach of preventing a controversial speaker from coming altogether would not be justified under this guidance, and would arguably fall foul of the obligation to advance education.

Once again, we remind students that this guidance does not just apply to the rules that union officers apply to union members and societies – union members (i.e. all students) also have a role to play in making sure their union does not compromise its independence by only inviting speakers of a particular persuasion.

We bring students' attention particularly to 10.2 of the chapter 5 guidance:

where speech is lawful, you should consider the risk of damage to your charity's reputation that could be caused by inhibiting free speech. This could include a detrimental impact towards your charity's independence or credibility. For charities with purposes to advance education, this risk assessment should also include consideration of their charitable purposes.

This is key support from the regulator of students' unions for the oft-made complaint that universities are especially damaged by the perception of restrictive, anti-free speech policies. Students should hold union officers to their legal obligation – they must protect the union's core credibility as an educational, rather than a political, organisation by actively promoting freedom of speech.

Causes for concern

Some parts of the updated advice might continue to cause confusion, or lead to free speech restrictions.

No platforming

The Chapter 5 guidance, wholly reasonably, backs 'no platform' policies regarding banned terror organisations, and also expresses some welcome reservations about any further extensions of such policies. The wording of the advice, however, still creates scope for students' unions to expand no platforming:

Where a 'no platform' policy might extend to restricting lawful speech, the trustees must ensure they are able to demonstrate clearly how they have come to the conclusion that this is appropriate, for example, because the trustees have reasonably concluded that in inviting a person or group they cannot comply with their charity law duties. Any such policy would need to have been carefully considered by the trustees, in line with their legal duties. The trustees should also ensure that there are clear and detailed records of their decision making and risk assessments evidencing how such a policy is consistent with their trustees' duties and does not unduly restrict their discretion in individual cases. [OG 48, 8.4]

We suggest that this advice must be considered alongside the rest of the Commission's advice, especially regarding the duty to advance education, and the centrality of freedom of speech to that aim. For an expanded no platform policy to be justified, it is not enough to show how the decision was made, or even that it was made carefully. Union officers should have to show, in all cases, that their position *actually is reasonable* – does a speaker pose such a threat to the union's reputation, or to its charitable purpose of promoting student welfare, that suppressing that speaker is more important than pursuing its key aim of promoting education through free debate? If that case cannot be convincingly made, we advise that students should oppose the policy.

As a rule of thumb, any expansion of a no platform policy beyond the types of groups currently on the NUS list – i.e. far right and Islamist extremists – is unlikely to be justified unless the union can prove otherwise.

Divisiveness

The updated guidance on 'divisive' and 'controversial' speakers is disappointing, and is likely, once more, to cause confusion or provide justification for restrictions on freedom of speech:

Trustees should consider the risks that could arise in a decision to host a speaker that could be considered to have unacceptable views **or has been criticised for being divisive**, or to host a particular event and how these

risks are managed in the best interests of the SU (this can include reputational risk and the risk to beneficiaries). [OG 48, 7.2.2(iv)]

There is a danger that this advice, if taken on its own, could drive a coach and horses through the Commission's stated aim to protect speech that is 'political, controversial, irritating, contentious, heretical, unpopular or provocative.' It is difficult to think of any interesting contribution to debate about politics, morality or law that wouldn't be, for some people, divisive. The advice as drafted would mean that any front-line figure from either side of the Brexit debate, for instance, should raise a red flag for 'divisiveness', as should any number of feminist academics, post-colonial theorists, social justice campaigners, political party leaders, or cabinet ministers.

There are two potential dangers here. The first danger is that the advice will be taken literally, and SUs will think twice about inviting a vast range of scholars and public figures who work in the contentious, uncertain areas explored in higher education and public policy – ethicists, political scientists, geneticists, and politically-minded academics in the humanities and social sciences.

The second, and more likely, danger is that SU officers will shun a literal interpretation of 'divisiveness' – under which vast swathes of political or ethical debate would, absurdly, be ruled out as too risky – and will instead interpret it more narrowly to mean speakers who would be divisive or alienating from the perspective of SU officers or of students. This would defeat the Charity Commission's acknowledgement of the educational benefit of challenging 'group-think'.

Controversy

Also disappointing is the Commission's position on 'controversial' speakers:

In some instances, strongly partisan or controversial views may compromise the charity's integrity or public trust and confidence in it. It may risk the charity's operations and other activities, or the safety of its staff and volunteers. For that reason, before inviting a speaker, you and your co-trustees should assess and manage these risks. [Ch. 5, 10.6]

Again, we are concerned that this advice on risk-management is not balanced against SUs' duty to promote education through freedom of expression, and not balanced against the Commission's welcome advice to be risk-alert but not risk-averse.

Elsewhere, the guidance bundles together the risk that is presented by both 'controversial' and 'extremist' views. This is particularly disappointing as the Joint Human Rights Committee confronted Charity Commission officers with [clear and strong reservations](#) about the conflation of controversy and extremism. Controversy is fundamental to any difficult issue of politics, law, morality, or public policy. Extremism is something different.

We advise that, taken on their own, these passages of the guidance might still cause confusion, or at worst might provide justification to SUs that wish to inhibit freedom of speech on campus.

These dangers to freedom of speech can be mitigated by reading the Commission's guidance in the round. We suggest that students and SU officers take as their starting point the following Commission advice:

- a key SU goal is the advancement of education, which includes development of political awareness, through free debate, including of controversial issues;

- free-thinking is crucial to an SU's reputation, so banning a controversial speaking event might do more damage to the SU than allowing the event to go ahead would do;
- the risk posed by controversial speakers must be mitigated and managed (for instance by having opposing speakers) rather than simply avoided.

It seems likely that few talks or debates would fall so foul of the above that they would simply have to be banned. We suggest that where a ban would be justified, it should not be on grounds of controversy – which is fundamental both to the academy and to an adversarial democracy such as the UK – but because the event would be merely inflammatory, and would serve more to alienate and offend, than to enlighten and provoke debate.

Summary

- Student groups and societies should be vigilant and put pressure on their SUs to make sure that policies and decisions on speaking events serve to advance education.
- The Charity Commission advises that freedom of speech is crucial to the educational purpose of SUs.
- Students should be vigilant when SUs use Charity Commission guidance to restrict freedom of speech – they should remind SU trustees of their duty to protect the SU's reputation as a charity advancing education.
- Unless an SU can put forward a strong case for why a speaking event would harm its reputation, or thwart its charitable objects, they should be reminded that any ban would probably not be justified under charity law.
- Students should resist attempts to cherry-pick the Commission's guidance – it should be read in the round.
- Controversy is not a good enough reason on its own to ban a speaker.

Appendix 1: Operational Guidance 48 (OG48)



CHARITY COMMISSION
FOR ENGLAND AND WALES

Charity Commission operational guidance (OG 48) Students' Unions

Summary of the guidance

This document provides guidance to Charity Commission staff about students' unions.

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Overview of the Sector

- (i) A charitable SU, (which may also be known as a students' association or guild of students), with an annual income of over £100,000 is required in law to register with the Commission. It will be regulated by the Commission in the same way as other registered charities. A charitable SU with an income below £100,000 is an excepted charity which does not need to be registered, but must comply with charity law.

- (ii) Most Welsh Universities, SUs, some other higher education providers ('HEPs') and colleges of Oxford and Cambridge Universities must be registered with and are regulated by the Commission.

- (iii) Most English universities and some HEPs are exempt charities which do not need to be registered with the Commission¹. The principal regulator of these exempt charities is the Office for Students ('OfS') which is responsible for promoting compliance by the trustees of their legal obligations, under charity law, in exercising control and management in the administration of the charity. Non-charitable HEPs are also regulated by the OfS. The OfS website can be found at: <https://www.officeforstudents.org.uk/>

1. What an SU is

1.1 Section 20 of the Education Act 1994 ('the 1994 Act') defines an SU as:

(a) an association of the generality of students at an establishment to which this Part [of the 1994 Act] applies whose principal purposes include promoting the general interests of its members as students; or

(b) a representative body (whether an association or not) whose principal purposes include representing the generality of students at an establishment to which this Part [of the 1994 Act] applies in academic, disciplinary or other matters relating to the government of the establishment.

1.2 **Students** are defined as:

- Undergraduate students enrolled at the university or college;
- Graduate students at the university or college; or
- Students at a particular hall of residence.

1.3 Section 21(1) of 1994 Act defines an **establishment** as:

- any university receiving financial support under section 65 of the Further and Higher Education Act 1992;
- any institution conducted by a higher education corporation or further education corporation;
- any sixth form college;
- any institution designated under section 129 of the Education Reform Act 1988 as eligible to receive support from funds administered by a higher education funding council;
- any institution designated under section 28 of the Further and Higher Education Act 1992 as eligible to receive support from funds administered by a further education funding council;

¹ See Schedule 3, paragraphs 2 to 11 of the Charities Act 2011

- any institution substantially dependent on financial support under section 6(5) of that Act;
- any institution designated, or of a description designated, by order of the Secretary of State; or
- any college, school or hall in an establishment within any of the above.

1.4 Although the purposes referred to in section 20 of the 1994 Act might not in other contexts be charitable, the courts have held over time that SUs are charitable on the basis that they are established by charitable universities to further the educational purposes of those universities, and funded in order to do so. It is now unusual for an SU not to have expressly stated charitable educational purposes in its governing document.

1.5 Whether or not an SU falls within the statutory definition above does not determine whether or not it is a charity. An SU which does not fall within the 1994 Act definition may still be a charity. It will be necessary to consider the circumstances of the relevant SU to establish whether or not it is a charity.

1.6 If the trustees of an SU are unsure whether their organisation falls within the 1994 Act definition, then the Commission would advise them to seek independent legal advice. The SU may be able to use its funds to meet the cost of seeking any such advice.

2. The charitable status and legal forms of SUs

From this point onwards, unless otherwise stated, any reference to SUs will be those which are recognised as charities under charity law (charitable SUs).

2.1 SUs were, until 30 May 2010, exempt charities. Following the enactment of the Charities Act 2006 (Changes in Exempt Charities) Order 2010, they no longer have exempt status. This does not mean that they were not charities before this date; merely that they did not have to register with the Commission before then.

2.2 As of 1 June 2010 an SU is required to register with the Commission if:

- It meets the legal definition of a charity in accordance with section 1 of the Charities Act 2011 ('the 2011 Act') (which is to be assessed in accordance with the Commission's usual processes); and
- It has a gross annual income of over £100,000.

2.3 In most cases an SU will set out in its governing document that it is an SU within the meaning of the Education Act 1994, which is devoted to the educational interests and welfare of its members (the students).

- 2.4 The **advancement of education** is a recognised description of purpose in the 2011 Act. Education in this context is a broad term, which includes promoting, sustaining and increasing collective knowledge and understanding of specific areas of study, skills and expertise², in a meaningful way³. Education extends beyond classroom education and can include research⁴, training⁵, development of political awareness or to acquire knowledge of and to debate or form views on political issues⁶. Further information on what constitutes educational objects for the public benefit can be found in the Commission’s publication on ‘The Advancement of Education for the Public Benefit’⁷.
- 2.5 Although the statutory definition of an SU (see above) refers to representing and promoting the interests of members, their overriding obligation as charities is to further their purposes for the public benefit. This means that they must not focus narrowly on the interests of members but on furthering their purposes, which are typically educational.
- 2.6 Where the SUs partner establishment (see 3 below) is not a charity, the Commission will need to determine whether the SU is established for wholly charitable purposes, rather than it being established wholly or partly to further the partner establishment’s non-charitable purposes.
- 2.7 SUs with a gross annual income of £100,000 or less (‘smaller SUs’) are not required to be registered or to file accounts with the Commission, they are excepted charities. Despite not being required to register they fall within the Commission’s jurisdiction. As with all charities they are subject to charity law, the trustees have the legal responsibilities that accompany their trustee status and they are subject to the Commission’s compliance and investigation powers. For further information on excepted charities see the Commission’s published guidance⁸.
- 2.8 SUs can take on different legal forms but the most common legal forms adopted are:

² *Re Shaw* [1957] 1 WLR 729

³ *Vancouver Society of Immigrant and Visible Minority Women v Minister of National Revenue* [1999] 169 DLR (4th) 34

⁴ *Re Hopkins Will Trusts* [1964] 3 All ER 56

⁵ *CITB v Attorney General* [1971] 1 WLR 1303

⁶ *Attorney General v Ross* (1986) 1 WLR 252

⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/358536/theadvancement-of-education-for-the-public-benefit.pdf

⁸

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/587387/Excepted_charities.pdf

- Company limited by guarantee;
- Charitable Incorporated Organisation ('CIO'); or
- Unincorporated association.

2.9 For further information on legal structures please see the Commission's published guidance *CC22a: Charity Types: How to Choose A Structure*⁹.

3. The relationships between SUs and their partner establishments

*In this guidance, the establishment, as set out at 1.3 will be referred to as the **partner establishment**.*

- 3.1 SUs share a close legal and practical relationship with their partner establishments, but are distinct and most are constitutionally independent. There are some which are required to have a representative of the partner establishment on their trustee board or on a board subcommittee, but this will not necessarily prevent them from being independent in law.
- 3.2 A partner establishment may fund the SU by an amount paid per student or by an annual grant unrelated to student numbers. There may also be other equivalent funding arrangements in place which may need to be examined in order to understand the nature of the relationship the SU has with the partner establishment and to what extent there may be obligations with regard to how to spend funds or what activities to undertake. Some funding arrangements may also include a requirement for SUs to comply with policies, procedures and conditions specified by the partner establishment. The use of the premises by an SU may also be subject to certain terms and conditions. Some SUs own or lease their own premises, or may have arrangements with other people or organisations which may need to be considered separately.
- 3.3 Under section 22(2) of the 1994 Act a partner establishment is required to take reasonable steps to ensure that:
- The partner SU has a written constitution which is approved by the governing body of the partner establishment and is reviewed at intervals of not more than five years;
 - Students have the right to opt out of membership of the SU;
 - Their partner SU operates in a fair and democratic way: appointments to major SU offices should be by election in a secret ballot, in which all members are entitled to vote;
 - The financial affairs of the SU are properly conducted; as such the budget should be approved, expenditure must be monitored and audited financial statements should be provided;

⁹ <https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure>

- If the partner SU decides to affiliate with an external organisation, the SU publishes notice of its decision, submits a report and reviews affiliations;
- The partner SU has a complaints procedure;
- The partner establishment prepares a Code of Practice setting out its duty to secure freedom of speech in accordance with section 43 of the Education (No.2) Act 1986 ('the 1986 Act') are to be implemented (which the SU must take into consideration); and
- Inform the students of the Code of Practice once a year.

3.4 The Code of Practice is an arrangement between the partner establishment's governing body and students which sets out:

- The procedures to be followed by members of the partner establishment and visiting speakers in connection with the partner establishment or any public or private meeting which is to be held or take place on its premises;
- The procedures to be followed by members of the partner establishment and visiting speakers in connection with any such meeting or activity; and
- The steps which the partner establishment must take to secure compliance with the requirements of the Code of Practice (in relation to section 43 of the 1986 Act), including, where appropriate, disciplinary measures.

4. Structures of SUs

4.1 Overview

An SU is distinct from:

- Students (many of whom will be members of an SU);
- Clubs and societies;
- Elected student officers;
- Trustees;
- Trustee body; and
- Mechanisms, structures and processes which are in place in to ensure SUs make democratic decisions. These could include an SU council, forum or committee, as well as decision making processes of the whole student body, such as referenda.

4.2 Members

An SU's membership will comprise of students who are formally registered for an approved programme of study provided by the partner establishment, have not opted out of membership and have not graduated from their programme of study. The members are likely to be subject to the regulations and disciplinary

codes of the partner establishment. The members are separate from the SU itself. Membership of SUs differs in size and diversity across the country.

4.3 Clubs and societies

- 4.3.1 Typically SUs will have a number of clubs and societies who receive funding from the SU and which members of the SU can join.
- 4.3.2 The particular constitutional arrangements between the SU and its clubs and societies will determine whether the acts of clubs and societies are automatically the acts of the SU. It is possible (depending on the arrangements) that the SU or its trustees may be liable for acts and omissions of its clubs and societies.
- 4.3.3 SUs follow different models. Some treat clubs and societies as components of the SU and some treat them as independent entities, which are affiliated with the SU. For most of the SUs which are registered with the Commission, their clubs and societies are linked to the SU in its constitution.
- 4.3.4 Even with clubs and societies which are constitutionally independent, if the SU funds the clubs and societies, the trustees will need to have oversight of them to ensure that the provision of this funding is furthering the educational objects of the SU.
- 4.3.5 It is possible, although unlikely, that a club or society may be a legal entity separate from the SU. If the club or society is established for exclusively charitable purposes, then it may be required to register as a charity in its own right.

4.4 Elected officers

- 4.4.1 Elected officers, also known as sabbatical officers, are students who take time out of their studies to lead and represent students and the SU's democracy. They are typically elected by secret ballot, by the students at the partner establishment, and hold office for one year. Some SUs will allow sabbatical officers to stand for re-election for a second year, although two years is usually the maximum permitted term of office.
- 4.4.2 Elected Officers are often also charity trustees and will also have a particular area of responsibility or portfolio. They are likely to be paid or provided with a stipend and will enter into a contract governing their role.
- 4.4.3 Many trustee boards of SUs include some, if not all, of the elected officers, with the president or 'lead officer' of the SU taking the role of chair of the trustee board.

4.5 Trustees

- 4.5.1 As with any charity, the trustees of an SU have the legal responsibilities that go with trustee status. They are responsible for the management and administration of the SU to ensure it is carrying out activities for the purpose of advancing its educational objects.
- 4.5.2 In law, the trustees of a charity are the persons having the general control and management of the administration of a charity¹⁰. Where an SU has a group of individuals who make key decisions as well as a wider ‘students’ council’ or similar group, in most cases it would be the smaller group who are the trustees in law.
- 4.5.3 The trustees must undertake their role subject to the Education Act 1994, its governing document and bye-laws, charity law and the law in general (which includes criminal law, equality law and defamation). They must also ensure appropriate and adequate safeguarding policies and procedures are in place for those that take part in the SU and for its beneficiaries.
- 4.5.4 The essential duties and responsibilities of the trustees of SUs are the same as trustees of any other charity. These duties are set out in the Commission’s guidance *CC3 - The essential trustee: what you need to know, what you need to do*¹¹. In this context, this will include that trustees:
- Ensure the SU is carrying out its purposes for the public benefit only;
 - Comply with the SU’s governing document and the law;
 - Act in the SU’s best interests;
 - Manage the SU’s resources responsibly;
 - Act with reasonable care and skill; and
 - Ensure that the SU is accountable.
- 4.5.5 It is not the Commission’s role to regulate compliance with the law, other than charity law. However, a breach of the general law may indicate that the trustees are in breach of charity law, if, for example, it can be shown that these breaches may have placed or place beneficiaries at risk of harm, or the SU at risk of financial damage, or undue reputational harm.

4.6 Trustee Board and Governance

- 4.6.1 Governance structures will vary and it will be necessary to consider the governing document and policies of the SU in order to understand the terminology used in each case.
- 4.6.2 Trustees can be defined as the trustee board, managing trustees, committee members, governors or another title (as defined by the governing document) which is likely to include:

¹⁰ s177 Charities Act 2011

¹¹ <https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3>

- Student trustees: students who are members of the SU, who are voted for by the students or appointed;
- Elected officers/sabbatical officers;
- External trustees: separate from the partner establishment and appointed following a recruitment process by the SU; and
- In some cases, one or more trustees appointed or recommended for appointment by the partner establishment.

4.6.3 Members are therefore separate from the trustees; but trustees may be members as well. In these instances, trustees should take particular care to ensure that they are clear in what capacity they are acting, and also ensure that they are capable of taking decisions that are in the best interests of the charity only, when acting as a trustee.

5. Democratic Decision Making and Activity

5.1 Democratic decision making structures

5.1.1 SUs have mechanisms, structures and processes in place through which they make democratic decisions on behalf of the membership. These structures can include an SU council, forum or committees, and may consist of representatives who are students from halls of residence, academic courses, clubs and societies, or from the general student population. Those representatives do not run the SU, but are likely to be responsible instead for presenting, debating and deciding on motions.

5.1.2 An SU may also use a decision making process of the whole membership, such as referenda, when considering motions.

5.1.3 As well as providing a decision making mechanism for a charity which has a large membership, the democratic structures and processes of an SU may, in some cases, be used to further the educational objects by educating students in the political process and encouraging them to get involved in deliberation and debate. Facilitating discussion and debate regarding issues of general interest has long been, and remains, an integral part of most SUs' charitable activities.

5.1.4 Motions may be proposed in SU debates which call upon the SU corporately, or the trustees in their capacity as such, to take or not to take particular positions or actions.

5.1.5 Members of an SU can, and do, as part of their activities, consider, debate and endorse motions, which can cover a range of topics or issues e.g. from current international events to local campus issues. However, the membership of an SU is distinct, and has differing legal obligations, from the trustee body of an SU, even if some individuals hold the positions of trustee and member simultaneously.

- 5.1.6 The trustees of an SU considering whether or not to approve or endorse a motion must be clear what this means in practice for the SU as a charity, and must be able to explain how doing so furthers the SU's charitable purposes and how it is consistent with their legal duties as charity trustees. This means that trustees should ensure that any action they take in support of a decision made by the membership is in the best interests of the charity only, and that they have complied with their other general charity law duties including having sufficiently identified and managed any associated risks.
- 5.1.7 If a motion calls on the SU corporately, or the trustees individually in their role as trustees, to take a particular view or action on a matter, or to campaign in favour of or against a particular proposition, then the principles applying to campaigning and political activity, described later in this guidance, will need to be observed. In particular, such positions or steps must only be taken if they further the charitable purposes of the SU.
- 5.1.8 Trustees should take into consideration the impact on students and ensure that any view or activity taken is not, and does not appear to be, discriminatory towards students on the basis of particular protected characteristics. This includes decisions relating to the debating or adoption of motions. It is the responsibility of trustees, if a motion can properly be passed, to implement it only so far as is permitted under charity law and other relevant legal obligations (such as the Equality Act 2010). The SU's resources (including the time of the sabbatical officers, who are paid) must not be used to implement any motions if doing so would not be lawful.
- 5.1.9 It is also the responsibility of the trustees to ensure they act within the law and take steps to mitigate the risks of compromising the SU's independence and reputation. This is likely to include a balancing act, such as considering the possible beneficial as well as detrimental impact of taking certain actions in relation to a motion, particularly where those risks are higher e.g. where it relates to a strongly emotive or highly contested matter.
- 5.1.10 From the SU's perspective, it may be helpful if motions which are put to members are drafted so as to be strictly compliant with the SU's governing document and clearly representative of members' views rather than those of the trustees, and are subject to charity law requirements both in terms of content and methods of implementation. An SU's governing document may contain provisions which refer to whether or not the members of the SU have a legal power to bind the trustees to take or not to take a particular action.
- 5.1.11 Trustees should consider whether endorsing or implementing all or any part of a motion may be seen to unreasonably limit the discretion of the trustees' decision making.
- 5.1.12 A motion does not necessarily have to affect 'students as students', as long as the trustees can demonstrate and satisfy themselves that it is a legitimate motion for a charitable SU to debate, in furtherance of its objects which usually include the advancement of education. There may however be greater

difficulties in demonstrating this where the motion or its contents are less obviously relevant.

5.2 Acting with Other Bodies and Affiliations

5.2.1 The trustees of an SU may decide (often in accordance with a policy passed by members) to:

- affiliate with the NUS¹² or a similar body to ensure that its members are represented at a national level; or
- affiliate to a campaigning alliance, even if the alliance includes non-charitable organisations, if doing so is a proper way of furthering its educational objects.

5.2.2 An SU must not:

- Take part in activities through an alliance which it cannot lawfully undertake directly (i.e. not in furtherance of its charitable objects); or
- Permit its clubs or societies to transfer funds given to them by the SU for purposes outside its charitable objects.

6. Political activity and campaigning

6.1 Overview

6.1.1 As with any charity, an SU cannot have political objects – that is, objects which include the furtherance of the interests of a particular political party or securing or opposing any change in the law or in the policy or decisions of public bodies. However, it can become involved in campaigning and political activity which furthers or supports its charitable purposes, unless its governing document prohibits it. The Commission has published guidance *Campaigning and political activity guidance for charities (CC9)*¹³ which is applicable to SUs, and to all other charities (registered or unregistered).

6.1.2 An SU may give its support to specific policies advocated by political parties if it would help achieve its charitable purposes. However, trustees must not allow the charity to be used as a vehicle for the expression of the political views of any individual trustee or staff member, which means personal or party political views.

¹² The NUS does not fall within the definition of an SU and is not a charity. It is a voluntary membership organisation, which is a confederation of 600 SUs across further and higher education. Its role is to promote, defend and extend the rights of students and develop and champion strong SUs. It has a registered charity with the Commission (NUS Students' Union Charitable Services, Registered Number: 1140142), but this does not affect our relationship with or regulation of charitable students' unions.

¹³ <https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charitiescc9>

6.1.3 Trustees must comply with their duty to manage their resources responsibly, which includes ensuring there is no undue risk or detrimental impact to the charity's reputation and to act only in furtherance or support of the charity's purposes. As such, trustees must ensure that they do not express their personal political views or engage in personal political activity while acting as a trustee and in the course of discharging their trustee duties, as this could be seen to compromise the independence of not just the trustee but the charity itself.

6.2 Political activity

6.2.1 The Commission describes political activity as: *'activity by a charity which is aimed at securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad. It includes activity to preserve an existing piece of legislation, where a charity opposes it being repealed or amended. This differs from activity aimed at ensuring that an existing law is observed, which falls under Campaigning. Political activity might include some or all of: raising public support for such a change, seeking to influence political parties or independent candidates, decision-makers, politicians or public servants on the charity's position in various ways in support of the desired change; and responding to consultations carried out by political parties'*.

6.2.2 Most SUs will include a clause in their governing document to the effect that that they will seek to pursue their aims and objectives independent of any political party. However, they can make public comments on social, economic and political issues, if it furthers the educational objects of the SU.

6.2.3 Any political activity on which charitable funds are spent should properly further the educational objects of the SU. This includes the use of charitable property or the time of a sabbatical officer whose salary is paid for out of the charitable funds of the SU.

6.2.4 As noted above (under 'Democratic decision making structures') members of an SU may consider, debate and endorse motions on particular topics from time to time. If an SU, or its trustees in their capacity as trustees, intend to adopt or endorse a position which members have adopted collectively, then it is only appropriate for them to do so if this furthers the SU's charitable purposes.

6.3 Campaigning

6.3.1 The Commission's guidance defines 'campaigning' as referring to: *'awareness-raising and to efforts to educate or involve the public by mobilising their support on a particular issue, or to influence or change public attitudes. It also uses it to refer to campaigning activity which aims to ensure that existing laws are observed. The Commission distinguishes this from an activity which involves trying to secure support for, or oppose, a change in the law or in the policy or decisions of central government, local authorities or other public bodies,*

whether in this country or abroad, and which it refers to in this guidance as 'political activity'.

- 6.3.2 The debating and passing of motions forms a part of the activity of an SU and can be a way of furthering the educational objects of the SU, which is not necessarily considered part of political activity or campaigning.
- 6.3.3 An SU can apply its assets to legitimate and reasonable campaigning and political activity as a means to further its objects.
- 6.3.4 Trustees of the SU will be expected to be satisfied that any campaigning is a reasonable activity in furthering the educational objects, as well as identify and manage risks associated with campaigning.
- 6.3.5 SUs should not use their resources to campaign on issues that do not further their charitable objects, and in their decision making process the trustees should have the governing document in the front of their mind.
- 6.3.6 An SU is not permitted to give money to other organisations to undertake or engage in activities that it could not undertake itself. It cannot donate or allow its funds to be used to support campaigning on an issue that would be outside of its charitable objects. In two reported cases, the High Court has granted injunctions to prevent charitable SUs from giving funds for political purposes which were outside their objects¹⁴.

6.4 Political clubs and associations

SUs can support political clubs or societies by providing funding, premises or other forms of support to such clubs and societies, provided that this is for the educational benefit of its members (for example to facilitate the development of political awareness), or otherwise furthers their charitable purposes. Grants/funding must be made on an even handed basis and in a way which is not unlawfully discriminatory.

6.5 Party politics

- 6.5.1 An SU should maintain neutrality, as such they must not support or oppose a particular political party, candidate or politician.
- 6.5.2 The trustee body of an SU must not allow its funds to be used for party political purposes, directly or indirectly.
- 6.5.3 The trustee body of an SU can encourage students to develop political awareness, acquire knowledge of and debate political issues. This includes

¹⁴ Including proposed donations to a campaign against the Gulf War and affiliation to a non-charitable organisation (*Webb v O'Doherty The Times 11 Feb 1991*) and Funds for a campaign against the proposed withdrawal of free milk for school children and funds for another charity with different objects (*Baldry v Feintuck [1972] 1 WLR 552*)

facilitating clubs and societies which may be associated with particular political parties, provided that this is done in a balanced manner and without preference to one or more particular political parties over others.

7. Speakers and Events

7.1 Freedom of Speech and SUs

7.1.1 Freedom of speech, within the law, is a human right which underpins a democratic society. It has been secured by Article 10 of the European Convention on Human Rights, incorporated into English and Welsh law by the Human Rights Act 1998. It is not an absolute right and can be restricted in circumstances where it is legitimate and proportionate to do so.

7.1.2 Freedom of speech should form part of the fundamental consideration of the activities of an SU in furthering its educational objects. SUs provide students with opportunities to learn, debate and challenge their own views and perceptions to facilitate educational and personal development. This could be through the SUs hosting debates, or supporting clubs, societies or individual students in doing so. This may involve dealing with issues which may be considered political, controversial, irritating, contentious, heretical, unpopular or provocative.

7.1.3 It is not for the Commission to manage an SU's activities in relation to debates, invitations to or hosting of speakers or the passing of motions¹⁵. The Commission's role is to ensure trustees discharge their duties appropriately and that there is a proper administration of the SU, which will involve consideration and assessment of:

- Discharging their duties as set out in our guidance CC3;
- Charity law;
- Criminal law;
- Other law – including defamation, equality law;
- The decision-making process with regard to the assets, resources, funds and reputation of the SU¹⁶;
- Adequate and appropriate risk assessment and management; and
- Management of complaints.

7.1.4 With specific reference to speakers and events, SUs may wish to refer to Chapter 5 of the Commission's compliance toolkit 'Protecting charities from harm'. Although that Chapter of the toolkit refers most directly to risks arising in relation to extremism, the legal principles on which it is based also apply more

¹⁵ Please also refer to the earlier sections of this guidance as it relates to motions. ¹⁶ See guidance: 'Its your decision: charity trustees and decision making (CC27)'

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/583855/CC27_new.pdf ¹⁷ See section 22(2) of the Education Act 1994

generally, and there is a specific section applying to SUs and debating societies.

7.2 Freedom of Speech and Partner Establishments

7.2.1 Partner establishments (HEPs) have a legal obligation to protect freedom of expression in accordance with the statutory provisions referred to below. SUs are usually separate legal bodies from their partner establishments and do not directly fall under the scope of these legal obligations. However, a partner establishment is required to take steps to ensure that its partner SU does not interfere with freedom of speech and complies with the Code of Practice (in relation to discharging its duty under Section 43 of the Education (No.2) Act 1986 Act ('section 43'))¹⁷ which sets out:

- the procedures to be followed by members, students and employees in relation to meetings and other activities held on the premises; and
- the conduct required of any people in connection with those activities.

7.2.2 The Commission recognises that, irrespective of whether these duties apply directly to an SU or not, they uphold important principles which the SU is likely to want to recognise and consider when making adequate decisions and risk assessments about its activities.

(i) The Education (No.2) Act 1986

Section 43 creates a specific legal duty on most HEPs to promote freedom of speech (within the law) for their members, students, employees and visiting speakers. There is no obligation to secure speech which is not within the law, where it would, for example, be an offence, such as incitement to racial or religious hatred, or the encouragement of terrorism. However, it might mean hosting speakers with controversial or offensive views.

(ii) The Human Rights Act 1998

Section 6 of the Human Rights Act 1998 requires public bodies to act in a way which is compatible with the rights set out in the European Convention on Human Rights. HEPs are considered public bodies, and as such they are required to have regard to these rights, including Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association). However, these are not absolute rights, and they can be departed from or limited/restricted in the interests of society.

The balance of interests involved in deciding whether a public authority has acted in breach of a person's human rights will often involve assessing the risk of harm to others caused by a person exercising their rights (for example their right to express opinions). This supports the need for HEPs to carry out risk assessments, or to ensure that they are carried out by SUs.

(iii) The Prevent Duty

Section 26 of the Counter-Terrorism and Security Act 2015 ('the 2015 Act') imposes a duty on a number of types of organisations, including most HEPs and further education providers, to '*have due regard to the need to prevent people from being drawn into terrorism*' ('the Prevent duty').

SUs are autonomous bodies and do not fall within the scope of Schedule 6 of the 2015 Act, and as such the Prevent duty does not fall directly on them as it does on HEPs. Regardless of the Prevent duty, the Commission would expect all trustees to discharge their legal duties and responsibilities to manage the risks from terrorism, extremism or other illegal conduct such as racial or religious hatred. Trustees should consider the risks that could arise in a decision to host a speaker that could be considered to have unacceptable views or has been criticised for being divisive, or to host a particular event and how these risks are managed in the best interests of the SU (this can include reputational risk and the risk to beneficiaries).

(iv) Public Sector Equality Duty ('PSED')

Most partner establishments have a statutory duty to comply with the PSED, under section 149 of the Equality Act 2010, which requires them to have due regard to the need to eliminate discrimination, harassment, victimisation and other conduct that is prohibited by the Equality Act 2010, advance equality of opportunity between persons who share a relevant protected characteristic (and who do not) and foster good relations between persons who share a relevant protected characteristic (and who do not).

7.2.3 SUs should take into account the provisions of Codes of Practice put in place by partner establishments. If SUs can demonstrate that they have considered and complied with the relevant Codes then this will assist in showing that they have considered the principles which apply in these cases.

8. 'No Platform' policies

8.1 A typical 'no platform' policy asserts that a particular person or organisation should not be allowed to speak at any of an SU's events due to a set of opinions that individual or group holds. It can also include policies that relate to funding for groups/membership/clubs and societies.

8.2 This is to be distinguished from decisions made on a case by case basis not to allow certain speakers in order to ensure that the educational objectives of that event can be effectively furthered. These decisions might be properly taken where the risks of inviting a particular person or holding a certain event have been assessed and the trustees are of the view they cannot adequately protect the charity, its reputation or beneficiaries from undue harm.

8.3 If a 'no platform' policy is directed at preventing unlawful speech, this should not be problematic. For example, a 'no platform' policy in respect of proscribed

terrorist organisations or members of such organisations would not be objectionable.

- 8.4 Where a 'no platform' policy might extend to restricting lawful speech, the trustees must ensure they are able to demonstrate clearly how they have come to the conclusion that this is appropriate, for example, because the trustees have reasonably concluded that in inviting a person or group they cannot comply with their charity law duties. Any such policy would need to have been carefully considered by the trustees, in line with their legal duties. The trustees should also ensure that there are clear and detailed records of their decision making and risk assessments evidencing how such a policy is consistent with their trustees' duties and does not unduly restrict their discretion in individual cases.

9. Risk management

- 9.1 As with any charity the trustees of an SU are under a duty to act in the best interests of the charity. This involves ensuring that appropriate, informed decisions are made in order to further the charity's purposes.
- 9.2 Trustees also have a duty to avoid putting the assets, beneficiaries or reputation of the SU at undue risk. This requires trustees to take reasonable steps to protect the charity from legal claims, including many which can arise as a result of events held on university or SU premises. Trustees must have in place appropriate risk management arrangements which enable them to identify and mitigate such risks, and this may require a balancing act at times, or for steps to be taken that are proportionate to the risks posed. This includes not only risks arising from speaking events or from undertaking particular activities but from events more generally, such as liability for accidents on premises or from breaches of licensing conditions.

10. Commercial Activities

- 10.1 The Commission's guidance on trading by charities will be relevant to SUs carrying on commercial activities¹⁶.
- 10.2 SUs may undertake commercial activities (possibly through trading subsidiaries), such as to operate a bar, provide catering facilities or organise concerts, in order to raise funds.
- 10.3 Any profits obtained by the SU will form part of the SU's funds and must be applied for the charitable purposes of the SU, and trustees must ensure that they are aware of any potential tax consequences of commercial activities.

¹⁶ <https://www.gov.uk/guidance/charities-and-trading>

Appendix 2: Protecting charities from abuse for extremist purposes



CHARITY COMMISSION
FOR ENGLAND AND WALES

Chapter 5: Protecting charities from abuse for extremist purposes

Updated 19 November 2018

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1. What is the purpose of this guidance and who should read it?

This guidance is for charities regulated by the Charity Commission. It will also be helpful for exempt charities that are regulated by other principal regulators because the same charity law requirements apply¹.

Its aim is to help you as trustees to discharge your legal duties under charity law, manage the risks and ultimately protect your charity from being used or abused for extremism, terrorism or illegal activity. Equally, this guidance recognises the starting principle of free speech. As such, it reinforces the notion that, whilst ensuring its people and beneficiaries are protected, charities are often central to providing an environment that allows for a range of views to be expressed, discussed and debated within the law.

Charities often play an important role in providing discussion and debate for personal development and challenging held views and perceptions. They do so by encouraging free speech, which is an important element in furthering their charitable purposes. Providing specific mechanisms for constructive debate and social action, these activities may also work in protecting against terrorism and extremism, building a strong civil society and upholding important rights, democracy and fundamental British values.

All charities must comply with UK law and so must not support terrorism or other illegal conduct, such as hatred on the grounds of race, religion or sexual orientation. In addition, a charity's name, premises or money must not be used to promote extremist or other activities that are inappropriate under charity law, for example because they are in breach of equalities legislation.

This guidance may also be helpful for charities who are themselves, or who are working closely with others, subject to the Prevent Duty².

This guidance seeks to help charities that regularly host or hold events at their premises, use speakers at events or distribute literature (whether or not produced by the charity) to further their charity's purposes through the promotion and exchange of views and ideas. It highlights:

- some of the challenges that charities may encounter and some
- practical tips as to how to manage them how to avoid problems in
- the first place what to do if there are concerns about a speaker, an event or literature

This guidance is relevant to all charities engaging in the types of activities set out above. Charities that will find this guidance helpful include:

- charitable think tanks and debating societies students' unions religious charities
- schools, colleges and universities other charities involved in education
- bookshops and other charities that provide or distribute literature and educational materials
- charities that provide or distribute literature and educational materials through electronic media, including television, radio, internet, social media or physical recordings (memory cards, CDs or DVDs)

The guidance explains your legal duties as a trustee. These include how to manage risks so you protect your charity, act lawfully, and maintain public trust and confidence in your charity. These are the legal requirements to which the Commission will hold you to account. Following this guidance will help you show that you are complying with your duties and responsibilities.

2. Scope of this guidance

This guidance aims to raise your awareness of the legal requirements placed on you in relation to both criminal and charity law so that you can properly discharge these duties in the interests of your charity. It gives a brief overview of the wider legal framework, including the law relating to freedom of speech, harassment and discrimination, terrorism, extremism and the Prevent duty. This guidance is not intended to be overly complex or place disproportionate burdens on you. Rather, it aims to help you navigate any situations which require challenging judgements and ensure that the risk of criticism of your actions is minimised whilst also enabling you to comply with your legal duties.

What the Commission means by 'must' and 'should'

In this guidance:

- 'must' means something is a legal or regulatory requirement or duty that trustees must comply with
- 'should' means something is good practice that the Commission expects trustees to follow and apply to their charity

Following the good practice specified in this guidance will help you to run your charity effectively, avoid difficulties and comply with your legal duties. Charities vary in terms of their size and activities. Consider and decide how best to apply this good practice to your charity's circumstances. The Commission expects you to be able to explain and justify your approach, particularly if you decide not to follow the good practice in this guide.

In some cases you will be unable to comply with your legal duties if you don't follow the good practice. For example:

Your legal duty:	It's vital that you:
Act in your charity's best interests and manage its resources responsibly.	Implement reasonable risk management strategies to identify and mitigate the risk of your charity's funds, assets, people and reputation becoming used for extremism.
Comply with the law. You must not run an event or publish material that glorifies terrorism or incites hatred on the grounds of race, religion or sexual orientation, as this would be a criminal matter.	Implement the necessary safeguards to ensure that your charity doesn't glorify terrorism or incite hatred on the grounds of race, religion or sexual orientation.
Carry out your charity's purposes for the public benefit. Views or activities that incite hatred on the grounds of race, religion or sexual orientation cannot be for the public benefit because they are illegal.	Ensure that your charity does not promote views that denigrate those of a particular faith, race or sexual orientation.

Trustees who act in breach of their legal duties can be held responsible for consequences that flow from such a breach and for any loss the charity incurs as a result. When the Commission looks into cases of potential breach of trust or duty or other misconduct or mismanagement, it may take account of evidence that trustees have exposed the charity, its assets, its people or its beneficiaries to harm or undue risk by not following good practice. It also looks at what steps have been taken by the trustees in all the circumstances, as this guidance is not exhaustive for every type of situation that arises.

3. Technical terms used

This list explains some of the technical terms used in this guidance.

Beneficiary: a person who receives benefit, financial or otherwise, from a charity.

CONTEST: the UK Government's strategy for Countering Terrorism.

Counter-extremism Strategy: in October 2015, the UK government published a Counter-extremism strategy. This focuses on 4 areas: countering extremist ideology; building a partnership with all those opposed to extremism; disrupting extremists; and, building more cohesive communities.

Counter-terrorism legislation: the Terrorism Act 2000 is the main piece of counter-terrorism legislation in the UK.

Other relevant laws includes: (1) The Anti-Terrorism, Crime and Security Act 2001; (2) The Prevention of Terrorism Act 2005; (3) The Terrorism Act 2006; (4) The Counter-Terrorism Act 2008; (5) The Terrorist Asset Freezing etc. Act 2010; (6) Terrorism Prevention and Investigations Measures Act 2011; (7) Protection of Freedoms Act 2012; (8) the Counter Terrorism and Security Act 2015; and, (9) Criminal Finances Act 2017.

Designated persons or entities: individuals or groups which face financial restrictions in the UK. The Office for Financial Sanctions Implementation (OFSI), part of HM Treasury, maintains the Consolidated List (<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>) of these individuals and entities on its website.

Extremism: as defined in the UK Prevent Strategy and the Counter-Extremism Strategy, extremism is a vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. Also included in extremism are calls for the death of members of our armed forces, whether in this country or overseas.

Governing document: a legal document setting out the charity's purposes and, usually, how it is to be run. It may be a trust deed, constitution, articles of association, will, conveyance, Royal Charter, scheme of the Commission, or other formal document.

Political activity: as defined in this guidance, political activity must only be undertaken by a charity in the context of supporting the delivery of its charitable purposes. The Commission uses this term to refer to activity by a charity which is aimed at securing, or opposing, any change in the law or in the policy or decisions of central government, local authorities or other public bodies, whether in this country or abroad. It includes activity to preserve an existing piece of legislation, where a charity opposes it being repealed or amended.

Prevent: one of the four work streams of the CONTEST strategy. Prevent aims to stop people becoming terrorists or supporting terrorism, including

challenging and preventing extremist ideology which is conducive to, and can be used to legitimise, terrorism.

Property: includes not only land and buildings, but also investments, cash and other assets.

Proscribed Organisation: an organisation which the Home Secretary believes to be concerned in terrorism as defined by the Terrorism Act 2000. It's a criminal offence for a person to be a member of, invite support for, or wear the uniform of, a proscribed organisation. Proscription means that the financial assets of the organisation become terrorist property and can be subject to freezing and seizure. The Home Office maintains a list of terrorist groups

<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>) or organisations banned under UK law on its website.

Radicalisation: the process by which a person comes to support terrorism and forms of extremism leading to terrorism.

Radicaliser: an individual who encourages others to develop or adopt beliefs and views supportive of terrorism and forms of extremism leading to terrorism.

Radicalising materials: these include literature or videos that are used by radicalisers to encourage or reinforce individuals to adopt a violent ideology. Some of this material may explicitly encourage violence. Other materials may take no avowed position on violence but make claims to which violence is subsequently presented as the only solution.

Serious Incident: a serious incident in a charity is an adverse event, whether actual or alleged, which results in, or risks significant:

- harm to your charity's beneficiaries, staff, volunteers or others who come into contact with your charity through its work
- loss of your charity's money or assets
- damage to your charity's property
- harm to your charity's work or reputation

If a serious incident takes place, you need to report to the Commission what happened and explain how you are dealing with it, as soon as is reasonably possible after it happens, or immediately after you become aware of it.

See Serious Incident Reporting <https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>) for more detailed information.

Terrorism: as defined under UK law in the Terrorism Act 2000 (TACT 2000). In summary this defines terrorism as an action that endangers or causes serious violence to a person/people; causes serious damage to property; or seriously interferes or disrupts an electronic system. The use or threat must be designed to influence the government or to intimidate the public and is made for the purpose of advancing a political, religious or ideological cause.

Trustees: charity trustees are the people who are responsible for the general control and management of the administration of the charity. In the charity's governing document they may be collectively called trustees, the board, managing trustees, the management committee, governors or directors, or they may be referred to by some other title.

4. Why are extremism issues relevant to my charity?

4.1 Short answer (legal requirement):

As a trustee you have a duty to manage your charity's resources responsibly. You must make sure that its assets, people, beneficiaries and reputation are not exposed to undue risk. This includes any risk from becoming drawn into or involved in extremism because this would also involve a breach of criminal law/illegality. This applies to all charities even if they are not registered with the Commission.

In addition, some charities, because of the nature of their particular work or the type of beneficiaries they support - some of whom may be at particular risk of radicalisation - may be attractive to those wishing to promote extremist views or behaviour. Trustees of such charities must take additional steps to ensure that their charity is not abused. However, the extent of those steps will vary according to the type and level of activity and the associated risk in certain areas. These additional steps are not intended to be overly complex or place disproportionate burdens on trustees. Rather, the steps aim to help trustees navigate situations which can require challenging judgements and ensure that the risk of criticism of their actions is minimised whilst also enabling you to comply with your legal duties.

Trustees also have an important role in helping to prevent the promotion of extremist ideas that may encourage terrorism, or that incite criminal acts or hatred on the grounds of race, religion or sexual orientation or that breach equality laws.

4.2 In more detail:

There have been occasions when terrorists, and those with extremist views who encourage terrorism and terrorist ideology, have used charities, their

events or their social media platforms to make those views known, or have used charities to promote or distribute their literature. You therefore need to be aware of the risks and take reasonable steps to protect your charity accordingly. The risks vary from charity to charity depending on its activities and its beneficiaries. For some charities, the risks will be very low and there will be little they need to do to protect it. For others, the risks are likely to be higher and you will need to take specific steps to safeguard your charity against such abuse if you're to meet your legal duties as a trustee. The risks are likely to be higher for those charities that regularly run speaking events, host speakers or use literature to further the charity's purposes.

In addition, charities can be an important protection against extremism and terrorism. They can help uphold democracy and the rule of law, enabling certain rights and freedoms including freedom of expression and assembly. Whilst ensuring that their beneficiaries and people are protected, schools, universities and students' unions, for example, can play a vital role in promoting free speech by providing an environment where challenging ideas or views can be discussed and debated within the law and preparing young people to challenge extremism and the ideology of terrorism. Similarly, faith and community based organisations can play a very important role in preventative activity, challenging ideology that claims religious justification for terrorism or extremism.

Some charities also support beneficiaries that may be at risk of radicalisation. Trustees of these charities, should ensure that they know what to do when there are concerns about an individual. The charity's staff and volunteers also need to know how to deal with these concerns. This not only protects those at risk but it also protects the trustees in taking the right steps and to ensure that they are complying with their legal duties.

5. When are extremist views contrary to charity law?

5.1 Short answer:

Some views may not be the norm or traditional. They may even offend, shock or disturb others. That does not mean they cannot be promoted or supported by a charity.

On the other hand, expressing or acting on certain views, such as inciting religious hatred, may be a criminal offence and/or in breach of human rights and equality laws.

Beyond that, there is a range of views that under charity law may not be appropriate for a charity to support because they, for example, breach

political campaigning, public benefit rules or other laws which apply to particular types of charities, such as schools, under education law.

If a charity provides a platform for the expression or promotion of extremist views, this is not likely to support the charity's purposes or to comply with the public benefit requirement³ not to cause undue detriment or harm.

Trustees are also likely to be in breach of their duties as trustees.

5.2 In more detail:

Everyone has the right to freedom of expression under British law. This is true even where such views or opinions may offend, shock or disturb others. In the vast majority of circumstances, it should be possible for speech to go ahead.

However, freedom of expression is not an absolute right, and can be limited by law where necessary, for example, to prevent crime, in the interests of national security or to protect the rights of others. Promoting certain views would be a criminal offence, for example, if these encourage terrorism. This includes publishing statements that glorify terrorist acts.

Legal requirement

Charities, their trustees, staff and volunteers must comply with the general law so they must both as an individual and as a representative of the charity make sure they do not commit a crime.

It will be a criminal matter if a charity runs an event or publishes material which glorifies terrorism or incites hatred on the grounds of race, religion or sexual orientation. You, your co-trustees and other charity representatives may also be at risk of committing a criminal offence in carrying out your role where, for example, you express ideas, views or policies that are promoted by and closely associated with terrorist groups.

Under charity law, charities must comply with the public benefit requirement. Views or activities that are violent or that encourage unlawful violence cannot be for the public benefit because they are illegal. In addition, there are other extremist views and activities, particularly those which seek to radicalise or use radicalising materials that may be inappropriate for a charity to host or promote. Such views may not further the charity's purposes, or may breach the rules on political activities. Other extremist views may help to create an environment conducive to terrorism. In addition, promoting views which are harmful to social cohesion, such as:

- denigrating those of a particular faith or no faith
- promoting unjustified segregation on religious or racial grounds
- seeking to radicalise by making claims to which violence is subsequently presented as the only solution

may well be inconsistent with the public benefit requirement even though these views might fall well below the criminal threshold. All these pose unacceptable risks to a charity.

The Commission accepts that there is no universally accepted definition of a 'controversial' or 'extremist' view⁴. As such, the Commission will not focus on whether or not the views expressed, for example, at a charity's event are 'controversial' or 'extremist', but instead will review the extent to which you have discharged your trustee legal duties under charity law, considering the risks that are likely to arise and what steps can reasonably be taken to mitigate them.

6. How might extremists abuse charities?

6.1 Short answer:

Abuse can occur in many ways, such as:

- through the use of the charity's premises
- by speakers at the charity's events
- through the use of the charity's communications network, including social media, to promote extremist literature

This abuse may be carried out by a person or organisation, either connected to a charity or outside of it.

6.2 In more detail:

Trustees should be aware that abuse can occur in ways which aren't always immediately obvious or apparent. It is therefore important that trustees maintain good lines of communication, accountability and oversight where they are not directly in charge of all aspects of the management and administration of a charity. Some examples include:

- the charity organises activities that support views which could be considered harmful or unlawful
- an individual within a charity allows its premises to be used by someone else to promote terrorist activity or to express, without challenge, extremist ideology
- a charity invites speakers, or uses volunteers, who the trustees know are likely to promote extremist ideology to influence or direct the charity's work

- trustees, staff or other charity representatives promote extremist ideology or make inappropriate extremist comments in their personal capacity
- people with extremist views use legitimate and acceptable contact with the charity to endorse these views, or to give them status or credibility
- a charity uses or distributes literature which contains extremist views and makes this available to the charity's beneficiaries
- a charity works with, or funds, a partner that promotes or fails to condemn extremist views or terrorist activity (whether or not it may be a charity) and so brings the charity into disrepute
- other groups and bodies use charity premises to hold an event at which extremist views are expressed or promoted and/or to collect funds in support of extremist or terrorist purposes
- a charity supports extremists, for example by providing charitable funds or other assistance only to people who hold or have expressed extremist views
- an event unconnected to the charity is a platform for extremist views or invites a speaker known to have made inappropriate extremist comments and the charity's name is associated with the event because the organisers are donating the income to the charity and advertising this to attract attendees
- the communications network of a charity is exploited so that those intent on promoting and developing extremist views in order to encourage terrorism can contact each other – this may happen without the knowledge of the charity or its trustees

7. What are my legal duties as a charity trustee?

7.1 Short answer (legal requirement):

As a trustee you have a duty to act in the best interests of your charity. You must manage your charity's resources responsibly, act reasonably and honestly and ensure that your charity's assets, people, beneficiaries and reputation are not placed at undue risk. You must also ensure that your charity complies with the relevant legal requirements that apply to it.

A charity's activities can only be in pursuit of lawful charitable purposes for the public benefit. Concerns about a charity promoting or giving a platform to inappropriate extremist views would call into question whether what it was doing was lawful, supporting its purposes and for the public benefit.

In addition, trustees of certain charities - particularly education charities - will also be subject to a duty under section 26 of the Counter-Terrorism and Security Act 2015 (the 2015 Act), to have 'due regard to the need to prevent people from being drawn into terrorism'. This duty is known as the Prevent duty and more detail can be found in the Prevent duty section.

7.2 In more detail (legal requirement):

Under charity law trustees have 6 main legal duties. These are explained in The essential trustee: what you need to know, what you need to do (CC3)(<https://www.gov.uk/government/publications/the-essential-trustee-whatyou-need-to-know-cc3>) and are summarised below:

- ensure your charity is carrying out its purposes for the public benefit
- comply with your charity's governing document and the law
- act in your charity's best interests
- manage your charity's resources responsibly
- act with reasonable care and skill
- ensure your charity is accountable

These trustee duties apply in a number of ways in the context of this subject area, including:

- to comply with the law, including counter-terrorism legislation and criminal law, you must ensure your charity's activities do not: promote unlawful violence or hatred on the grounds of race, religion or sexual orientation; encourage or glorify terrorism; or incite criminal acts or public order offences. However, trustees should not inhibit speech that is within the law as this may result in a breach of human rights law. In some cases, a balancing of competing considerations may be needed.
- to act in your charity's best interests and manage its resources responsibly, you must ensure that its assets are used only to support its charitable purposes. You must avoid exposing your charity's assets, people, beneficiaries or reputation to undue risk. Where a charity's beneficiaries or users are children or adults at risk, you should ensure that you have adequate measures in place to assess and address the risks specific to those groups.
- when dealing with concerns that are raised about charity activities, the greater the risks, the more you and your co-trustees will need to do to demonstrate that you've discharged your duties. So if the charity regularly invites controversial speakers, you're likely to have to do more to show how you're properly managing the associated risks. Your charity must not act in a way that could lead a reasonable member of the public to conclude that the charity or its trustees were associated with a proscribed organisation or promoting or supporting terrorism.
- you and your co-trustees should not use your charity's name to promote views or activities inappropriate for a charity. If you know that your

charity's name is, or is likely to be, associated with extremist activity but do nothing about it, you'll be failing in your duty to ensure that your charity is complying with the law, in particular adequately protecting its assets and carrying out its purposes for the public benefit. This also applies if you were unaware of the risk, but ought to have known about it and taken reasonable steps to address it.

- to ensure that your charity's assets are used only to support its purposes, you should comply with the rules on carrying out political activities. This means that you must not allow it to be used as a vehicle for the expression of the political views of any individual trustee, staff member or other representative. Find out more in Campaigning and political activity guidance for charities: CC9 (<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-bycharities-cc9>).
- a charity should not fund or support an organisation that exposes its beneficiaries to extremist views or activities which directly, or indirectly, promote terrorism. This is so even if the charity's funding or support is spent on legitimate charitable activities. If this happens you would have failed in your duty to manage your charity's resources responsibly and to avoid exposing its assets, people, beneficiaries or reputation to undue risk. The Commission is also likely to consider this to be misconduct and/or mismanagement.
- to ensure your charity is carrying out its purposes for the public benefit, you should ensure that it's outward facing and inclusive.
- if your charity is considering funding non-charitable bodies, you must ensure that funds are used only for charitable activities which support its purposes and don't expose it to undue reputational or other risks. If your charity funds or works with a partner that supports or fails to condemn extremist views and terrorism, this would impact on public trust and confidence in your charity and also give rise to regulatory concerns. For example, a charity provides funding for mathematics and language classes at a school overseas. However, the trustees know that the school also teaches and promotes terrorist ideology alongside proper classes. This activity means it would be unacceptable for the charity to continue to support the school and the trustees must ensure this ceases.

Some charities will also be subject to a duty under section 26 of the Counter-Terrorism and Security Act 2015 to have 'due regard to the need to prevent people from being drawn into terrorism'. This duty is known as the Prevent duty and it applies to 'specified authorities' that are described

in Schedule 6 of the Act. For more information, please see Section 9 on the wider legal framework.

8. In practice what does this mean for trustees?

8.1 Short answer (legal requirement):

Provided speech is legal, the right to speak freely includes saying things which may offend, shock or disturb others. You and your co-trustees must act to manage your charity's assets responsibly, which includes its reputation, and to act with reasonable care and skill and in your charity's best interests. You should take all reasonable steps to protect it from harm by being vigilant, and putting in place appropriate policies and procedures, particularly if you regularly run events or distribute literature. This does not mean that such events or speeches cannot take place where there is a higher risk, but it does mean that trustees might have to consider in more detail what the risks are and what steps can be taken to address or mitigate those risks so that the event or speech can take place in furtherance of the charity's best interests.

If a speaker or author breaks the law, they will be culpable. However in some instances, if you knew, or ought to have known, that the speaker or author would break the law, you may also find yourself liable or otherwise in breach of your legal duties.

8.2 In more detail:

As recognised internationally, freedom of expression is a key human right. Provided speech is legal, the right to speak freely includes saying things which may offend, shock or disturb others. However, freedom of expression is not an absolute right and can be limited by law where necessary, for example, to prevent crime, in the interests of national security or to protect the rights of others.

The risks from extremism are likely to be higher for those charities that regularly run speaking events, host speakers or distribute literature to further the charity's purposes. However, the risks will still vary from charity to charity and your response should be proportionate to these: the higher the risks, the more you'll need to do to protect your charity and comply with your trustee duties.

As a trustee, you must manage your charity's resources responsibly. You should ensure that you exercise proper control over its financial affairs, keep accurate records and safeguard its assets. Ultimately, it's your responsibility as a trustee to be satisfied that hosting a specific event, or inviting a particular speaker, is in the best interests of your charity.

As examples, where appropriate, you should:

- ensure that adequate procedures are put in place and properly implemented to prevent terrorist organisations and extremists from taking advantage of your charity's status, reputation, facilities or assets
- implement effective procedures for assessing the risks posed by individuals who may speak at events organised by your charity. These include carrying out appropriate background checks and assessing the risks when working with other organisations or groups to host an event
- be able to demonstrate that you've considered the suitability of individuals or groups with which the charity is going to be closely associated
- be able to demonstrate that you have processes in place to satisfy yourself that literature distributed or made available by the charity is consistent with its charitable objects and does not place the charity at undue risk from harm
- ensure that you have taken reasonable steps to avoid the charity's premises, assets, staff, volunteers or other resources being used for activities inappropriate for a charity
- be alert to the risk that, very occasionally, a speaker may have an ulterior motive for wanting to work with your charity that could be unconnected with its work, and which could adversely affect its reputation, independence and public confidence in it
- take all necessary steps to ensure your charity's activities and views cannot be misinterpreted and that these do not place it at undue risk of harm or reputational damage
- be aware that what you do or say in a personal capacity may also impact on the charity
- take immediate steps to make it clear that your charity does not support violent or terrorist activity, or terrorist ideology, if its activities might appear to suggest otherwise

The Commission expects any person connected with a charity, whether a trustee, employee or volunteer, to deal responsibly and efficiently with concerns about a charity's possible links with extremist activity and allegations of connections to or support for terrorists and terrorism.

9. What other legal issues do trustees need to be aware of?

9.1 Short answer (legal requirement):

In addition to complying with your duties under charity law, you must comply with your legal duties under the general law including criminal, human rights and equality law. This means ensuring that the charity's

decision making and risk assessment procedures take account of the relevant law as it applies to your charity. If there is any doubt, you should consider taking legal advice.

9.2 In more detail:

The wider legal framework (legal requirement)

This section gives an overview of some of the wider legal considerations that may be relevant for you and your co-trustees when organising charitable activities that involve guest speakers, or when distributing literature and other educational material as part of your charity's work. It aims to help you properly administer your charity.

You should follow the trustee decision-making principles as set out in the Commission's guidance *It's your decision: charity trustees and decision-making* (<https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making>). You should consider obtaining external professional advice on issues where there may be significant risk to your charity; where you and your co-trustees may be in breach of your duties; or, on complex legal matters. In higher risk situations, it will be difficult to see how you could show you've met your duties unless you do so.

Human rights law: the Human Rights Act 1998 incorporates into UK domestic law the provisions of the European Convention on Human Rights. It applies only to public bodies and so will not apply to most charities.

The rights in the Convention that are most likely to be relevant in this context are Articles:

- 9 (freedom of thought, conscience and religion)
- 10 (freedom of expression)
- 11 (freedom of association)
- 14 (prohibition of discrimination)

None of the rights listed above are absolute. They can be limited by law where necessary, for example, to prevent crime, in the interests of national security or public order, or to protect the rights of others.

Article 17 of the Convention states that the Convention does not grant anyone the right to do anything aimed at depriving others of their Convention rights. For example, speech or literature that aims to make the lives of a particular group intolerable would not be protected under the right to freedom of expression.

Freedom of speech: Article 10 above refers to right to freedom of expression. This right forms part of wider laws protecting speech, and is sometimes known as freedom of speech. For some charities, such as higher education institutions, there are specific and important legal duties to respect freedom of speech. Such duties may arise in the context of running events and distributing literature. However, as a trustee, you must ensure that in enabling free speech you are not failing to comply with other legal duties.

There may be instances when it's necessary for you to limit freedom of speech, for example, if you're informed that speakers at your charity may:

- promote or encourage discrimination against a protected group
- commit a criminal offence
- incite others to commit criminal acts
- act in a way that is contrary to the civil or human rights of the individuals or the charity itself by, for example, inciting racial or religious violence

Equalities Act 2010: this protects people from discrimination or harassment in the workplace and wider society on grounds which include, but are not limited to, religion or belief, race, sex, sexual orientation, disability and age.

It also includes a public sector equality duty that places a proactive duty on public bodies (which includes some types of charity) to have due regard to the need to:

- eliminate discrimination
- advance equality of opportunity
- foster good relations between different people when carrying out their activities

Criminal law: an individual's rights can be lawfully restricted if their behaviour constitutes a criminal offence.

There are a number of public order offences that you and your co-trustees need to be careful not to break when organising events. If in doubt, trustees may find it helpful to seek their own independent professional advice. Further information is available in the Crown Prosecution Service guidance General principle: public order offences

[http://www.cps.gov.uk/legal/p_to_r/public_order_offences/#General Principle](http://www.cps.gov.uk/legal/p_to_r/public_order_offences/#General_Principle).

Incitement to hatred on the grounds of race, religion or sexual orientation is also a criminal offence, where there's either an intention, or a likelihood, that hatred will be stirred up.

The Terrorism Act 2000 specifically makes it a criminal offence directly, or indirectly, to incite or encourage others to commit acts of terrorism or to glorify terrorism. It's sufficient if the speaker is reckless as to whether members of the public may be encouraged to commit, prepare or instigate acts of terrorism. Charities cannot provide a platform for, or support, terrorist activities or ideologies. You must therefore be vigilant to ensure that your charity's premises, assets, staff, volunteers and other resources cannot be used for activities that may, or may appear to, condone terrorist activities.

You may commit a criminal offence if your charity is connected to or supports a proscribed organisation. You should therefore put in place proper procedures for managing the risks of it coming into contact with proscribed organisations, designated persons, groups or entities and take appropriate steps if this does happen

Even indirect or informal links with a proscribed terrorist organisation pose unacceptable risks to a charity's property and its proper administration. This may be an association with someone who is a known supporter of a proscribed organisation, or allowing a member of a proscribed organisation to influence the activities of the charity. Examples of indirect or informal links to proscribed organisations include allowing a charity premises, events, websites, literature, or social media to support a proscribed organisation. You and your co-trustees should ensure that the risks caused by associating with such persons or organisations are properly assessed and managed.

It's a criminal offence for a person (including the designated person) to deal with funds or economic resources belonging to, owned by or held by a designated individual or entity. It's also a criminal offence to make funds, economic resources or financial services, available directly or indirectly, to or for, the benefit of a designated individual or entity.

The Office for Financial Sanctions Implementation (OFSI), part of HM Treasury, maintains a list of all designated persons and entities whose assets have been frozen in the UK - Financial sanctions: consolidated list of targets(<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>).

The Home Office maintains a list of terrorist groups or organisations banned under UK law - Proscribed terrorist groups or organisations

<https://www.gov.uk/government/publications/proscribed-terror-groups-or-organisations--2>).

To ensure that you fulfill your legal duties, the Commission recommends that you check prospective speakers and partner organisations against these lists as part of your routine due diligence and risk management procedures.

For more information, see the commission's guidance Protecting charities from harm: Chapter 1 - Charities and terrorism (<https://www.gov.uk/government/publications/charities-and-terrorism>).

The Prevent duty: Some charities will also be subject to a duty under section 26 of the Counter-Terrorism and Security Act 2015 to have 'due regard to the need to prevent people from being drawn into terrorism'. This duty is known as the Prevent duty and it applies to 'specified authorities' that are described in Schedule 6 of the Act.

Not every charity is a 'specified authority'. However, some charities, for example certain educational charities, are 'specified authorities' and therefore subject to the Prevent duty. The Duty is not about restricting debate or free speech. For schools, the Duty explicitly says that they should be safe spaces in which children and young people can understand and discuss sensitive topics, including terrorist ideology, to learn how to challenge these ideas. The Duty also explicitly requires further and higher education institutions to have regard to their duty to secure freedom of speech and to have particular regard to the importance of academic freedom.

Trustees of charities that are specified authorities should make sure that they are familiar with the government's statutory guidance on the Prevent duty (<https://www.gov.uk/government/publications/prevent-dutyguidance>) and (where appropriate) any supplementary guidance produced by relevant authorities, such as the Department for Education's (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/439598/prevent-duty-departmental-advicev6.pdf) advice for school and childcare providers or the Office for Students' guidance (<http://www.hefce.ac.uk/reg/prevent/>) on how it monitors higher education institutions' compliance with the Prevent duty.

While the Commission does not directly oversee or monitor compliance with the Prevent duty itself, as with all legal requirements, trustees of specified authorities must make sure that their charities comply. If a charity were identified as failing to comply, the Commission may need to engage, either with other relevant authorities, or directly with the charity, to address any underlying governance problems and ensure future compliance.

Even if a charity is not a 'specified authority' itself, it may enter into contracts or work with others - such as local councils, health and social care providers or higher education institutions - that are bound by the Prevent duty. These organisations may place contractual or other obligations on charities which relate to those authorities' own compliance with the duty. Trustees must be aware of these obligations, in addition to their broader responsibilities to prevent their charities from being abused for extremist purposes, and make sure that these are factored into their charity's risk assessments, policies and procedures. Regardless of the Prevent Duty, the Commission would expect all trustees to discharge their legal duties and responsibilities to manage the risks from terrorism, extremism or other illegal conduct such as hatred on the grounds of race, religion or sexual orientation.

Further information for charities that work with people who may be at risk of radicalisation, can be found in the Prevent Strategy (<https://www.gov.uk/government/publications/prevent-strategy-2011>) under Objective Two: supporting vulnerable people.

10. Charity events and speakers

10.1 How can trustees manage potential risks when inviting speakers to participate in charity events and meetings?

10.2 Short answer:

As a trustee, you have a duty to manage your charity's resources responsibly and must protect its assets and avoid taking undue risks. In most instances, speeches or events can take place unhindered or without detailed risk assessments. Trustees should however be mindful of the risk of giving a platform to speakers who break the law by glorifying or supporting terrorism, inciting violence or hatred on the grounds of race, religion or sexual orientation or other illegal activity.

There are a number of steps you should consider taking to manage the risks, depending on your charity's activities and how often it holds events giving a platform to speakers. You should take a measured and proportionate approach - the greater the risks, the more you'll need to do to protect your charity and ensure you comply with your duties. If you and your co-trustees, or those in the charity organising the event, invite and allow speakers who you might have reasonably suspected would use the platform to break the law - for example because they have done so previously - they may find themselves in breach of criminal law and/or charity law. In addition, if you and your co-trustees fail to implement appropriate measures to protect your charity, you may be in breach of your trustee duties.

On the other hand, where speech is lawful, you should consider the risk of damage to your charity's reputation that could be caused by inhibiting free speech. This could include a detrimental impact towards your charity's independence or credibility. For charities with purposes to advance education, this risk assessment should also include consideration of their charitable purposes. Further information on this is provided in Sections 12 and 13 below.

10.3 In more detail:

The Commission recognises the important role that charities have in challenging traditional boundaries and 'group-think' as well as encouraging the free exchange of views and the educational benefits of such activities. As such, any risks of inviting speakers should be balanced with any risks of inhibiting lawful speech.

You should be alert to, rather than averse to, the risks of inviting speakers to participate in your charity's events or meetings and take a measured and proportionate risk-based approach in their organisation. The more frequent the events and/or the greater the concerns, the more you'll need to do to provide sufficient assurance that your decisions to allow speakers a platform are in the best interests of the charity and furthering its purpose.

You and your co-trustees should assess the risks and benefits of running an event, including:

- why the event is in the charity's best interests
- whether the charity may be drawn into activities that: are outside its purposes; do not comply with the public benefit requirement; are a misapplication of funds
- whether the event may breach the legal/good practice requirements on political activities and campaigning
- what benefit or detriment there may be to the charity's reputation, which may include an impact on the charity's independence or credibility the costs and financial risks
- the risks attached to the specific event, and how these might best be managed and the cost implications in doing so
- any unintended consequences how best to evaluate the event's success and impact

In addition, some examples of the steps that you and your co-trustees can take that will help you to manage the risks include:

- have clear risk assessment and decision-making policies and procedures for inviting speakers (internal and external) to charity events

- have clear criteria for deciding if a speaker is a cause for concern
- where other organisations are closely associated with an event, the risk assessment should include an evaluation of the suitability of the charity's relationship with them and of being linked to any of their promotional material
- carry out due diligence checks on potential speakers and partner organisations, including basic checks that aim to establish the extent of the risk of the charity directly or indirectly promoting inappropriate or extremist views
- carry out checks against the Home Office list of proscribed groups and against the OFSI list of designated persons and entities
- be alert to warning signs that a speaker may promote views that: are illegal in the UK; intended to radicalise; or, raise concerns about inappropriate political activities or public benefit issues
- if a risk assessment identifies a sufficient cause for concern, consider obtaining and assessing a copy of the speech before giving approval for the speaker to deliver it
- provide a written briefing for speakers that sets out the charity's requirements of speakers and their conduct at an event. The briefing should make speakers aware of: the charity's purposes, its charitable status; and, the key factors which they should consider to ensure that their contribution is consistent with the charity's purpose. In some cases a more detailed briefing may be needed which could include the following specific provisions that speakers:
 - ensure they do not do anything that could bring the name of the charity into disrepute or damage public trust and confidence in it
 - do not encourage, glorify or promote any acts of terrorism, including any individuals, groups and organisations that support such actions
 - do not incite hatred or violence or call for the breaking of the law
 - do not spread hatred and intolerance in the community
 - be careful not to be unnecessarily divisive or denigrate faiths, racial or other groups
 - are not permitted to raise or collect funds for any external organisation or cause without the express permission of the trustees
- ensure that staff and chairs attending events and activities, where there are invited speakers, understand and follow the charity's policy and procedures, and are adequately briefed and tasked
- consider how to facilitate the right to reply to various points or views raised and whether they should intervene and challenge if inappropriate comments are made
- ensure there are clear procedures in place for dealing with an incident/complaint and for taking action, including where relevant, disciplinary action, if the charity's policy and rules which govern decisions on inviting speakers are breached • record decisions made

on inviting speakers and where appropriate the reasons why, particularly where they may be controversial, and the factors that were considered. This will provide evidence to demonstrate that you and your co-trustees have acted responsibly in the event of future challenge

10.4 Can someone with controversial views be invited to a charity event to speak?

10.5 Short answer:

Yes. For some charities, enabling debate and discussion of controversial issues may even be integral to their charitable purposes. This guidance should not be used, and is not intended ever to be used, to prohibit those with lawful, albeit unpopular, views. Nonetheless, you and your co-trustees must be clear about how this will further the charity's objects and take active steps to manage any resulting risks.

10.6 In more detail:

Some views may not be the norm or traditional and may even offend, shock or disturb others. That does not necessarily mean they cannot be promoted, supported or hosted by a charity. Expressing strongly controversial or partisan views is not illegal or unacceptable under charity law in itself, unless these are criminal. However, whether it's unacceptable under charity law for a charity to support these views or allow them to be expressed will depend on the circumstances: what is said; when; to whom; and why; as well as how, if at all, these further the charity's purposes.

Some charities, particularly educational ones, host debates with speakers of ranging views without taking any position themselves. However, freedom of expression may be limited in certain circumstances, for example, to protect others from unlawful violence, hatred and discrimination. In particular, freedom of expression does not protect statements that discriminate against or harass, or incite violence or hatred against other persons and groups, particularly by reference to their race, religious belief, gender or sexual orientation. As a trustee, you must not allow your charity to be used to express the personal political views of any individual trustee or staff member. Neither must your charity be used to promote extremist, radicalising or other views that support terrorism. That said, a charity can host a speaker who has expressed or holds views which are not considered mainstream or which might be considered to be offensive if the views expressed are legal - that is, do not glorify terrorism or incite racial violence and the event furthers the charity's purpose for the public benefit with trustees able to demonstrate that they have discharged their legal duties. Such views should still be balanced in appropriate circumstances, for example, by opposing speakers or by enabling the right to reply.

You should be able to show that an activity supports the charity's purposes, and that in doing so it does not lead to undue public harm or detriment. In some instances, strongly partisan or controversial views may compromise the charity's integrity or public trust and confidence in it. It may risk the charity's operations and other activities, or the safety of its staff and volunteers. For that reason, before inviting a speaker, you and your co-trustees should assess and manage these risks.

10.7 Can charity speaking events be limited to a small and specific group of people?

10.8 Short answer:

Speaking events held by charities are normally open to anyone and not limited to a small defined group. However, it may sometimes be acceptable to set restrictions on who can attend if it can be shown that the restriction is lawful, reasonable and relevant to the charity's aims.

10.9 In more detail (legal requirement):

Charity law requires that charities should be established and operate for charitable purposes and for the public benefit. Charities by definition are outward-facing and inclusive, not inward-looking or for private benefit.

Charity speaker events should be accessible to as many people as possible to maximise the charity's reach and positive impact. There should be no unnecessary restrictions on who can attend unless you can show other ways in which the public benefit requirement can be satisfied. This means that any restrictions must be legitimate, proportionate, rational and justifiable given the aim of the organisation.

As a trustee, you must also consider your obligations under the Equality Act 2010 and ensure that there is no discrimination on the grounds of a protected characteristic in the charity's provision of services and in deciding whether any such restrictions are necessary for the charity to promote its purpose.

10.10 What if the event is held on the charity's premises but is being run by another organisation?

10.11 Short answer:

If you and your co-trustees allow another organisation to use your charity's premises for an event but you believe, or have reasonable cause to suspect,

that this may result in an illegal activity, you must immediately report your concerns to the police and take steps to stop the event.

10.12 In more detail:

A charity can allow other organisations to use its premises, either as a way of furthering its charitable aims or on a commercial basis in order to raise funds. In either case, if you and your co-trustees have concerns that such an event may break criminal law, you must immediately report those concerns to the police.

You may refuse to allow a particular organisation or individual to use your charity's premises for a number of reasons, such as if you consider that:

- the organisation's aims or an individual's activities
- conflict with your charity's purposes there's a risk of
- public disorder there's a risk of alienating the charity's beneficiaries or supporters.

To protect your charity and its assets, if you regularly hire out its premises and facilities, you should ensure you set clear terms for the rental/hiring agreement. These could contain provisions that allow your charity to reserve the right to prevent an event taking place where you have concerns about it and/or where there is potential for the conditions of use to be breached. This could include where you have significant concerns about public order issues or that, illegal and/or extremist views or activities are likely to be promoted.

In some circumstances, you and your co-trustees may decide to allow the event to go ahead but insist on a charity representative attending it to monitor the proceedings and assess the risks. This will depend on the circumstances and the risks identified. If you attempt to stop an event but are unable to, you may, depending on the outcome, consider refusing to allow the premises to be used again and/or report your concerns about the organisation to the police where appropriate.

10.13 Can someone with controversial views be a charity trustee?

10.14 Short answer:

Yes. There is a long and successful history of trustees and their charities being in the forefront of social change and promoting ideas that, at the time, were unpopular or controversial. This guidance should not be used, and is not intended ever to be used, to prohibit those with lawful, albeit unpopular, views.

All trustees must act in the best interests of the charity only and must ensure any conflicts of interest are properly managed. In some instances, expressing strongly contentious or partisan views may compromise the independence of the charity and make it unsuitable for the individual to act as a trustee. This will depend on the circumstances and the nature of the person's conduct.

10.15 In more detail:

As a trustee, you have a legal duty to act with reasonable care and skill in the administration of the charity and to act in its best interests. You should also consider, with regards to your seniority and public connection to the charity, how your conduct in a personal capacity may affect your ability to act as an independent trustee of a charity, or the charity's reputation itself.

Many people involved with charities have strong and often controversial or partisan views. In many instances, this is not in itself problematic. There may be some occasions however where expressing strongly controversial or partisan views on a particular issue without due regard to the charity's position may compromise the charity's integrity, purposes or activities. This may mean that in some circumstances you're not suitable to act as a trustee, even if those views are expressed in a personal capacity. This is because those views may be such that they conflict with you exercising your objective judgment in the interests of the charity and therefore your ability to make proper decisions; those views may create risks to the charity's operations and/or reputation; and, so may undermine the charity's ability to deliver services to its beneficiaries. In order to assist you identify and manage such risks, please refer to our guidance Conflicts of interest: a guide for charity trustees (CC29) (<https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charitytrustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees>).

If you cannot carry out your role and comply with your legal duties, you should resign. If you remain in post but know you're unable to comply with your trustee duties, this would be misconduct and/or mismanagement in the administration of the charity.

11. Extremist literature

11.1 How can a charity ensure it does not promote or support extremist literature?

11.2 Short answer:

Charities use a wide range of means to distribute information and educational materials. Examples include through electronic media, including television and radio, social media, including Facebook, Twitter and YouTube, or physical recordings, including memory cards, CDs and DVDs. Charities may also sell, use, distribute or otherwise promote literature at their premises, in prayer rooms and through bookshops.

As a trustee, you must ensure that the risks associated with promoting material in these ways are assessed and that appropriate measures are put in place to mitigate against those risks.

11.3 In more detail:

Many charities, by the nature of their work and the matters they deal with, will raise issues which some people find emotive. This can mean these charities' written materials include content that offends, shocks or disturbs others. This is perfectly acceptable so long as it has a well-founded evidence base, is factually accurate, and is within the law. For further information on the wider legal framework, please see Section 9 of this guidance.

You and your co-trustees should therefore consider the particular risks of using such material, which may harm the public perception of the charity. Even if the content of this material does not breach the general law or charity law, you should weigh up these risks against the potential benefits such as an enhanced public understanding and/or a change in attitude towards an issue.

More guidance on using campaigning material is in *Speaking out: guidance on campaigning and political activities by charities (CC9)* (<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>).

There are a number of steps that you can take to reduce and manage the risk of your charity distributing inappropriate extremist literature or material. This is particularly important where it regularly uses or distributes literature. These steps include:

- have a clear policy and procedures for risk assessment and decision-making in relation to literature which may be regularly used or distributed by the charity or which is made available at its premises have criteria and a clear framework for determining if an author or the content of any material is a cause for concern
- where an author is assessed as a potential concern, carry out further due diligence such as checks against the OFSI list of designated individuals and entities

- in instances where a risk assessment identifies a sufficient cause for concern, consider obtaining a copy of the literature and assessing its content before giving approval for it to be disseminated at a charity event or made available at its premises

11.4 When will certain literature be inappropriate?

11.5 Short answer:

As a trustee, you should use good judgment. You should remain vigilant so that, as a minimum, you prevent material that contains extremist views likely to be in breach of UK law from being made available by your charity.

11.6 In more detail:

When you assess material that your charity makes available, you need to take into account that certain content and views expressed in that content may be illegal. This includes, for example, views that:

- promote unlawful violence
- incite hatred on the grounds of race, religion or sexual orientation
- encourage or glorify terrorism or promote terrorist aims or ideologies
- call for members of the armed forces to be killed

Extremist views that incite criminal acts or public order offences also break the law.

In order for you to decide whether the material is appropriate for your charity to use and distribute, and within its objects, you should also consider:

- how controversial the material is
- the risk that the content is harmful to some people
- whether the material might be misinterpreted or have different meanings to different audiences
- how the public might react if they knew this material was being distributed or used by the charity and accessed by its beneficiaries
- what impact on public trust and confidence in the charity this might have
- whether it's likely to generate complaints and how you might respond

11.7 What if inappropriate material is promoted through the internet?

11.8 Short answer:

You can report your concerns about illegal or harmful online content (information, videos and pictures) to the police at the Counter Terrorism Internet Referral Unit (CTIRU), through the GOV.UK (<https://www.gov.uk/reportterrorism>) website.

If the inappropriate content involves the charity's own material, or is connected to the charity, you must take the necessary steps to remove the material and deal with the incident promptly.

11.9 In more detail:

The legal framework is provided by Sections 1 and 2 of the Terrorism Act 2006 (TACT) which creates the offences of encouragement of terrorism (section 1) and the dissemination of terrorist publications (section 2).

The Counter Terrorism Internet Referral Unit (CTIRU) is a dedicated police unit that assesses and investigates internet-based content which may be illegal or harmful. It takes appropriate action through the criminal justice system and/or by contacting internet service providers. Trustees or charities concerned about online material can make referrals to the CTIRU through the GOV.UK (<https://www.gov.uk/report-terrorism>) website.

Illegal or harmful content might include:

- articles, images, speeches or videos that promote terrorism or encourage violence
- content encouraging people to commit acts of terrorism
- websites made by terrorist or extremist organisations
- videos of terrorist attacks

If you and your co-trustees have concerns about internet-based content which may be illegal, or charity staff or volunteers raise such concerns, you should take reasonable and prompt steps to address these. This may include advising staff and volunteers about reporting to the police and checking this is done, or deciding to make a report yourself.

If the internet-based content involves the charity's own material, as a trustee, you're responsible and if it's clearly unacceptable, must take down the content straight away. You should take steps to find out how the content was linked with the charity and should also consider how to prevent this happening again.

12. In relation to extremism, what risks and legal issues do schools and other educational charities need to be aware of?

12.1 Short answer:

A charity should not distribute, display or use educational materials that contain biased or incorrect information about other people, groups or beliefs (for example, material that is anti-Semitic or homophobic).

Neither is it acceptable for any charity to publicise extremist views that breach UK law or are not for the public benefit or to preach hatred, particularly against members of other religions and faiths.

Some educational charities are subject to the Prevent duty under section 26 of the Counter-Terrorism and Security Act 2015 (the 2015 Act), to have 'due regard to the need to prevent people from being drawn into terrorism'. Section 9 of this chapter provides more information, whilst specific published guidance is also available at Prevent duty guidance: for England and Wales

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445977/3799_Revised_Prevent_Duty_Guidance_England_Wales_V2-Interactive.pdf.

12.2 In more detail:

Charity law gives a wide meaning to education and does not limit it to education in a classroom environment. Although education can have an uncontroversial broad value base, it should allow those being educated to make up their own minds on controversial issues. This means:

- researching and presenting information in a neutral and balanced way that, where appropriate, encourages awareness of different points of view
- considering the arguments in an appropriate way related to the evidence
- any conclusions made, should be based on evidence and analysis

In an educational context and to develop critical thinking skills, it's expected that students will be engaged in analysis, discussion and debate on challenging issues, which could include extremist views and ideologies. It is important to recognise that, whilst ensuring its beneficiaries and people are protected, educational charities can provide environments where emotive or sensitive topics can be discussed and debated in furtherance of their educational purposes. However, a charity cannot promote or endorse

such views if they breach UK law or do not comply with the public benefit requirement.

This also applies outside of the classroom or other direct educational provision. You should ensure that your charity's educational premises are not misused to promote extremist views or activities, for example, through after school or extra-curricular activities, or through child care provision.

The legal requirements for educational institutions place clear obligations on many charitable schools to ensure there are safeguards against biased or unbalanced teaching or the promotion of partisan political views in publicly funded schools. These require that all reasonable and practicable steps be taken to ensure that where political or controversial issues are brought to pupils' attention, they are offered a balanced presentation of opposing views.

There's also a duty on publicly funded schools to promote community cohesion and there are further requirements in the independent school standards. Ofsted and the Department for Education have the role and remit to enforce these obligations.

In addition to these education regulations, educational establishments, including schools, universities, colleges and other organisations which have educational charitable purposes, must, under charity law, ensure that the provision of education does not promote a political or extremist point of view. Therefore the general duties set out in this guidance above will also apply. For further information, please see the Commission's guidance: The Advancement of Education for the Public Benefit (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/358536/theadvancement-of-education-for-the-public-benefit.pdf).

13. In relation to extremism, what risks and legal issues do debating societies and students' unions need to be aware of?

13.1 Short answer:

Most student societies are part of a students' union and these are usually charities that are established to advance education. The right to freedom of expression is an important element in furthering educational charitable purposes and many of these charities are leaders in promoting democracy, human rights and civil liberties. But this must be balanced with ensuring that activities aimed at promoting these rights do not interfere with or deprive other people of their rights. For example, speech or literature that

aims to make the lives of a particular group intolerable would not be protected under the right to freedom of expression.

Certain further education and higher education institutions are also subject to the Prevent duty to have due regard to the need to prevent people from being drawn into terrorism. For more information, please see Section 9 on the wider legal framework.

13.2 In more detail:

A charitable students' union with an annual income of over £100,000 must register with the Commission. Charitable students' unions with an income below this threshold are excepted charities which do not need to be registered, but must comply with charity law. All trustees have a legal duty to ensure their charity is carrying out its purposes. For students' unions, their purposes will often include the provision of forums for discussion and debate for the personal development of their students. Freedom of speech should therefore form part of the fundamental consideration of students' unions' activities in furthering their purposes. They may also be putting their reputation, including their independence and credibility, at risk if they inhibit lawful free speech. See Section 9 of this guidance for further information on the wider legal framework.

In addition to furthering their purposes, under charity law, all charities must also operate for the public benefit and must avoid undue damage to the charity and its assets, people, beneficiaries and reputation. All charities, including higher education institutions, students' unions and debating societies, can be challenged on whether they have given due consideration to the public benefit and associated risks when they, or one of their affiliated societies, invite speakers to address students.

If trustees can show that a debate is lawful, an adequate risk assessment has been carried out and appropriate safeguards where necessary have been put in place to ensure that a debate or programme of debates is conducted in a balanced and non-partisan manner, then they will not ordinarily be expected to close or not to carry out a debate. If and when new information about a debate (e.g. a speaker or notice of risk of harm) comes to light, it is important that trustees carry out the appropriate risk assessment.

Students' unions have mechanisms, structures and processes in place in which they make democratic decisions on behalf of their members. In some cases, these democratic structures and processes may also be used to further their charitable purposes by educating students in the political process and encouraging them to get involved in deliberation and debate. In these settings, motions may be proposed which call upon the students' union, or its trustees, to take or not to take particular positions or actions.

Students' union trustees considering whether or not to approve or endorse a motion must be clear what this means in practice for the charity, and must be able to explain how doing so furthers its purposes and how it is consistent with their legal duties as trustees.

As with any charity, a students' union cannot have political objects. However, it can become involved in campaigning and political activity which furthers or supports its charitable purposes, unless its governing document prohibits it. The Commission has published guidance on this, please see Campaigning and political activity guidance for charities (CC9) (<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9>). Students' unions can also support political clubs or societies by providing funding, premises or other forms of support, if this is for the educational benefit of its members or otherwise furthers their charitable purposes.

Students' unions are usually funded by their partner higher education institution and share a close legal and practical relationship but are distinct and often independent. This funding will be subject to agreement by the students' union, which may include requirements to comply with policies, procedures and conditions specified by the partner institution. Higher education institutions also have a legal obligation to protect freedom of expression and must take steps to ensure its students' union does not interfere with freedom of speech and complies with their Code of Practice.

Most higher education institutions are also subject to the Prevent duty to have due regard to the need to prevent people from being drawn into terrorism, please see Section 9 on the wider legal framework. Students' unions are not subject to the Prevent duty but regardless, all trustees must discharge their legal duties and responsibilities to manage the risks from terrorism, extremism or other illegal conduct such as racial or religious hatred.

Students' unions and higher education institutions should also consider the activities and views being expressed within or on behalf of affiliated societies, along with materials that are made available in bookshops and prayer rooms, through electronic media, websites and social media spaces, and to what extent these could be seen to impact on the charity. For some students' unions, their clubs and societies are components of the union whereas for others, they are viewed as independent entities which are affiliated with the union. The level of risk will vary depending on the structure but either way, if a club or society is providing a forum to debate or hosting an event then the trustees of the students' union should ensure that those who are involved in organising the event have taken sufficient steps to identify and manage the risks. This does not mean trustees personally overseeing every event, but trustees should take steps to ensure that such oversight is in place.

14. What should I do if I'm concerned that a charity is promoting extremist views?

If your concerns involve criminality, you must report these to the police straight away. You should also inform the Commission.

Some charities, for example most English universities, academies, sixth form colleges and foundation and voluntary schools, are exempt from registration and regulation by the Commission and have a principal regulator to regulate them as charities. If the charity is an exempt charity, you need to report to their principal regulator in the first instance. To find out whether a charity is exempt and who its principal regulator is, see Commission guidance Exempt charities (CC23) (<https://www.gov.uk/government/publications/exempt-charities-cc23>).

For other charitable organisations, you can report your concerns to the Commission using its online Reporting concerns about a charity (<https://forms.charitycommission.gov.uk/raising-concerns/>) form available on its website. You'll need to explain why and how you think the charity is promoting extremist ideas and whether you have asked the trustees to address your concerns.

If you're a trustee and are concerned about activities at your charity, you should raise your concerns with the other trustees as soon as possible. If they have failed to act on your concerns or you feel unable to raise this with them because it may risk your personal safety, then you must report your concerns to the police. You should also report this to the Commission using the online Reporting concerns about a charity (<https://forms.charitycommission.gov.uk/raising-concerns/>) form mentioned above, when reporting an incident without the authority of the other trustees.

If you have the authority of the other trustees, you should report the matter as a serious incident.

14.1 Serious incident reporting (legal requirement)

The Commission requires charities to report serious incidents. A serious incident is an adverse event, whether actual or alleged, which results in or risks significant:

- harm to your charity's beneficiaries, staff, volunteers or others who come into contact with your charity through its work
- loss of your charity's money or assets
- damage to your charity's property
- harm to your charity's work or reputation

For the purposes of the serious incident reporting guidance, “significant” means significant in the context of your charity, taking account of its staff, operations, finances and/or reputation. The most common type of incidents are safeguarding issues, frauds, thefts, significant financial losses, criminal breaches and terrorism or extremism allegations.

The Commission’s Serious incident reporting guidance (<https://www.gov.uk/guidance/how-to-report-a-serious-incident-in-your-charity>) explains what sort of incidents should be reported if you’re aware of, or suspect them.

Specifically, with respect to terrorism or extremism, given the serious risk to your charity that such concerns pose, you should immediately make a report if you become aware of allegations being made, or have evidence to suspect that:

- your charity (including trustees, members of staff, volunteers or anyone connected with the charity) has known or alleged links to a proscribed organisation or other terrorist/unlawful activity
- someone within or closely connected to the charity, or one of your delivery partners, is placed on a UK or international terrorist list or is subject to an asset freeze
- charity funds or assets have been used to pay bribes, protection money or ransoms
- charity funds or assets have been used/diverted (perhaps via a delivery partner) to support a terrorist group or for other terrorist purposes
- the charity has been used to circumvent asset freezing measures
- charity personnel have been kidnapped or harmed by terrorist groups, including overseas, when representing the charity or carrying out charity work
- you know or suspect that your charity’s premises, or any of the activities that your charity runs, have been misused as a platform for the expression or promotion of extremist views, or the distribution of extremist materials
- you become aware of media reports alleging that your charity has been misused for such purposes, particularly if you believe these could damage your charity’s reputation

As a matter of good practice, all charities, regardless of size or income, should report serious incidents to the Commission promptly.

If your charity’s income is over £25,000, you must, as part of the Annual Return, sign a declaration confirming there were no serious incidents during the previous financial year that should have been reported to the Commission but were not. If incidents did occur, but weren’t reported at

the time, you should submit these before you file your charity's Annual Return, so you can make the declaration.

Until all serious incidents have been reported, you will not be able to make this declaration, or complete the Annual Return, which is a statutory requirement under section 169 of the Charities Act 2011. It's an offence under section 60 of the Charities Act 2011 to provide false or misleading information to the Commission, which includes through the Annual Return.

If you fail to report a serious incident that subsequently comes to light, the Commission may consider this to be mismanagement, for example, where the trustees have failed to manage the risks properly and breached their legal duties. This may prompt regulatory action, particularly if further abuse or damage has arisen following the initial incident.

If something does go wrong, you should take immediate action to:

- prevent or minimise any further harm, loss or damage
- report it to the Commission as a serious incident
- report it to the police (and/or other relevant agencies) if you suspect a crime has been committed, and to any other regulators the charity is accountable to
- plan what to say to your staff, volunteers, members, the public, the media and other stakeholders, such as funders
- review what happened and prevent it from happening again – this may include reviewing internal controls and procedures, internal or external investigation and/or seeking appropriate help from professional advisers

15. What will the Commission do when concerns are raised with it?

The Commission's regulatory role is to ensure that trustees comply with their legal duties and responsibilities in managing and administering their charity. When serious concerns about charities come to the Commission's attention, it assesses the issues to decide the most appropriate course of action. The Commission's regulatory focus is on the conduct of the trustees and whether they are:

- appropriately managing risks
- properly furthering the charity's purpose
- acting lawfully

If the trustees have effectively dealt with the matter, the Charity Commission may decide not to take any further regulatory action.

However, where there are serious concerns of abuse in a charity, the Commission may need to take regulatory action. This is likely to include providing regulatory advice and guidance, placing the trustees on notice that they need to take action to resolve the matter and monitoring that they have done this.

In some cases the Commission may need to open an investigation, even if the trustees are cooperating with it and the police. If the activities of concern do not stop, the Commission may need to exercise legal powers against trustees to protect the charity. In some circumstances, the breach may call into question whether the organisation is in fact, or ever was, a charity.

16. Further information

- The essential trustee: what you need to know (CC3)
[\(<https://www.gov.uk/government/publications/theessential-trustee-what-you-need-to-know-cc3>\)](https://www.gov.uk/government/publications/theessential-trustee-what-you-need-to-know-cc3)
- Compliance Toolkit - Protecting charities from harm
[\(<https://www.gov.uk/government/collections/protectingcharities-from-harm-compliance-toolkit#chapter-1>\):](https://www.gov.uk/government/collections/protectingcharities-from-harm-compliance-toolkit#chapter-1)
 - Chapter 1: Charities and terrorism
[\(<https://www.gov.uk/government/publications/charities-and-terrorism>\)](https://www.gov.uk/government/publications/charities-and-terrorism)
 - Chapter 2: Due diligence, monitoring and verification of the end use of funds
[\(<https://www.gov.uk/government/publications/charities-due-diligence-checks-and-monitoring-end-use-of-funds>\)](https://www.gov.uk/government/publications/charities-due-diligence-checks-and-monitoring-end-use-of-funds)
- Charities and risk management (CC26)
[\(<https://www.gov.uk/government/publications/charities-and-riskmanagement-cc26>\)](https://www.gov.uk/government/publications/charities-and-riskmanagement-cc26)
- Speaking out: guidance on campaigning and political activity by charities (CC9)
[\(<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-bycharities-cc9>\)](https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-bycharities-cc9)
 - See also Commission guidance update on Charities, elections and referendums
[\(<https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-bycharities-cc9>\)](https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-bycharities-cc9)

- Public benefit: rules for charities (<https://www.gov.uk/public-benefit-rules-for-charities>)
 - The UK government's Prevent strategy (<https://www.gov.uk/government/publications/prevent-strategy-2011>)
 - The UK government's Counter Extremism strategy (<https://www.gov.uk/government/publications/counterextremism-strategy>)
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1. See Commission guidance: Exempt charities (<https://www.gov.uk/government/publications/exempt-charitiescc23>)
☞
2. The Prevent Duty was introduced under the Counter-Terrorism and Security Act 2015. Prevent is one of the 4 strands of CONTEST, the UK Government's Strategy for Countering Terrorism. ☞
3. See Commission guidance: Charities and Public Benefit (<https://www.gov.uk/government/publications/publicbenefit-an-overview>) ☞
4. When engaging on issues related to 'extremism', the Commission considers the UK Prevent Strategy's and the UK Counter-Extremism Strategy's definition of 'extremism' as an initial reference. ☞