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| Students’ Unions |
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# OG 48 Students' Unions

# Policy Statement/Overview

This guidance has undergone extensive review in November 2018.

## Summary of the guidance

The purpose of this operational guidance is to provide guidance to Commission staff on:

* What an SU is
* The structure, charitable status and legal forms of SU's
* The relationships between SU's and their partner establishments
* Democratic decision making and activity
* Political activity and campaigning and commercial activities
* Speakers and events
* No Platform polices and risk management

## Casework Guidance

### Overview of the Sector

* 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.
* 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.
* Most English universities and some HEPs are exempt charities which do not need to be registered with the [Commission](http://www.legislation.gov.uk/ukpga/2011/25/schedule/3). The principal regulator of these exempt charities is the [Office for Students](https://www.officeforstudents.org.uk/) ("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.

## 1. What an SU is

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]*

*(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.*

**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.

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;
* 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.

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.

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.

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

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

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.

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.

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).

The [**advancement of education**](https://www.gov.uk/government/publications/charitable-purposes/charitable%20purposes) 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 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. 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](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/358536/the-advancement-of-education-for-the-public-benefit.pdf).

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.

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.

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](https://www.gov.uk/government/publications/excepted-charities) see the Commission’s published guidance.

SUs can take on different legal forms but the most common legal forms adopted are:

* Company limited by guarantee;
* Charitable Incorporated Organisation ("CIO"); or
* Unincorporated association.

For further information on legal structures please see the Commission’s published guidance [CC22a: Charity Types: How to Choose A Structure](https://www.gov.uk/guidance/charity-types-how-to-choose-a-structure).

## 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***.

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 sub-committee, but this will not necessarily prevent them from being independent in law.

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.

Section 22(1) of the 1994 Act requires partner establishments to take all reasonably practicable steps to secure that their Students' Unions operate in a fair and democratic manner and are accountable for their finances. Under section 22(2) of the 1994 Act this includes, but is not limited to securing that the Students' Union has a written constitution, that the financial affairs of the union are properly conducted and that there is a fair, written procedure for allocating resources to groups or clubs.

The partner establishment is required to prepare, issue and revise (when necessary) a Code of Practice setting out, in relation to each of the requirements of section 22(2) of the 1994 Act, the manner in which they are to be effected and the details of the arrangements to secure compliance. This Code of Practice and any restrictions imposed on Students' Unions by charity law must be brought to the attention of all the students at the establishment at least once a year, in accordance with section 22(3) of the 1994 Act. The establishment is also required to bring to the attention of the students section 43 of the Education Act (No.2) 1986 (freedom of speech in universities and colleges) and any additional code of practice issued under it, relevant to the activities or conduct of the Students' Union.

## 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

Typically SUs will have a number of clubs and societies who receive funding from the SU and which members of the SU can join.

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.

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.

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.

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

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.

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.

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

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.

In law, the trustees of a charity are the persons having the general control and management of the administration of a charity. 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.

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.

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](https://www.gov.uk/government/publications/the-essential-trustee-what-you-need-to-know-cc3). 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.

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

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.

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:

* 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.

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

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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

* affiliate with the NUS 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.

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

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)](https://www.gov.uk/government/publications/speaking-out-guidance-on-campaigning-and-political-activity-by-charities-cc9) which is applicable to SUs, and to all other charities (registered or unregistered).

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.

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

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".*

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.

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.

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

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".*

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.

An SU can apply its assets to legitimate and reasonable campaigning and political activity as a means to further its objects.

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.

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.

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 objects.

### 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

An SU should maintain neutrality, as such they must not support or oppose a particular political party, candidate or politician.

The trustee body of an SU must not allow its funds to be used for party political purposes, directly or indirectly.

The trustee body of an SU can encourage students to develop political awareness, acquire knowledge of and debate political issues. This includes 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

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.

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.

It is not for the Commission to anage an SU’s activities in relation to debates, invitations to or hosting of speakers or the [passing of motions](https://ogs.charitycommission.gov.uk/g048a001.aspx#tab3#heading_toc_Ni_16). 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](https://www.gov.uk/government/publications/its-your-decision-charity-trustees-and-decision-making) process with regard to the assets, resources, funds and reputation of the SU;
* Adequate and appropriate risk assessment and management; and
* Management of complaints.

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

### 7.2 Freedom of Speech and Partner Establishments

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](http://www.legislation.gov.uk/ukpga/1994/30/section/22)")) 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.

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.

**(1). 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.

**(2). 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.

**(3).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).

**(4). 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).

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

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.

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.

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.

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

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.

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

The Commission’s guidance on [trading by charities](https://www.gov.uk/guidance/charities-and-trading) will be relevant to SUs carrying on commercial activities.

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.

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.