Lord David Trimble: I wanted to ask about this concept of non-violent extremism – my understanding is that it refers to people who are propagating an ideology which justifies the use of violence, not themselves using violence, but by propagating that ideology they are effectively grooming someone to then become violent. Now you seem to worried that the way in which they arrived at the views that a person is an extremist, by the things that they have said or done, and all the rest of it. I am uncomfortable with the material that is gathered to take a view to say what is extremism, which to my mind is not relevant to the issue of other people propagating a violent ideology, because I think that should be fairly clear.

Paul Bowen: But it’s not clear, that’s the problem. I will read you the definition from the 2011 Prevent policy but it’s also in the glossary of the main Prevent Duty Guidance. Extremism is defined in the 2011 as ‘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 and it includes non-violent extremism i.e. extremism which is not accompanied by violence. So, the difficulty is not with the radicalisation to commit terrorist acts that we were talking about, it’s the definition of extremism, which is much wider than that, and that is the definition that is being used by the Extremism Analysis Unit and it has also infected the Prevent Duty guidance. When I was talking earlier about the Prevent Duty being ok when it refers to steps being taken to prevent terrorism, but what has happened is this injected into that is this definition of non-violent extremism and extremism and being opposed to fundamental British values. This has broadened the base of opinion which can be proscribed.

Lord David Trimble: I think it’s a question of what we mean by extremism and I think extremism is an ideology which is preparing people for violence or validating the use of violence or saying it’s alright to go and kill these people.
Paul Bowen: But that’s not the definition in the guidance or in the policy.

**Helen Mountfield:** When the UN rapporteur on freedom of expression came to the UK in May last year, they said that the problem was the lack of definitional clarity and that people were being encouraged to report suspicious activity in a way that was closing down legitimate expression within a democracy and fostering a sense of extremism and withdrawal from the democratic process from this country. Its as if people then feel, ‘this country will not let me express my view that Sharia law would be better, this country will not let me express my view that homosexuality is a sin or abortion is a sin.’

**Gary Attle:** That does link to the guidance question. There is a very good website, called safe campus communities, it is hosted by Universities UK. It has all the guidance from the Equalities and Human Rights Commission, the NUS, and it’s all in one place. It has been brought together. I would echo Helen’s earlier point about some of the guidance from the Charity Commission. I think there is very good guidance about keeping a student’s union within its charitable purposes, and not going adrift in campaigning for political matters. Its ok to speak about political matters that comes within the charitable purposes of the advancement of education. But there is other guidance that was brought in in 2013 for charities and applies to student unions, which is called ‘protecting from harm’ or something like that and it talks about extremism issues and damage to reputation of a charity. What I don’t think there is enough of in that particular guidance is the section 43 duty that does bite on the student’s union if the premises of a university are used. So, student unions reading the charities guidance - and they are under the jurisdiction of the charities commission – will not give the same emphasis to the freedom of speech duty and therefore that guidance will sit heavily when a request comes in – and the evidence you heard last week suggested that.

**Lord David Trimble:** The problem is that the way one defines extremism has just become too loose and spread out and its produced by people that are concerned about covering themselves against any future criticism.

**Baroness Hamwee:** You don’t have to respond to that. Can I just ask you if any of you have got any actual examples where there has been conflict between the Prevent duty and the duty to promote free speech? Can you point to any real-life examples of problems with the Prevent duty? And you might not want to comment on this but I remember the debate as colleagues will do, the debate that was not that long ago, about the conflicting duties that universities have. In the Lords, there are a lot of people with university connections. And the guidance that came out after that debate it was heavily negotiated with and I wonder whether you might think there has been too much of a compromise.

**Paul Bowen:** Its quite interesting that that particular passage that I read you earlier was a compromise that came out of the before the election – well there was an election between the two forms of guidance– the first set of guidance from March 2015 was very contentious and one of the sentences in it that was very contentious was that it said that universities, RHEB’s must take steps to exclude extremist speakers from coming onto campus and that was seen as an
infringement of free speech. And so, the compromise was the passage that I read out to you which has exactly that same effect - which the judge has just said that it might have that effect but you can just ignore it because you have to carry out your own balancing exercise.

So, I was just saying that there was a contentious set of guidance to start off with in March 2015 and the way it was compromised was that it was going to be introduced but it wouldn't apply to universities in that form. There was then the election, then there was the revised guidance which introduced the higher education guidance which I have referred to.

**Baroness Lawrence:** I have listened to the discussion and I wondered with the universities and the student unions, has there been a point since Prevent that the university has had an opportunity to say that the Government has put in does not actually work too well. Has there been a discussion on this – it’s the same thing that we were listening to last week when students talked about the restrictions on what they can and can’t do and it seems as though not a lot of thought has been put into the guidance and I wonder if universities are able to say to the Government that, ‘well look there are certain things that are put in the guidance which do not work well.

**Gary Attle:** I think that is the job of Universities UK, and they will have been lobbying and talking to government extensively about the Prevent duty. They were lobbying when the Counter Terrorism and Security Bill was going through Parliament to get the amendment made to the primary legislation to have particular regard to the free speech duty. So, there was extensive lobbying back then. I am not sure what they are doing now.

**Harriet Harman:** Can I ask a question? Is it not the case that students, whether its student societies or student unions have got their right to free speech as against what the university administration do, so there is a duty on the university administration to protect free speech and have free speech policies, but there is also an inherent right in students, as people with human rights, and therefore it’s not the final story is it if the university actually decide something, which could be breaching the human rights of the students, by getting it wrong.

**Paul Bowen:** Yes, absolutely.

**Harriet Harman:** Do you think any examples of that are happening and what should be done about it?

**Paul Bowen:** There is some research being done by Professor Alison Scott Baumann – you had one of her research students in last week and I think she should be asked about this. We had evidence which was relevant up until November 2016 in the Butt case which had included conferences which were cancelled in Huddersfield because of Prevent concerns. We also had evidence of policies of different universities which showed a differing approach – some universities being more pro-free speech, some being more pro-prevent.

**Harriet Harman:** So, student unions could bring cases against universities?
Gary Attle: Universities are subject to judicial review. They have been challenged in the past. There aren’t many instances but it has happened.

Harriet Harman: By students?

Gary Attle: Yes

Paul Bowen: But never underestimate how difficult that would be. Particularly in these days of limited legal aid.

Harriet Harman: But just to finish Gary’s point – have universities been challenged by students?

Gary Attle: One of the only cases under section 43 was a case brought against the University of Liverpool in 1990. It was all to do with safety on campus and I think it was the Conservative association which wanted to have a diplomat from South Africa speaking on campus and there were worries about safety and so the university said no. The lead of student association successfully judicially reviewed the university because the university took into account public safety issues outside of the grounds of the university on police advice that there could be riots. But the University’s decision was quashed.

Harriet Harman: But you think Paul, that the financial burden would make it difficult because they wouldn’t have the resources?

Paul Bowen: That would be one of the obstacles. But one of the things that came out of Alison Scott Baumann’s evidence was that the students themselves felt constrained from even inviting certain speakers because they were afraid of being labelled as extremist themselves by inviting someone who might be seen as extremist. Now if you’re not inviting somebody in the first place there is never a decision made by a university to challenge. The individual that might have been invited will never get an invitation and will never know that they have been uninvited and there will therefore not be a challenge. When I watched the Committee’s last evidence session, it is certain groups, black minority ethnic groups, particularly Muslim groups, who are feeling particular effected by Prevent and may feel the least agency to challenge it.

Helen Mountfield: But what concerns me, and this is an issue about the Office for Students, is you have criminal law which prevents certain things being said you have the section 43 duty which can in theory be challenged by a judicial review, it worries me that the state could itself, through a regulator, look at what indicative behaviours of encouragement of freedom of expression are being undertaken by the university and take sanctions against it. ‘Who are you allowing to speak? – I want to see that because I want to know from your indicative behaviours if you are being balanced.’ One of the great threats to academic freedom is government interference. You can get a government of one colour that doesn’t like what is being said.

Karen Buck: I am interested in the other side of the coin. If a university makes a judgment call, particular on the safety issue, and then makes a judgment that on balance it will allow the invitation to proceed, and a controversial speaker is
invited and there is trouble. What is the scope or what powers does somebody have to take action against the university? And has this happened?

**Gary Attle:** I am not sure if it has happened. I suppose you would look what duty of care is owed and has the university taken adequate security measures for the safety of all people. The health and safety regime will kick in where you are supposed to have proper regard for the safety of all people. So theoretically those are the situations. I do know that university management do care huge amounts for the safety of all people coming onto their campus and there will be an outcry if they did not discharge those duties properly. I don’t feel in my experience in advising universities that the safety issue has a crushing effect on freedom of speech. They have to balance the rights and obligations in that regard.

**Lord Trimble:** You touched on the Office for Students. We wonder if there are any legal problems lurking there?

**Aileen McColgan:** Given the complexities about balancing the universities duties of promoting freedom of expression against the universities duties to foster good relations, promote equality and the Prevent duty, I struggle to see how suitable it could be for a regulator body such as the Office for Students to sit in judgement on universities and threaten fines and deregistration.

**Lord Trimble:** Deregistration means closing down a university?

**Aileen McColgan:** That is understood to be the ultimate sanction. It is to me a very unwise method by which to try balance these difficult rights.

**Lord Trimble:** So there would be lots of little sanctions along the way like fining them?

**Aileen McColgan:** Yes

**Gary Attle:** I find it curious that it was not on the face of the bill, the Higher Education and Research Bill, that free speech issues were not at the face of the bill itself and debated there. The mechanism for bringing in regulation in this area is connected to having a public interest condition and that is coming in quite late in the day, and I might have missed something in the Commons or Lords, but I find it odd that it was not on the face of the bill where it could have been debated by members of both Houses.

**Helen Mountfield:** And we already have a well-established duty on universities to take steps to protect freedom of expression, I do think at that point there needs to be some level of trust. If you have the state examining the indicative behaviours, have you been fair in the allocation of rooms for meetings for example, you are in a dangerous situation.

**Aileen McColgan:** I think it’s important us to note that with the alleged difficulties with freedom of expression and no-platforming, but if one looks at the Spiked survey which was published a few months ago, this categorises problematic intrusions on freedom of expression things like gender equality policies. So obviously if you have an anti-harassment policy which says it is
inappropriate to put up nude photographs of women and use sexual language in public meetings. That is a policy which to some level does engage with freedom of expression, but to count that as an example of universities clamping down on freedom of expression is problematic. There is a degree of hysteria perpetrated by the press and I am not talking about Prevent here, I am talking about no-platforming. I think it’s important to see that the problem is not as prevalent as is suggested.

Harriet Harman: It is a bit oxymoronic for there to be an imposition of freedom of speech, the idea that a state regulator has to impose freedom of speech, you can immediately feel that feels quite odd. So, if it’s not the right thing the OfS to be doing it, and if deregistration is not the right enforcement to be put it, to protect this duty, who else is around that you feel that could do it? What about the Equality and Human Rights Commission – they have all the different duties, like the right to life? What about them holding the judgment?

Aileen McCollan: Before deciding who is going to be regulator, should we be first looking at how we can facilitate the compliance by universities duties in relating to freedom of expression by properly giving them guidance which doesn’t overstate Prevent, which pays due regard to the need to protect freedom of expression, which facilitates their ability to pull together these strands.

Harriet Harman: But we would still need a regulator?

Helen Mountfield: The point you made earlier, that the real interest should be in students being able to receive ideas and also in protecting the right of academics to express views in a state of freedom. It doesn’t seem appropriate for the state to say ‘unless you do that in our judgement, we will impose a sanction.’ You might have an independent ombudsman. It may be an appropriate function for the Equalities and Human Rights Commission or a separate ombudsman. But it does not seem right that the state is able to say ‘we do not share your judgement and you have not done this right so we will impose sanctions upon you.’

Gary Attle: I would say that a university that is taking steps to restrict free speech, for example, by preventing them from having particular speakers from speaking at campus, could be breaching their human rights obligations. So, the idea that they cannot be told to stop doing what you’re doing’-

Harriet Harman: My point is not, they cannot be told stop doing what you’re doing, my point is who should be regulating? Should it be a state agent, or somebody who is independent like the Equality and Human Rights Commission?

Gary Attle: My view would be that there is an architecture which is in place already, the duty is placed on the governing body, the governors are the charity trustees. That is the primary place where the duties sit. If too much regulation comes about governors will feel undermined. I would urge caution with introducing more regulatory bodies in this area. I think it’s about revitalising the free speech duty and leadership from within universities to promote it really positively. And also, maybe taking down a notch, the Charities Commission
guidance, which doesn’t really promote free speech and is really quite a crushing on free speech, which worries about harm and reputation.

**Harriet Harman:** I was not suggesting to create a new ombudsman. I was saying who is best placed to make this judgment of if universities are balancing their duties.

**Paul Bowen:** The Equalities and Human Rights Commission would be a body. It is worth bearing in mind that the EHRC can fund cases in certain circumstances where rights have been infringed but they can only fund them if they involve an Equality Act claim. They could not fund someone to bring a challenge if it was a human rights claim if someone argued that their free speech had been violated.

**Helen Mountfield:** Yes, that was the compromise in the Act, the EHRC can intervene in cases but they cannot bring them or fund them unless they involve equality issues.

**Paul Bowen:** If you have a judicial review claim you can tag on a human rights claim.

If you’re talking about the EHRC taking a role in enforcing the right of free speech of students against universities that restrict their rights it would be worth bearing in mind what the limitations are of the EHRC.

**Harriet Harman:** But we want to know what should be the case, not what is the case.

**Paul Bowen:** Ah ok so it might be a recommendation to add in.

**Helen Mountfield:** If we were to introduce a new body, because the courts are inaccessible which would give a new power to the EHRC or an ombudsman or somebody. If there has to be a regulator, then I don’t think it should be a state body, it should be somebody independent.

**Harriet Harman:** We have got a state body with the state power to sanction, it’s a question of – and what we have been focusing on – is whether that is the wrong place for the protection for the human rights and for the balancing of the different rights. So, is there anybody else around who would be a better enabler or enforcer – who might be in a better place in doing this job?

**Paul Bowen:** There is another issue about the role of the Office for Students. Looking at this consultation document, which does trumpet this duty that the OfS will have to protect free speech. It starts from the same problematic position that we have been discussing. It says ‘our consultation is about valuing lawful free speech and ensuring that those that wish to engage in lawful debate can do so. There is no place for those that hold ‘unlawful extremist views or those that seek to undermine freedom of others. We will continue to ensure that this extremism of others never goes unchallenged.’ So here again is the problem we were taking about earlier about the definition of extremism. Is it the radicalisation that Lord Trimble was talking about or what is it?
Baroness Hamwee: That takes us back to the work we were doing in the last session, doesn’t it? Do any of the other members have any further questions. Is there anything else that you would like to add at this point?

Thank you all very much indeed.