



Charity Commission for England and Wales Parliamentary Briefing

Westminster Hall Debate: Fourth Report of the Joint Committee on Human Rights, Freedom of Speech in Universities, HC 589 (Thursday 17 May 2018)

Regulation of students' unions, universities and higher education institutions as charities

- Universities, students' unions and Higher Education Institutions (HEIs) are charities, subject to charity law.
- Most English universities and HEIs are "exempt charities", where the Office for Students (OfS) is the principal regulator for charity law, but the Commission has jurisdiction to intervene. Universities and other HEIs in Wales are not recognised as exempt charities, and are regulated by the Commission.
- The Charities Act 2006 specifies that students' unions are independent charities which must register with the Commission if their income exceeds £100,000.

Freedom of speech

- Students' unions make up just over 120 of the 90,000 charities on the Commission's register that have 'advancement of education' as one or more of their purposes.
- By the nature of their charitable status, students' unions and HEIs play an important role in providing discussion and debate for personal development, encouraging students to develop political awareness, to debate, to challenge their own views and perceptions and to form views on political issues. The Commission agrees that freedom of speech should form part of their activities in carrying out their educational charitable purposes.
- The Commission welcomes the Committee's confirmation that "freedom of speech is not absolute" and must be within the limits of the law.
- The charity law rules are very clear, but the Commission recognises that trustees may find the judgements they may have to make in applying them, in a small number of occasions, challenging. The Commission's role is to support trustees, including those of students' unions and HEIs, in that decision-making and, where needed, to hold them to account, on behalf of the public for the decisions they make.

Charity Commission Guidance

- The Commission's guidance is one of the tools used to explain their regulatory approach to all charities. Its guidance is written to enable and support all charities to recognise, and manage, the risks that arise from some activities, which may present higher risks, in order to support them to go ahead.
- The Commission has already committed to review two of its publications:
 - Chapter 5 of its guidance 'Protecting your charity from harm' – which is for all charities, not just students' unions and HEIs – to make sure it sufficiently stresses what charities can do and so has not lost an 'enabling' tone and is read in the manner in which it was originally intended – to support trustees to recognise, and then to manage and mitigate, risks to their charities.
 - To conduct a review in totality of the Commission's internal staff guidance on students' unions (OG48) – which is transparently published – to update it to ensure it sufficiently reflects relevant aspects of freedom of speech when students' unions carry out activities and ensure a clearer distinction is made between the responsibilities of the trustees, students' union bodies, student societies and the broader membership.

Freedom of Speech Summit

- The Commission welcomed the opportunity to attend the Minister for Universities' freedom of speech summit with other key stakeholders to engage in discussion collectively, including with the OfS, the National Union of Students, the Equality and Human Rights Commission (EHRC), and Home Office. The Commission is pleased that stakeholders have agreed to support new guidance led by the EHRC to act as a reference point of guidance for universities, students and students' unions on their respective rights and duties.