

23 December 2013

Stewart Maxwell MSP  
Convener  
Education and Culture Committee  
T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

Dear Mr Maxwell

### **Universities UK External Speaker Guidance**

Thank you for your letters dated 13 and 19 December. I appreciate the opportunity to respond to the Committee's concerns about our recently published document *External Speakers in Higher Education Institutions*.

The guidance did not promote or endorse enforced segregation by gender on campus. We unequivocally agree that no university should, or could, impose segregation at an open meeting on campus. In reviewing our guidance we will seek to make this more explicit, since it is clear that this has been a cause of considerable confusion and public concern.

In addition to the extensive legal advice we drew on in preparing the guidance, in response to this public concern we have withdrawn the case study in question; received advice from Senior Counsel; and referred the matter to the Equality and Human Rights Commission. At present, we believe that the law in respect of voluntary segregation remains unclear. However if, as the result of our review there are ways in which it should be corrected or clarified, we will do this.

Meanwhile, in your letters you asked a series of specific questions, to which we have responded in the attached annex. As this commentary makes clear, these are far from straightforward issues. Universities UK sought to help our member institutions navigate them. If it transpires that we have been mistaken or unclear in our interpretation or presentation, particularly in relation to the differences in law in different parts of the UK, we will correct our guidance.

### **The essential voice for our universities**

**Chief Executive**  
**Nicola Dandridge**

**Universities UK**  
Woburn House  
20 Tavistock Square  
London  
WC1H 9HQ

**telephone**  
+44 (0)20 7419 4111  
**fax**  
+44 (0)20 7388 8649

**email**  
[info@universitiesuk.ac.uk](mailto:info@universitiesuk.ac.uk)  
**website**  
[www.universitiesuk.ac.uk](http://www.universitiesuk.ac.uk)

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1001127

Please let me know if I can provide any further clarification.

Yours sincerely,

  
Nicola Dandridge  
**Chief Executive**

### ***Did we consult Universities Scotland?***

We were aware that the law in Scotland is different from the law in England in relation to the duty to safeguard freedom of speech, and therefore sought the advice of Scottish solicitors and consulted UK-wide bodies such as the Equality Challenge Unit, the Association of Chief Police Offices and the National Union of Students. Our guidance makes these legal differences clear (pages 6 and 32). Although we did not directly consult Universities Scotland, we kept our members in all parts of the UK informed about the development of the guidance, including through our Board, which includes representatives from Scotland.

The guidance acknowledges that the law, and therefore the balance of considerations, is different in Scotland. However the published opinion provided by Fenella Morris QC states:

‘Scottish universities will be aware that they are not subject to the requirements of section 43 set out above. It is my view that the absence of this specific statutory obligation does not fundamentally alter the analysis insofar as Scottish universities are still obliged to balance competing rights and interests, albeit there is not the additional emphasis on freedom of speech that arises under the English legislation.’

Having withdrawn the case study we would be open to suggestions as to how it could be improved in this regard.

### ***Could there be other grounds for allowing segregation?***

Technical Guidance on Further and Higher Education issued by the Equality & Human Rights Commission in 2010 states at paragraphs 4.8 and 4.9 that:

“4.8 When the protected characteristic is race, deliberately segregating a student or group of students from others of a different race automatically amounts to less favourable treatment...”

4.9 Segregation linked to other protected characteristics may be direct discrimination. However, it is necessary to show that it amounts to less favourable treatment.”

We understand that the Equality and Human Rights Commission is now reviewing their Technical Guidance.

***Could the guidance apply in other settings such as lectures, seminars and societies?***

The case study in question specifically and exclusively refers to external speakers being invited to universities by students and staff. The commentary also relates exclusively to this case study – that of an ultra-orthodox speaker invited to discuss his own faith as part of a series of seminars exploring faith in the modern world. It explores whether the institution can accommodate different preferences in a way that does not disadvantage any particular group. In this hypothetical case study, voluntary segregation may be the manifestation of a religious belief which is protected by Article 9 of the Equality and Human Rights Act.

***Do you consider there is a need for further inquiry, reform or legislation in this area?***

We have referred the relevant case study to the Equality and Human Rights Commission and await their view.

***In what circumstances [do] you consider that an individual's beliefs usurp the wider rights of others in a public environment.***

This case study has been widely misunderstood. We did not advocate a particular conclusion, but rather set out the factors which a university should consider in making its own decision. Section 43 of the Education Act (Number 2) 1986 does not apply in Scotland, so Scottish universities do not have an explicit legal duty to secure free speech in the way that English and Welsh universities do. Section 43 requires universities in England and Wales to:

“take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for ... visiting speakers” including a duty to “ensure, so far as is reasonably practicable, that the use of any premises of the establishment is not denied to any individual or body of persons on any ground connected with the beliefs or view of that individual”.

Universities have to balance this against competing rights. Ultimately it would be for a court to decide whether they had achieved the right balance. In her Opinion, Fenella Morris QC provided a commentary on this as follows:

“As set out above, universities that make decisions about the arrangements for external speakers, are required to strike a balance between competing rights and interests. In doing so, they will be obliged to have regard not only to the statutory duty imposed by Parliament in relation to freedom of speech, but also the great importance placed on freedom of speech both in the European jurisprudence and in the HRA [Human Rights Act]. Further, whether the reason advanced for placing a stipulation of segregation of an audience for a particular speaker relies upon the fact that it is the manifestation of a religious belief, two rights – Articles 9 and 10 – will be invoked. These two important rights must be balanced against a right of freedom of association of those who do not wish to be segregated while hearing a particular speaker. Although it would be too simplistic to suggest that the two former rights will always outweigh the latter, it is likely that in many cases the significance of the two former rights will be greater than the latter in terms of where a person sits in order to be part of the audience for a particular speaker if not allowing segregation would prevent the speaker appearing.”

This advice goes on to state that universities must *also* take account of criminal law, and the safety of staff, students and visitors etc. This underlines the point that the decision an individual university would have to make in these circumstances is not simply about balancing one person’s rights against those of others – but rather about balancing a range of different legislative requirements and other considerations.

As the Equality Challenge Unit has pointed out “it must be acknowledged that equality legislation is often not clear cut, and an institution's response to requests for segregated meetings are still likely to be based on a process of consideration of the context and in consultation with staff, students and the group requesting the event.”

The NUS has said that: “For events which are open to the general public or student population where some participants would like to segregate we recommend a seating arrangement that can be achieved to meet the needs of all. For instance, this might include having a space somewhere in the audience for those that do not wish to partake in any specialised spaces.”

Finally, it is worth reiterating the fundamental point that universities have complete autonomy over who they invite to speak on campus. Universities UK’s guidance is not prescriptive or binding on any university. Taken as a whole, the guidance is very clear about steps an institution might want to take in assessing the suitability of a

proposed speaker and also in suggesting that they may wish to involve a wide range of people and groups, including community representatives, student societies and lead staff with responsibility for equality and diversity, in making a decision about whether to issue an invitation to a speaker.

**UUK December 2013**